

W.P. No. 5321 of 2021  
Prosecutrix (Minor) through her Natural Guardian  
Vs.  
State of M.P. & Ors.

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**HIGH COURT OF MADHYA PRADESH**

**BENCH AT GWALIOR**

**SB : Justice G.S. Ahluwalia**

**W.P. No. 5321 of 2021**

**Prosecutrix (Minor) through her Natural Guardian  
Vs.  
State of M.P. and others**

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Shri Anil Kumar Mishra, Counsel for the Petitioner  
Shri M.P.S. Raghuvanshi, Add. Advocate General for the State with  
Investigating Officer  
Shri Amit Sanghi, Superintendent of Police, present for assisting the  
Court  
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Date of hearing : 17.06.2021  
Date of order : . 23.06.2021  
Whether approved for reporting : Yes

**Case was Heard through Video Conferencing**

**O r d e r**

**(Passed on 23/06/2021)**

1. This petition under Article 226 of the Constitution of India has  
been filed seeking the following relief(s) :-

**7. Relief Sought :-**

It is, therefore, most humbly prayed that the instant  
petition may kindly be allowed and a writ of mandamus  
and/or a suitable writ, order of direction in the nature of a  
writ be issued against the respondents and following  
relief(s) may kindly be granted :-

(I) The, respondent authorities may kindly be directed to  
take punitive action against the responsible officers in the  
interest of justice.

(II) That, respondent authorities may kindly be directed to  
arrest the accused persons of the aforementioned crime  
interest of justice.

(III) That, respondent authority may kindly be directed to change Investigation Officer of the case, so the entire investigation would be completed in fair and impartial manner.

(IV) That, respondent authority may kindly be directed to provide the protection to the prosecutrix and her entire family members in the interest of justice.

Any other relief which this Hon'ble Court deems fit in the facts and circumstances of the case same may kindly be granted to the petitioner.

2. It is the case of the petitioner, that the prosecutrix has lodged an F.I.R. in Crime No. 87/2021 for offence punishable under Sections 376, 506 of I.P.C. and under Section 3(2)(va), 3(1)(w)(ii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, on the allegations that since 18-12-2020 She is living in the house of Ganga Singh Bhadoria on rent. She is doing the household work of Ganga Singh Bhadoria. On 31-1-2021 at about 8 P.M., Aditya Bhadoria (Grand son of Ganga Singh Bhadoria) and his friend came to her room. She was raped by friend of Aditya Bhadoria, whereas Aditya Bhadoria was keeping a watch. While returning back, they extended a threat that in case if the matter is reported, then She will have to face dire consequences. It is submitted that F.I.R. was lodged on 31-1-2021 at about 23:50 and thereafter, the prosecutrix was illegally detained and her parents were also detained by the concerned police personals and the prosecutrix and her parents were subjected to cruelty. Therefore, the cousin brother of the prosecutrix filed a Habeas Corpus Petition

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which was registered as W.P. No. 2571 of 2021 and was disposed of vide order dated 9-2-2021 and the prosecutrix was permitted to go with her parents. The prosecutrix was produced before the Court below for recording of her statement under Section 164 of Cr.P.C., where also, She narrated the incident of beating. According to the Adhar Card, since, the prosecutrix was minor, therefore, She was deliberately sent to One Stop Center, Gwalior, though her parents were present.

3. It is the case of the petitioner, that She (Prosecutrix) and her parents were subject to harassment by the police and instead of providing shelter to the prosecutrix, the police personals are harassing her and her parents, thereby violating the fundamental rights of the prosecutrix to live with dignity. Accordingly, the petition has been filed seeking the above mentioned relief(s).

4. The respondents have filed their return. It is the claim of the respondents that the investigation is going in a right direction in proper manner and within the lines of law. Swift, speedy and proper investigation is going on. Nothing as alleged in the writ petition is being done by any of the Authority, investigating officer or any other person against the prosecutrix or any other person. It is mentioned that on 31-1-2021 at 9:40 P.M., a report was made to Dial 100 by prosecutrix wherein She reported that two person came to her and one of them committed rape on her. On 31-1-2021 itself, information

was received in the police station at 23:36 and the same was entered in General Diary Reference at 23:50 and accordingly, F.I.R. was lodged at 23:50. The mobile phone and Adhar Card of the prosecutrix was recovered in which date of birth of the prosecutrix is mentioned as 1-1-2007. Statement of prosecutrix was recorded and was sent for medical examination along with lady Constable Ms. Shivani Dubey. On the same date, Dr. Reena Saxena was informed that the prosecutrix is minor and is aged about 15 years, therefore, in absence of parents of the prosecutrix, the Doctor refused to carry out her internal examination. A.S.I. Vishram Singh was sent to bring the parents of the prosecutrix and the father of the prosecutrix, informed that he has not met the prosecutrix for the last 2-3 years and refused to give consent for her medical examination, as She was 19 years old. The father of the prosecutrix also submitted a mark sheet of class 9<sup>th</sup> of the prosecutrix in which her date of birth was mentioned as 7-3-2002. The admission register of the school was also summoned and it was found that the date of birth of the prosecutrix is 7-3-2002 i.e., 18 years and 10 months. Since, there was a discrepancy in the age of the prosecutrix, therefore, Ms. Kirti Upadhyaya, was directed by S.H.O. Police Station Morar Ajay Singh Pawar, to enquire as to why the prosecutrix has disclosed her incorrect date of birth. Accordingly, her statement was recorded once again, in which She informed that she has lodged the F.I.R. in the pressure of Dharmendra Dhakad.

Accordingly, the statement of Dharmendra Dhakad was also recorded who stated that the prosecutrix is the girl friend of his friend Shyamu Sharma and the prosecutrix must have lodged the F.I.R. in the greed of money. On the same day, the prosecutrix was sent to the Court of J.M.F.C., Gwalior for recording of her statement under Section 164 of Cr.P.C. She was got medically examined and the Doctor reported that the prosecutrix has sustained eight simple injuries on various parts of her body. The duration of these injuries was within 24 to 48 hours. Aditya Bhadoria was searched but he was missing. Vaginal swab draft was prepared on 12-2-2021 and was sent to Police Station Morar for sending the same for F.S.L. examination. On 16-2-2021, the accused persons were searched but they were not found. Again on 18-2-2021, Aditya Bhadoria was searched but he was found missing. On 24-2-2021, Aditya Bhadoria was searched but he was missing. On 25-2-2021, the family members of Aditya Bhadoria provided several documents to show that the allegations made against Aditya Bhadoria are false and vexatious. They also gave applications/representations to the Superintendent of Police, Gwalior as well as Inspector General of Police, Gwalior. It is also mentioned that a CD was also provided to show the presence of Sonu @ Sandeep in the Court premises. It is the case of the family members of Aditya Bhadoria that Sonu @ Sandeep had allegedly murdered the son of Ganga Singh Bhadoria, namely Sanjay Singh Bhadoria. It was

also claimed that since, Aditya Bhadoria and Ganga Singh Bhadoria are the key witnesses in the case of murder of Sanjay Singh Bhadoria therefore, it was claimed that in fact, Sonu @ Sandeep has cooked up a false story of rape against Aditya Bhadoria. Accordingly, the D.P.O. has been requested to provide the CCTV footage of the Court premises. However, it was replied by the D.P.O., that there are only two cameras in the Court premises and the footage can be obtained by the permission of the District Judge. On 13-3-2021, on the basis of DVD and DVR provided by Ganga Singh Bhadoria, the search of Sanjay Nai was also carried out. Since, the family members of Aditya Bhadoria are suspecting involvement of Shyamu Pandit and Sanjay Nai, therefore endeavor is being made to trace them out. Call details of the prosecutrix have also been obtained.

5. It is further claimed by the respondents, that since, the injuries found on the body of the prosecutrix were not that of duration when She was in the Police Station and therefore, the same cannot be attributed to any police officer. After recording of her statement under Section 164 of Cr.P.C., the prosecutrix was lodged in One Stop Center, Gwalior. On 2-2-2021, the Doctor after medical examination could not give any opinion, as to whether rape was committed on the prosecutrix or not. On 4-2-2021, Ms. Priti Bhargav was instructed to go to One Stop Center along with CSP Morar, where her statement under Section 161 of Cr.P.C. was recorded in the presence of CSP

Morar, Manju Mishra and Vasundara Bela, employees of One Stop Center. The One Stop Center did not give consent to take the prosecutrix to the place of incident. On 5-2-2021, the Special Judge, Gwalior, granted permission to take the prosecutrix to the place of incident and the prosecutrix provided the torn cloths. The filing of habeas corpus petition was also admitted in the return. It is further claimed that since, the prosecutrix is more than 18 years of age, therefore, offence under POCSO Act has not been registered.

6. It is claimed that all the rights of the prosecutrix have been protected and the respondents are ready and willing to produce the complete case diary, as and when demanded. The investigation is going on in a most honest manner. No atrocity has been committed.

7. On 16-6-2021, this case was directed to be listed on 17-6-2021 at the top of the list.

8. The case was taken up at 10:30 A.M. The Superintendent of Police, Gwalior, investigating officer were present in the office of Add. Advocate General. Since, the original case diary was with Add. Advocate General, therefore, he was requested to provide the same in PDF format, and accordingly, at the request of Shri Raghuvanshi, the case was directed to be called at 1:00 P.M. At 1:00 P.M., it was submitted by Shri Raghuvanshi that since, the diary is voluminous, therefore, he may be permitted to sent the physical case diary. Accordingly, Shri Raghuvanshi was directed to send the complete

case diary along with the proceedings recorded by the Police, and the matter was directed to be called at 3:30 P.M. Shri Amit Sanghi, Superintendent of Police, who was present in the office of Add. Advocate General was asked that he may join the Court proceedings from his office, through Video Conferencing.

9. Accordingly, the case was called at 3:30 P.M. and the hearing continued till 8:00 P.M.

10. During the course of arguments, it was found that the police has sent only two parts of police case diary and has not sent the papers containing the action taken by the police. When this fact was pointed out to Shri Raghuvanshi, then initially it was submitted that complete case diary has been sent, but on repeated request by the Court, the Investigating Officer, admitted that the part of the case diary which contains the proceedings, maintained as per the provisions of Regulation 742 of Police Regulations has not been sent. When this Court expressed its displeasure on suppressing the material documents, then the diary containing the proceedings of investigation was also sent in a sealed cover.

11. Be that as it may.

12. During the Course of arguments, it was revealed that when the prosecutrix informed the J.M.F.C., Gwalior about beating by the police, then the J.M.F.C., Gwalior, immediately brought this fact to the knowledge of the C.J.M., Gwalior who called the C.S.P., Gwalior



in Court and instructed to change the investigating officer and to send the prosecutrix to a secured place. There was no direction to send the prosecutrix to One Stop Center. However, the C.S.P., Morar, on his own, sent the prosecutrix to One Stop Center instead of sending her to the house of her parents. This conduct of C.S.P. Morar, shall be considered in the later part of the order.

13. During the Course of arguments, C.S.P., Morar also joined the Superintendent of Police, Gwalior. During the course of arguments, it was pointed out by Superintendent of Police, Gwalior, that Add. S.P., (East) is conducting an enquiry into the allegations of beating of prosecutrix in the police station, and the enquiry report is expected to be received within 3 to 4 days. However, looking to the controversy involved in the matter, the Superintendent of Police, Gwalior was directed to provide the complete file of Add. S.P. (East) regarding the enquiry. Although the Superintendent of Police, Gwalior was hesitant in providing the record on the pretext that the enquiry report is expected to be received within 3-4 days, but later on provided the file of Add. S.P. (East) in a sealed letter. Since, the prosecutrix had firstly informed the Dial 100 about the incident, and She was taken to Police Station by Dial 100, therefore, the relevant record of Dial 100 was also provided by the Superintendent of Police, in a sealed cover. During the course of arguments, it was also found that the statements of the witnesses have also been videographed, therefore, the Add.

Advocate General was directed to point out the Compact Disc containing the statements of the witnesses. It was pointed out by Shri Raghuvanshi, that the Pen drive/compact disc containing the videography of statements of witnesses is not in the police case diary and accordingly, sought some time to obtain the same from the lady constable who had recorded the same. Later on, a pen drive containing the videography of three statements of Prosecutrix, father of the prosecutrix, Dharmendra Dhakad was sent in a sealed cover by Shri Raghuvanshi, Add. Advocate General. During the course of arguments, it was pointed out by Shri Raghuvanshi, that he is not in possession of Rojnamcha Sanhas of Crime No. 87/2021 (present case). Accordingly, he was directed to supply the same. However, the same were not sent immediately, but on repeated reminders by the Reader of this Court, the Rojnamcha Sanhas of Police Station Morar were made available which contains only a part of investigation, but the Rojnmacha Sanhas of Police Station Sirol were not made available. It is not out of place to mention here that under the orders of the C.J.M., Gwalior, the investigating officer was changed and Smt. Priti Bhargava, S.H.O., Police Station Sirol, Distt. Gwalior was handed over investigation. Thus, this Court is not in possession of the Rojnamcha Sanhas of investigation which was done from 3-2-2021 onwards. Be that as it may be.

14. The controversy involved in the present case is that whether

the police is conducting the investigation in a free and fair manner or not?

15. Before considering the facts of the case, this Court thinks it apposite to consider the scope of interference by this Court at the stage of investigation.

16. The Supreme Court in the case of **Manohar Lal Sharma Vs. Union of India and others** reported in (2014) 2 SCC 532 has held as under :

24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the citizens.

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38. The monitoring of investigations/inquiries by the Court is intended to ensure that proper progress takes place without directing or channelling the mode or manner of investigation. The whole idea is to retain public confidence in the impartial inquiry/investigation into the alleged crime; that inquiry/investigation into every accusation is made on a reasonable basis irrespective of the position and status of that person and the inquiry/investigation is taken to the

logical conclusion in accordance with law. The monitoring by the Court aims to lend credence to the inquiry/investigation being conducted by CBI as premier investigating agency and to eliminate any impression of bias, lack of fairness and objectivity therein.

39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such “Court-directed” or “Court-monitored” cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression “Court-monitored” has been interchangeably used with “Court-supervised investigation”. Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.

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61. At the outset, one must appreciate that a constitutional court monitors an investigation by the State police or the Central Bureau of Investigation (for short “CBI”) only and only in public interest. That is the leitmotif of a constitutional Court-monitored investigation. No constitutional court “desires” to monitor an inquiry or an

investigation (compendiously referred to hereinafter as “an investigation”) nor does it encourage the monitoring of any investigation by a police authority, be it the State police or CBI. Public interest is the sole consideration and a constitutional court monitors an investigation only when circumstances compel it to do so, such as (illustratively) a lack of enthusiasm by the investigating officer or agency (due to “pressures” on it) in conducting a proper investigation, or a lack of enthusiasm by the Government concerned in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the Government concerned to take the investigation to its logical conclusion for whatever reason, or in extreme cases, to hinder the investigation.

17. Thus, it is clear that this Court in exercise of its power under Article 226 of Constitution of India, cannot supervise the investigation, but can certainly monitor the investigation, in order to find out as to whether the investigation is being done properly or not. At the beginning of the arguments itself, it was made clear to the Counsel for both the parties, that this Court will be confining itself to the manner in which the police is conducting the investigation and this Court will not touch any opinion, formed by the police so far, as it may amount to “Supervision”. Therefore, the Counsel for the parties, have argued the case in the light of the limited scope of interference by this Court.

#### **FACTS OF THE CASE**

18. On 31-1-2021 at 23:50, F.I.R. in crime No. 87 of 2021 was registered at Police Station Morar, Distt. Gwalior, although the information in the police station was already received at 23:36. As

per the F.I.R., the prosecutrix disclosed her age as 15 years and alleged that from 18-12-2020, she is residing in the house of Ganga Singh Bhadoria on rent and is doing the work of dusting and mopping. At about 8 P.M., Aditya Bhadoria and his friend came to her rented premises and pushed her. The boy accompanying Aditya Bhadoria committed rape on her and Aditya was standing there. While going back, they extended a threat that in case if the incident is narrated to any body then She will be killed.

19. On 31-1-2021 at 11:55 P.M., the mobile phone of the prosecutrix, and her duplicate Adhar Card were seized. The statement of prosecutrix under Section 161 of Cr.P.C. was recorded on 31-1-2021 itself, in which She had repeated the allegations made in the F.I.R.

20. On 31/1/2021, the prosecutrix was sent for medical examination along with the application for medical examination. It is important to mention here that in the application for medical examination, there was no reference of any injuries on the body of the prosecutrix. On 1-2-2021, Dr. Reena Saxena mentioned that since, the girl has disclosed her age as 15 years and her parents are not accompanying her, therefore, She cannot carry out her internal examination. As per the Out Patient Record, the date and time of registration is 1-2-2021 at 12:26:43. The police case diary also contains the format of medical examination, according to which Dr.

Reena Saxena refused to carry out internal examination of the prosecutrix at 2:20 A.M. (in the night) on 1-2-2021.

21. On 1-2-2021, the prosecutrix was produced before the Court of J.M.F.C., Gwalior for examination of her statement under Section 164 of Cr.P.C. which reads as under :

01. घटना दिनांक 31.01.2021 की रात के 8:00 बजे की है। मैं अपने घर पर किचिन में खाना बना रही थी। मैं गंगा सिंह भदौरिया के मकान में किराए से रहती हूँ तभी दरवाजे पर किसी ने खटखटाया तो मैंने दरवाजा खोलकर देखा तो वहाँ गंगासिंह भदौरिया का नाती आदित्य एवं उसके साथ कोई लडका आया था फिर आदित्य के साथ जो लडका आया था उसने मुझे घर में अंदर की तरफ धक्का दिया, फिर दोनों लोग अंदर आ गए और दरवाजे की कुंडी लगा दी थी। आदित्य ने मेरा मुंह बांध दिया और मेरे दोनों हाथ पकड़ लिए फिर दूसरे लडके ने मेरे कपड़े फाड़ दिए और उसने मेरा बलात्कार किया, फिर मैंने दूसरे लडके के पेशाब की जगह पर लात मारी तो वह हट गया। मैंने मौका मिलते ही आदित्य भैया को भी धक्का दे दिया था और फिर जब मैंने गंगा सिंह अंकल को आवाज लगाई तो वह वहाँ पर आ गए। उन्होंने गेट में धक्का दिया तो गेट की कुंडी खुल गई थी इतने में दूसरा लडका दूसरे दरवाजे से भाग गया था। उसके बाद गंगासिंह अंकल ने दरवाजा बंद कर दिया था क्योंकि आदित्य ने घटना के दौरान अपना पेंट उतार दिया था। गंगासिंह अंकल आदित्य को बाहर ले गए और फिर मैंने अंदर से दरवाजा लगा लिया था बाहर से गंगासिंह अंकल बोनले लगे कि “ सुन चमरिया तूने अगर किसी से बोला तो तुझे जान से मरवा देंगे” मैं बहुत धबरा गई थी तो मैंने 100 नंबर डायल कर दिया था फिर पुलिस वहाँ आ गई थी और मुझे मुरार थाने लेकर गई थी। थाने पर मेरे बयान लिए थे। फिर मुझे बहुत देर थाने पर बिठाया और लगभग 11:50 पर मेरी एफआईआर दर्ज की थी, फिर मुझे मेडिकल के लेकर गए पर मेरी आधार कार्ड में उम्र 15 साल होने की वजह से मेरे माता पिता की अनुपस्थिति में मेरा मेडिकल नहीं हो पाया था। फिर मुझे थाने वापिस लाए और रातभर थाने पर रखा था। सुबह के समय मेरे पिताजी थाने पर आ गए थे।

02. उसके बाद टी.आई. सर ने गंगासिंह भदौरिया को बुलाया था और फिर से बयान लिए हैं वह मुझसे कह रहे थे कि गंगासिंह भदौरिया तो बहुत ही सीधे इंसान है तुम उनके खिलाफ रिपोर्ट क्या कर रहे हो और मुझसे बोलने लगा कि वह तो फांसी लगाकर मर जायेगा। थाने पर सब मुझे बोल रहे थे कि तुम झूठ बोल रही हो फिर मैंने बोला था कि मैं 19 साल की हूँ और अगर यदि यकीन नहीं है तो मेरा मेडिकल करवा लो। फिर मुझे एक पुलिस वाली लेकर गई और मुझे बहुत मारा था, फिर मुझे उपर वाले हॉल में लेकर गये थे वहाँ 6-7 पुलिस वाली थी उन्होंने मुझे पट्टे से मारा था, जिससे मुझे पूरे शरीर पर चोटें आई हैं। उसके बाद वह मुझे नीचे लेकर आ गए थे

और फिर से बयान कराना शुरू किए। वह लोग मुझसे बोल रहे थे कि तुम अपने बयान में ऐसा बोलो कि तुमने पैसों के लिए झूठा केस किया है। फिर उन लोगों ने मार मार कर झूठे बयान बुलवाए थे और झूठे बयान की वीडियो रिकार्डिंग कर ली थी। उसके बाद वह लोग दुबारा मुझे उपर ले गए और उल्टा टांगकर मारने लगे और वहां पर पुरुष पुलिस वाले भी थे उन लोगों ने भी मेरे साथ मारपीट की। उसके बाद टी आई सर के आफिस ले गए और टी आई सर मुझे बोलने लगे कि तुम कोर्ट में जाकर भी वही बयान देना कि पैसों के लिए तुमने झूठी रिपोर्ट की है और अगर तुमने ऐसा बयान नहीं दिया तो तुम वापिस थाने ही लौटकर आओगी फिर तुम्हें उल्टा लटकायेंगे और चाहे तुम मर भी जाओ तब भी तुम्हें नहीं उतारेंगे। उसके बाद मुझे कोर्ट बयान के लिए लेकर आए थे। यही मेरे कथन हैं।

22. In view of the allegations made by the prosecutrix, the J.M.F.C., Gwalior, immediately brought this fact to the knowledge of the C.J.M., Gwalior, who also verified the allegations of beating from the prosecutrix, who once again alleged that She was beaten by the Police and accordingly, C.S.P. Morar, Gwalior was called in the Court and was directed to take custody of the prosecutrix and was also directed to get the prosecutrix medically examined under his supervision and was further directed to keep the prosecutrix in a secured place. The C.S.P., Morar was also directed to inform the senior police officers. The copy of the order passed by C.J.M., Gwalior is in the police case diary.

23. Thereafter, the prosecutrix was sent for medical examination. For the first time, the police in its requisition for medical examination, wrote that the prosecutrix is alleging that She has suffered injuries on her wrist, thighs of both legs, waist, knees and back. In medical examination, the Doctor found 8 contusions on the



body of the prosecutrix. This medical was conducted on 1-2-2021 at 7:45 P.M. However, the detailed examination of the prosecutrix was not conducted, and accordingly, She was again sent for medical examination, but according to the police, the prosecutrix refused to undergo her internal examination. Although in the case diary, there is no proceeding of 2-2-2021, but the case diary contains on more medical certificate of the prosecutrix which was conducted on 2-2-2021 at 09:30 P.M.. The Doctor has described the injuries as under :

“Multiple bruises on B/L thigh and tenderness caused by Hard and blunt object.

In column 15E of format it is written Bruises and swelling on B/L thigh.

In column 16 of format it is written as Bruising & Swelling on B/L thigh and face (Lt. Side) is seen.

In column 17 of format it is written as tenderness on left cheek bone, Mild tenderness behind the ears, and B/L thighs bruising with tenderness.

The prosecutrix was referred to Orthopedician for further evaluation and management (B/L bruising and tenderness present)

However, there is nothing in the police case diary to indicate that the prosecutrix was ever referred to Orthopedician for treatment of the prosecutrix.

**Before proceeding further, it is necessary to find out as to**

**whether the Investigating Officer has written case diary in  
accordance with Police Regulations or not?**

24. Police Regulation No. 742 reads as under :

742. Case diary how written - The manner in which the case diary should be written is indicated in the following institutions:-

(a) The diary should commence with a brief statement of the circumstances under which the complaint was lodged and should be followed with a verbatim copy of the complaint. All relevant facts discovered by questioning witnesses, or by personal research, all places visited and all measures taken from time to time by the investigating officer should be noted in the diary. The time at which the diary is commenced and the time when any particular action, such as arrest, search of a house, sending for an accused or witness, is taken should be regarded simultaneously with the setting down of the fact itself.

(b) The case diary should show as concisely and clearly as possible what has been ascertained day by day and should not consist of a series of depositions of witnesses examined by the investigating officer. The recording of the statement of a witness in deposition form is not obligatory (Section 161, Criminal Procedure Code). And should only be resorted to in the case of witnesses on the details of whose evidence much depends. Thus, should there be a question of the identification of an offender, the statements of the witnesses to such identification should be fully and carefully recorded. Again, in serious cases, it is, as a rule, desirable to take down the whole statement of every person who gives important information-especially every person who, from the circumstances of the case, ought to know something about it. For instance, when a person has been murdered at night in a house where other persons also live, the statements of those other persons should be recorded in full.

(c) Signing of a statement recorded - The only circumstances in which a statement taken down in writing by a police officer making an investigation is to be signed by the person making it are when the deponent is in a moribund condition and the statement is practically a dying declaration. If a magistrate is near at hand, and the

declaration is one that in the event of the deceased's death would be relevant under Section 32 of the Indian Evidence Act, the magistrate should be asked to attend and record the statement of a dying person, in accordance with the provisions of Section 164, Criminal Procedure Code.

If the attendance of a magistrate cannot be secured, without the risk of such person's death before his statement can be recorded, the investigating officer will record the dying declaration in accordance with the following instructions:-

(1) If possible, such person shall be examined by a medical officer with a view to ascertaining that he is sufficiently in possession of his reason to make a credible statement.

(2) Such statement shall be recorded in the presence of two or more credible witnesses unconnected with the police department. If such credible witness cannot be obtained without risk of such person's death before his statement can be recorded, it will be recorded in the presence of one or more police officers. This rule does not apply when a gazetted officer is present.

(3) If any person is accused by the dependent of having been concerned in the transaction which threatens to result in his death, such person should be allowed to be present if he wishes while statement is being taken down.

(4) The statement must be headed with declarant's name, father's name, caste and residence and should consist of questions and answers. The answers must be taken down from the declarant's lips word for word exactly as he utters them, and must not be afterwards added to or corrected in any way. The date and time of recording the statement must be recorded and the statement must be signed or otherwise attested by the deponent, the recording officer and the witnesses. A court will not place any confidence in a dying declaration which has been reduced to writing after it has been made, or which has been recorded in the words of the recording officer and not in those of the declarant himself.

25. Thus, from plain reading of Regulation 742(a) of M.P. Police Regulations, it is clear that while writing case diary, the investigating officer has to write the time of every action.

26. But, in the present case, the case diary has been written in a

most casual manner and contrary to the provisions of Regulation 742 of M.P. Police Regulations. *In the entire case diary, the timings of every action taken by the investigating officer has not been mentioned. Therefore, it is clear that the case diary has not been maintained as per Regulation 742 of M.P. Police Regulations.*

27. The case diary started from 31-1-2021, in which it is mentioned that the F.I.R. was lodged at 23:36, whereas in the F.I.R., the time of lodging F.I.R. is 23:50. The case diary was written on 1-2-2021 but the time is not mentioned. This Court is conscious of provisions of Section 172 of Cr.P.C., therefore, would not refer the diary proceedings in detail. But important aspects would be reflected in the order. It is mentioned in the case diary proceedings that F.I.R. has been lodged and information has been given to the Senior Officers and copy of F.I.R. is being send to Magistrate. Thereafter, the fact of seizure of Mobile and Duplicate Adhar card is mentioned. It is also mentioned that Sub-Inspector Kirti Upadhyaya has recorded the statement of the prosecutrix under Section 161 of Cr.P.C, which was videographed by Lady Constable Manisha Jadon. It is also mentioned that the C.D. Of Videography is prepared and is kept in Case diary, but as already pointed out, the Compact Disc of Videography was not found in the case diary. Thereafter, there is a reference of sending the prosecutrix for medical examination and refusal by the Doctor due to the fact that the prosecutrix claims to be

minor and is not accompanied by their parents. Father of the prosecutrix was summoned through A.S.I. Vishram Singh. Father of the prosecutrix informed that the prosecutrix is not in touch with him for the last 2-3 years and he has nothing to do with the prosecutrix. It was also mentioned that he has refused to give consent for her medical examination, because She is major. He also informed, that he is in possession of marksheets of prosecutrix and photocopy of the same were produced. The Caste Certificate was also included in the case diary. It was also mentioned that Sub-Inspector Kirti Upadhyaya was directed to interrogate the prosecutrix as to why She disclosed her incorrect age. Sub-Inspector Kirti Upadhyaya informed on telephone that the prosecutrix has admitted that She has lodged the report under pressure of one Dharmendra Dhakad, however, the prosecutrix has refused to undergo medical examination, and her father has refused to give consent. It is also mentioned that the prosecutrix has informed that in fact She was raped by Dharmendra Dhakad. Accordingly, the prosecutrix was taken to the house of Dharmendra Dhakad. Dharmendra Dhakad denied the charges and has stated that the prosecutrix might be alleging against him for want of money. Thereafter, the prosecutrix was once again interrogated in front of Dharmendra Dhakad, and then She resiled from her second statement and claimed that She was raped by one Hanif. Accordingly, the supplementary statement of the prosecutrix was recorded and the

same was videographed. Thereafter the prosecutrix was sent to Court for her statement under Section 164 of Cr.P.C. and at the time of departure, the prosecutrix was saying that in fact She has been raped by Rahul Sharma. The mobile of Dharmendra Dhakad was seized. The lady Constable Pratibha Kushwaha informed that when She reached the Court, then the J.M.F.C., Gwalior refused to record the statement under Section 164 of Cr.P.C. When the constable came out of the chamber of J.M.F.C., then 5-6 person surrounded the Constable and the prosecutrix and one lawyer tried to take away the prosecutrix. The unknown persons were saying that since, they have given money to the prosecutrix, therefore, She has to give statement. Thereafter, the Advocate took the prosecutrix inside the Court of J.M.F.C.. It is also mentioned that the Advocate and the prosecutrix were inside the Chamber of the J.M.F.C. Thereafter, She received the copy of the statement recorded under Section 164 of Cr.P.C. in sealed cover. Thereafter, on the instructions of C.J.M., the C.S.P., Morar reached the Court and the prosecutrix was taken for medical examination. After She came back, the C.S.P., Morar stated that since, the prosecutrix has not been examined from rape point of view, therefore, She should be taken again for medical examination. Again the prosecutrix refused to give her consent for medical examination. Thereafter, again she came back to the office of C.S.P., who instructed her to leave the prosecutrix in One Stop Center and

accordingly, the CORONA test of the prosecutrix was got done and she was left in One Stop Center. It is also mentioned that Court Munshi had also informed the I.O., that Sonu @ Sandeep who is an accused in Crime No. 750/17 is also in the Court and is pressurizing the prosecutrix and he is being assisted by Govt. Pleader O.P. Sharma. Accordingly Constable Satendra Chouhan was directed to record the incident. However, before the incident could be recorded, Sonu @ Sandeep went away. It is also mentioned that Constable Satendra had informed that either Sonu or Govt. Pleader O.P. Sharma has informed him that false case has been registered in order to put pressure in the murder case.

28. It is also mentioned in the case diary proceedings that Ganga Singh Bhadoria was called in the Police Station who informed that he had let out the room at the monthly rent of Rs. 3500/-. He also informed that if some body had come to his house, then it must have got recorded in CCTV camera installed in his house. Therefore, he was directed to see the CCTV footage.

29. Thus, it is clear that on 1-2-2021, Ganga Singh Bhadoria was in the Police Station, and the case diary doesnot contain copy of any notice sent to Ganga Singh Bhadoria, thereby requiring him to come to Police Station. However, in her statement recorded under Section 164 of Cr.P.C., the prosecutrix has specifically stated that the T.I. had called Ganga Singh Bhadoria. Thus, it is clear that the police had

called Ganga Singh Bhadoria in the police station immediately after the F.I.R. was lodged.

**Whether prosecutrix had made any allegation against Ganga Singh Bhadoria in her statement recorded under Section 161 of Cr.P.C. on 31-1-2021.**

30. The police case diary contains the statement of the prosecutrix which was recorded on 31-1-2021 and in the statement, no allegation against Ganga Singh Bhadoria is mentioned. However, in her statement under Section 164 of Cr.P.C., the prosecutrix has stated that after She raised an alarm, Ganga Singh Bhadoria also came on the spot and closed the door and by calling her by Caste name, threatened her not to disclose the incident to any body, otherwise, She will have to face dire consequences.

**The moot question is that whether Sub-Inspector Kirti Upadhyaya had rightly recorded the statement of the prosecutrix on 31-1-2021 or has manipulated the same by not mentioning the allegations against Ganga Singh Bhadoria.**

31. The statement of the prosecutrix was also videographed and the same has been provided in a Pen Drive. This Court has seen the video clipping. In the said statement, the prosecutrix has specifically leveled allegations against Ganga Singh Bhadoria. It has been stated by the prosecutrix that after kicking the rapist, She raised an alarm. Ganga Singh Bhadoria came there and thereafter the boy who had



committed rape ran away. Ganga Singh Bhadoria also scolded Aditya that “what has been done by him” and thereafter locked the door. Thereafter, by calling her by Caste Name, threatened that in case if the prosecutrix tells to anybody then She will be killed. For the reasons best known to Sub-Inspector Kirti Upadhyaya, the allegations made against Ganga Singh Bhadoria were not mentioned in the statement of the prosecutrix, but even Ganga Singh Bhadoria was also called in the police station and was allowed to go away. Further from the video clipping it is clear that *Sub-Inspector* Kirti Upadhyaya was simply interrogating the prosecutrix and was not writing her statement.

32. Police Headquarter, State of Madhya Pradesh has issued circular No. File No.1-01/Pu.Mu./Ati.M.N./Ni.S/Parpatra/45/2019/ dated 7-3-2019 which deals with guidelines for investigation in the matters of rape. Clause (5) of above mentioned circular reads as under :

(5) पीडिता एवं गवाहों के कथन उसके समक्ष ही उससे पूछकर लिखे जाये और ऐसे कथन सी.सी.टी.वी./ वीडियो कैमरे के सामने इस प्रकार लिखे जावे कि कैमरा फ्रेम में विवेचक, गवाह एवं दस्तावेज जिसे लिखा जा रहा है स्पष्ट दिखाई दें। यही प्रक्रिया जप्ती, गिरफ्तारी पत्रक एवं अन्य सभी दस्तावेजों के विषय में अपनाई जावे जिसमें पीडिता या किसी भी साक्षी के हस्ताक्षर लिखे जाने हों।

33. From the video clipping of statement under Section 161 of Cr.P.C. recorded on 31-1-2021, it is clear that Sub-Inspector Kirti Upadhyaya was not reducing her statement in writing and was simply

asking questions. Thus, the manner of video recording of statement of the prosecutrix was also not in accordance with circulars issued by the Police Head Quarter.

34. Thus, it is clear that Sub-Inspector Kirti Upadhyaya has manipulated the statement of the prosecutrix, and has written her statement as per her wishes. Therefore, it is clear that right from the very beginning, the police had started manipulating the things.

35. On the instructions of the Court, the Superintendent of Police, Gwalior has provided the record of FRV dial 100. This document was made available on 18-6-2021 i.e., on the next day of hearing as the record was to be summoned from Bhopal.

36. From the Event record of FRV, it is clear that on 31-1-2021, at 20:29:09, the prosecutrix called Dial 100 and informed about rape. In the initial information given to Dial 100, it was alleged that Aditya Bhadoria has raped her and has locked her inside the room. After various attempts to send SMS to PS Morar, C.S.P Morar and FRV, the information to FRV Unit Gwl 43 was given at 20:30:35 on 31-1-2021. At 20:32:33, information was given to S.H.O., P.S. Morar on his mobile, C.S.P., Morar was also informed at 20:35:30. SMSs were successfully sent to Mobile No. 8085188394, 7587612701, 7587600013, 9425964313 and 947993002. At 20:36:53, information was given to CSP Morar. The phone of M.2 (Most Probably Add. S.P.) was busy. The ASP was thereafter informed at 20:46:28, who

informed that Morar area doesnot fall within his jurisdiction. Information was given to M.2 (Most Probably Add. S.P. are called as M.2). At 20:51:48, FRV informed that they have reached on the place of incident. FRV gave further information that the complainant has been brought to Police Station at 21:04:49 and the event was closed at 21:41:48.

37. Thus, it is clear that the S.H.O., Police Station Morar Ajay Singh Pawar, C.S.P., Morar, M.2 were already informed about the incident by head quarter of dial 100 at 20:32:33. Thus, when the complainant reached police station on FRV Dial 100, the police was already aware of the incident. Therefore, the police had ample time to manipulate the things, and therefore, the Sub-Inspector Kirti Upadhaya deliberately omitted the allegations against Ganga Singh Bhadoria in the statement of the prosecutrix recorded under Section 161 of Cr.P.C. Since, no information was given by Dial 100 to Sub-Inspector Kirti Upadhyaya, but information of incident was given to S.H.O., Police Station Morar, Ajay Singh Pawar, C.S.P. Morar and M.2, therefore, it is clear that Sub-Inspector Kirti Upadhyaya must have been instructed by any of the above mentioned three officers.

38. Thus, it is clear that for the reasons best known to S.H.O., Police Station Morar, Ajay Singh Pawar, C.S.P., Morar and M.2, the things had already started working against the prosecutrix.

**Whether allegations made against Ganga Singh Bhadoria in**

**videographed statement of prosecutrix discloses commission of any offence**

39. It is the allegation of the prosecutrix that, after locking her inside the room, Ganga Singh Bhadoria shouted from outside and by calling her by her caste name, threatened her not to disclose the incident to any body, otherwise, She will be killed.

40. It is clear that when the prosecutrix was humiliated and insulted by calling her by her caste name, Ganga Singh Bhadoria was outside the house, whereas the prosecutrix was inside the house. Thus, it is clear that Ganga Singh Bhadoria was in a place which was withing public view. Thus, it is clear that *prima facie* offence under Section 3(1)(r),(s) of SC/ST (Prevention of Atrocities) Act, 1989 is made out. Further, by extending threat to kill her, Ganga Singh Bhadoria had also *prima facie* committed the offence of intimidation under Section 506 Part 2 of I.P.C.

**Whether the F.I.R. was lodged promptly or the prosecutrix was made to wait in the Police Station.**

41. The prosecutrix has alleged in her statement under Section 164 of Cr.P.C., that when She reached police station, She was made to wait for long time and only thereafter, her F.I.R. was lodged.

42. If the record of F.R.V. Unit 43 Gwl is considered, then it is clear that the prosecutrix was left in the Police Station Morar by F.R.V., at 21:04:09, whereas the F.I.R. was lodged at 23:50 i.e., after

approximately 3 hours. It is mentioned in the F.I.R., that the information of incident was received in police station at 23:36, whereas the headquarter of Dial 100 had already informed the S.H.O., Police Station Morar, Ajay Singh Pawar, C.S.P., Morar and M.2 at about 22:32:33. Further more, the prosecutrix had already reached the Police Station at 21:04:09. Thus, it is clear that the police deliberately did not lodge the F.I.R., and compelled the prosecutrix to wait in the police station for approximately for 3 hours in the night.

43. Thus, it is clear that the F.I.R. was not lodged promptly and all efforts were made by the police to harass the prosecutrix with an oblique motive. The fact that Ganga Singh Bhadoria was also called in the Police Station to put forward his defence, clearly indicates the reason as to why police officers were harassing and humiliating the prosecutrix. Not only that, the police had also manipulated the official record i.e., statement of prosecutrix recorded under Section 161 of Cr.P.C.

**Whether the prosecutrix had any injury on her body at the time of her Medical Examination on 1-2-2021 at 2:20 A.M.?**

44. According to police case diary, the prosecutrix was sent for medical examination. Requisition form for her medical examination which was prepared on 1-2-2021 i.e., intervening night of 31-1-2021 and 1-2-2021 is also in the case diary. It is mentioned in the requisition form as under :

फरि. (Name is not being mentioned in order to maintain her privacy) का उक्त प्रोफार्मा मे बलात्कार संबंधी मेडिकल परीक्षण कर साक्ष्य प्रिजर्व कर देने की कृपा करे  
नोट अन्य कोई अभिमत जो अभियोजन की दृष्टि से महत्वपूर्ण हो देने की कृपा करे।

45. There is no mention of any injuries on the body of the prosecutrix. Further, the case diary contains the printed format of medical examination. The columns for description of injuries are blank. The printed prescription contains the following remark of the Doctor :

लडकी अपनी उम्र 15 साल बताती है । उसके अभिभावक अभी उपस्थित नहीं है । अतः मैं उसका आंतरिक परिक्षण नहीं कर सकती ।

46. The above mentioned note reveals that the Doctor had refused to conduct the internal examination of the prosecutrix in absence of her parents, but for medical examination of the body of the prosecutrix in order to find out any external injury except on private part, no consent was required. Had the Doctor found any injury on the body of the prosecutrix (Except Private Part), then She would have certainly mentioned the same in her medical report. Thus, it is clear that on 1-2-2021 at the time of examination of the prosecutrix by the Doctor Reena Saxena, the prosecutrix did not have any injury on her body.

47. Further, the statement of the prosecutrix recorded under Section 161 of Cr.P.C. on 31-1-2021 was also videographed, and apparently no injury is visible on her face (This should not be treated

as finding and it is a matter of enquiry/investigation/trial). There is no mention of any injury in the case diary. Thus, it is clear that on 31-1-2021, when the prosecutrix came to Police Station, there was no injury on her body.

**Whether the prosecutrix was kept in the police station after her medical examination?**

48. On 1-2-2021 at 2:20 A.M. in the night, the Doctor had seen the prosecutrix and had refused to carry out her internal examination in absence of her guardians/parents. In the case diary, there is no mention that after returning back from hospital, whether the prosecutrix was allowed to go or where She was kept. However, one thing is clear that the father of the prosecutrix was called in the police station in the morning.

49. After taking instructions from the Investigating Officer, it is submitted by Shri M.P.S. Raghuvavnsi, Add. Advocate General, that the prosecutrix was brought back from the hospital at 4 A.M. in the morning. Since, the house of the father of the prosecutrix is situated at a distance of 25 Kms from the police station, therefore the prosecutrix was kept in Urja desk, which is situated in Police Station itself. However, he fairly conceded that this fact of keeping the prosecutrix in Urja desk in the night is not mentioned in the case diary. However, it is mentioned that this fact is mentioned in Rojnamchan Sanha dated 1-2-2021. During the course of arguments,

it was replied by Shri Raghuvanshi, that the prosecutrix came back to Police Station at 4 AM, whereas the Rojnamchasanha dated 1-12-2021 discloses that the prosecutrix was brought back to Police Station at 2:54 A.M. Thus, the submissions made by Add. Advocate General on the instructions of the Investigating Officer does not tally with record. Thus, the authenticity of Rojnamchasanha also comes under cloud. Therefore, the verbal submission of Shri Raghuvanshi that the prosecutrix was kept in the Urja desk cannot be accepted. Thus, it is clear that the prosecutrix was kept in the Police Station in the night, without any authority of law. Even otherwise, undisputedly, Urja Desk is also inside the Police Station.

50. Shri Amit Sanghi, Superintendent of Police, Gwalior, fairly conceded that this act of the S.H.O., Police Station Morar, Ajay Singh Pawar and Sub-Inspector Kirti Upadhyaya was contrary to law and the prosecutrix should not have been kept in the police station in the night. Thus, it is clear that S.H.O., Police Station Morar, Ajay Singh Pawar and Sub-Inspector Kirti Upadhyaya had not only manipulated the statement of the prosecutrix recorded under Section 161 of Cr.P.C., but they also illegally detained the prosecutrix in the police station for the whole night. Shri Raghuvanshi, Add. Advocate General submitted that since, the house of the father of the prosecutrix was 25 kms away from the Police Station, therefore, she was kept in Urja Desk. However, this explanation cannot be said to



be plausible and appears to be an after thought. If the S.H.O., Police Station Morar, Ajay Singh Pawar was of the view that it was not possible to send the prosecutrix to the house of her father, then he should have taken permission from the Court of Competent Jurisdiction after informing the Senior Officers and should have mentioned this fact in the case diary. But nothing was done. Further, every police station has been allotted four wheelers, therefore, it is incorrect to say that it was not possible to send the prosecutrix to the house of her father in the night. It is also not the case of the police, that the prosecutrix had ever refused to go to the house of her father. On the contrary, it is the case of the respondents themselves, that the father of the prosecutrix was informed in the morning and thereafter he came to Police Station. Thus, it is clear that the police officers were treating the prosecutrix as an accused.

**(Whether videography of statement of Ganga Singh Bhadoria was necessary or not?)**

51. The Police Head Quarter in its circular No. File No./Paripatra/A.M.Ni./Mahila apradh/323/2017 dated 9-11-2017 has directed as under :

7- घटनास्थल की वीडियोग्राफी आवश्यक रूप से करायी जावे, पीडिता के वीडियो कथन अबाध रूप से नियमानुसार कराये जावें।

52. Another circular dated 7-3-2019 has already been reproduced earlier. As per Police Circular dated 7-3-2019, the I.O. must get the

videography of statements of the prosecutrix and the witnesses. As per the police case diary dated 1-2-2021, Ganga Singh Bhadoria was called in the police station and he had given his defence. There is no difference between Prosecution witness or Defence witness. Although there were allegations against Ganga Singh Bhadoria, but that allegation was deliberately omitted by Sub-Inspector Kirti Upadhyaya in the statement of the prosecutrix recorded under Section 161 of Cr.P.C. Further, the S.H.O., Police Station Morar, Ajay Singh Pawar, had interrogated Ganga Singh Bhadoria as a witness. Then why the videography of the statement of Ganga Singh Bhadoria was not done by the police? Thus, it is clear that the police was not acting with clean hands and was acting in accordance with their whims and wishes. Be that as it may.

**Why two supplementary statements of the prosecutrix were recorded on 1-2-2021?**

53. Another important aspect of the matter is that Sub-Inspector Kirti Upadhyaya had recorded the supplementary statements of the prosecutrix twice on 1-2-2021. As per the police case diary, Sub-Inspector Kirti Upadhyaya was directed to interrogate the prosecutrix as to why She disclosed her wrong age. But if the supplementary statement of the prosecutrix recorded on 1-2-2021 is considered, then it is clear that no interrogation was done from the prosecutrix as to why She had disclosed incorrect date of birth. Not a single word

regarding disclosure of wrong date of birth were asked, but Sub-Inspector Kirti Upadhyaya again and again insisted the prosecutrix to tell about incident. Two supplementary statements of prosecutrix were recorded on 1-2-2021 and the same were also videographed.

54. Thus, it is clear that clarification given in case diary for recording of supplementary police statements is incorrect and misleading.

55. As per the statement of prosecutrix recorded under Section 164 of Cr.P.C., Ganga Singh Bhadoria was called in the police station, and thereafter, the prosecutrix was beaten by a lady police officer. Thereafter, She was taken upstairs where She was beaten by 6-7 lady police constables by belt. Thereafter, She was brought downstairs and her supplementary statements under Section 161 of Cr.P.C. were recorded. Thereafter again She was beaten by police personals including Male Police personals. Thus, it is clear from the statement of the prosecutrix recorded under Section 164 of Cr.P.C., the prosecutrix was beaten before recording of her supplementary statements.

56. The Doctor in the medical examination conducted on 2-2-2021 at 9:30 P.M., had found **multiple bruises** on B/L thigh and tenderness. The Doctor had also found swelling on B/L thigh. The Doctor had also found swelling on face (lt. Side) and in the column of Facial bone injury, it was once again mentioned that tenderness

was found on left cheek bone. Thus, it is clear that on 2-2-2021 at 9:30 P.M., the Doctor had found multiple bruises and swelling on B/L thigh and left cheek and mild tenderness behind the ears. Thus, it is clear that the prosecutrix was beaten in a standing condition, therefore, multiple bruises were found on B/L thigh. It also appears that the prosecutrix was slapped also, therefore, bruises and swelling was found on left cheek and tenderness was found behind her ears. The pattern of injuries found on the body of the prosecutrix is indicative of fact that the prosecutrix was helpless and was in standing condition without any motion, and She was being beaten mercilessly. One thing is clear that on 31-1-2021, when the prosecutrix came to Police Station for lodging of F.I.R., there was no injury on her body and when She was produced before the J.M.F.C., Gwalior, she had made complaint of beating by police personals and same allegation was repeated in the Court of C.J.M., Gwalior and in the M.L.C., bruises and contusions were found on the body of the prosecutrix. Thus, *prima facie*, the allegation of beating of prosecutrix in police custody appears to be correct. However, before drawing any conclusion, this Court would like to consider other important aspects of the matter.

57. According to police case diary proceedings, on 1-2-2021, when the prosecutrix was sent again for the purposes of medical examination, She refused to undergo medical examination of her

private part. The case diary also contains the medical report dated 2-2-2021. Thus, it is clear that the prosecutrix was also sent to Hospital by the police on 2-2-2021 for her medical examination, but the police case diary doesnot contain any proceedings of 2-2-2021. The last proceeding of 1-2-2021 is written on page no. 154 and the next proceedings are of 3-2-2021 which is on page no. 155.

58. As already pointed out, the police had recorded three statements of the prosecutrix i.e., first on 31-1-2021, supplementary statement on 1-2-2021 and 2<sup>nd</sup> supplementary statement on 1-2-2021 itself. As already pointed out, there is nothing in the case diary to indicate that at what time, the statement/supplementary statements of the prosecutrix were recorded. However, from the supplementary statements of the prosecutrix, it appears that in her 1<sup>st</sup> supplementary statement, she had narrated that infact she was raped by Dharmendra Dhakad, and thereafter, in her second supplementary statement, She stated that infact She was raped by one Haneef.

59. If the videography of statement of the prosecutrix in which She had stated that She was raped by Dharmendra is seen, then it is clear that the videography was done from the right side of the prosecutrix, therefore, her right cheek is visible, but her left cheek is not visible. Further as the prosecutrix had taken Chunni on her head, therefore, back side of her ear is not visible. Why videography was done from one angle is best known to the police personals. One of the reason

might be that the police must be trying to hide the swelling of the prosecutrix on her left cheek. Be that whatever it may be.

60. One thing is clear from the video clipping that Sub-Inspector Kirti Upadhyaya did not reduce her statement in writing and was taking notes. Thus, it is clear that method of taking statement of the prosecutrix was not in accordance with settled principle of law as well as the police circular dated 7-3-2019. If the supplementary statement of the prosecutrix recorded by Sub-Inspector Kirti Upadhyaya is compared with the video clipping of the statement of the prosecutrix, then it is clear that her statement was not reduced in writing in its entirety. The prosecutrix did not utter the name of Aditya in her statement, but it was Sub-Inspector Kirti Upadhyaya, who was suggesting the name of Aditya. Further, the prosecutrix did not say that Dharmendra had instigated her to falsely implicate Aditya in F.I.R., but that is mentioned in the statement of the prosecutrix. Thus, it is clear that Sub-Inspector Kirti Upadhyaya was out and out to manipulate the record. Further, the prosecutrix was looking terrified and the manner of asking question was also rude. Be that as it may.

61. According to the police case diary, the prosecutrix was taken to the house of Dharmendra Dhakad and both were brought back to Police Station, where the statement of Dharmendra Dhakad was recorded and was also videographed. Dharmendra Dhakad denied

the allegation of rape and on the question put by Sub-Inspector Kirti Upadhyaya, he replied, that the prosecutrix might be alleging against him for want of money. According to case diary, the prosecutrix and Dharmendra Dhakad were interrogated in presence of each other and thereafter, Prosecutrix resiled from her second supplementary statement and alleged that in fact She was raped by Haneef. Accordingly, her third supplementary statement was recorded. The video clipping of third supplementary statement is also available. In this video clipping the prosecutrix is apparently looking in a terrified condition. Shri Raghuvanshi was also directed to point out as to whether any swelling is visible on her face or not, then he submitted that since, there is a light in the background, therefore, he is not in a position to say that whether there is any swelling on the face of the prosecutrix or not. Further, the prosecutrix was not fluent in answering the questions. She was thinking and was taking time in answering the question, which clearly indicates that She was under pressure. Be that as it may. It is once again clarified that the finding regarding behavior of the prosecutrix in video clipping is not final and they are subject to enquiry/investigation/trial, but for the purposes of this writ petition, if the manner of giving statement on 31-1-2021 is compared with the manner of giving statement on 1-2-2021 (on two occasions) it appears that she was in terrified condition. However, one thing is clear that the Sub-Inspector Kirit Upadhyaya

did not record the complete statement of the prosecutrix which was made on 31-1-2021 as well as did not record supplementary statements completely as well as did not mention the demeanor of prosecutrix. Thus, it is clear that the prosecutrix was beaten by the police officials before recording of her supplementary statements. The number of injuries and the part of body of the prosecutrix shows that She was mercilessly beaten by the police personals for oblique motive. Multiple bruises were found on thighs of both legs, which clearly indicates, that the solitary intention of the wrong doer was to create fear in the mind of the prosecutrix so that She may change her version. *But one thing is clear that, before the beating of the prosecutrix took place, Ganga Singh Bhadoria had already visited the police station.*

62. There is another aspect of the matter, which cannot be ignored.

63. After the prosecutrix made complaint regarding her beating by the police personals, the C.J.M. took cognizance of her complaint and directed the C.S.P. Morar to change the investigating officer and to provide adequate protection. This order was placed before Superintendent of Police, Gwalior who in his turn, directed the Add. S.P., Smt. Suman Gurjar to enquire into matter. As already pointed, initially Superintendent of Police, Gwalior submitted that enquiry is still pending and the enquiry report shall be produced within 3-4 days and only on the repeated directions by this Court, the enquiry file



pending before Add. S.P., Ms. Suman Gurjar was provided to the Court.

64. According to the file of enquiry into the allegation of beating by the police personals with the prosecutrix is concerned, that gives a very hopeless image of Police Personals working in the District of Gwalior.

65. From the file, it is clear that on 2-2-2021, the Superintendent of Police, Gwalior, directed Smt. Suman Gurjar, Add. Superintendent of Police (East), Gwalior to conduct an enquiry and submit the report within 5 days. On 3-2-2021, Smt. Suman Gurjar, Add. S.P. (East), marked the letter of the Superintendent of Police, to her reader and directed for obtaining report from C.S.P. Morar.

66. On 4-2-2021, a letter was sent to Shri Ram Naresh Pachouri, C.S.P., Morar to conduct an enquiry. The C.S.P., Morar, recorded the statements of the prosecutrix as well as Police Personals. After reproducing the statements of the witnesses, it is mentioned by C.S.P., Morar, that the CCTV cameras of P.S. Morar are out of order from 25-7-2020 and therefore, the footage of the police station could not be obtained. Thereafter, the C.S.P., directly jumped to a conclusion that the allegation of beating by police is false. The conclusion drawn by C.S.P., Morar, Gwalior reads as under :

यह है कि साक्षियों के कथन उपलब्ध दस्तावेजी साक्ष्य जांच मे आये उपरोक्त तथ्यों एवं संपूर्ण जांच से पाया गया है कि दिनांक 31.1. 2021 को फरियादिया (Name is not being reproduced in order

to maintain privacy) हाल गंगा सिंह भदौरिया का मकान सी पी कालोनी के द्वारा थाना मुरार पर उसके साथ बलात्कार होने की रिपोर्ट की गई थी। दिनांक 31.1.2021 को फरियादिया को मेडिकल परीक्षण हेतु रात्री मे मुरार अस्पताल भिजवाया गया था जो वहां करीब रात्री बजे तक अस्पताल मे रही किन्तु मेडीकल परीक्षण नही होने से वापस थाना आने पर (Name is not being reproduced in order to maintain privacy) का कोई परिजन उपस्थित नही होने से एवं फरियादिया की जिद करने पर उसे सुरक्षार्थ थाना मुरार की उर्जा डैक्स मे महिला आर 2128 शिवानी दुबे के साथ रखा गया था उसके साथ थाना पर पुलिस द्वारा मारपीट नही की जाना पाया गया है। माननीय न्यायालय के आदेश से दिनांक 1.2.2021 को फरियादिया का मेडिकल परीक्षण कराया गया जिसमे डॉक्टर द्वारा (Name is not being reproduced in order to maintain privacy) को आई चोट 24 से 48 घंटा की होना बताया गया है जो फरियादिया के थाना मे आने के पूर्व की भी होना संभव है।

67. In the meanwhile, the cousin brother of the prosecutrix had filed a habeas corpus petition which was registered as W.P. No. 2571 of 2021, and the corpus was produced before the Division Bench of this Court through Video Conferencing and expressed her willingness to move to her parental home and accordingly She was released from One Stop Center and was permitted to stay with her parents. In the habeas Corpus petition also, allegations of maltreatment were made. While disposing of the writ petition, it was observed by the Division Bench as under :

Respondent/Authorities especially Station House Officer, Police Station Morar, Gwalior is expected to investigate the matter in accordance with law in just free and fair manner and would ensure consequential follow up action as per law.

68. In the light of the observations, the Add.S.P. (East) wrote another letter dated 25-2-2021 to C.S.P., Morar to enquire into the matter in the light of the observations made by this Court. Reminders

were sent on 24-3-2021, 15-4-2021, 18-5-2021. By letter dated 7-4-2021, the C.S.P., Morar informed the Add. S.P. (East) that the explanation of S.H.O., Police Station Morar Ajay Singh Pawar was taken on the following issues :

1. When 8 injuries were found in the medical examination, then why She was not got medically examined at the earliest.
2. There is a clear direction that the lady complainant and lady accused should not be retained in police station after sunset, but why She was retained in the Police Station for the whole night?
3. Why the statements of the prosecutrix under Section 164 of Cr.P.C. were not got recorded as early as possible?

69. After taking explanation, it was opined that the explanation of S.H.O., Police Station Morar, Ajay Singh Pawar, Distt. Gwalior is not satisfactory.

70. Thereafter, it appears that on 4-6-2021, the C.S.P., Morar again submitted his report. This report is nothing but a verbatim reproduction of first report. In this report also, no reasons have been assigned and the C.S.P., Morar, after reproducing the statements of the witnesses, directly came to conclusion that there is no evidence of beating in the police station. Surprisingly, the Add. S.P. (East) instead of taking further action on the report, directed her Reader to place before her for appreciation of evidence. This endorsement was made on 4-6-2021 and thereafter nothing was done by Add. S.P.

(East). It is really surprising that when the Superintendent of Police, Gwalior had entrusted the enquiry to Add. S.P. (East) because of serious allegations of beating by police personals were made by the rape victim, but still the Add. S.P. (East) took the matter in a most casual manner and forwarded the letter of the Superintendent of Police, Gwalior to C.S.P., Morar for enquiry. Further, the C.S.P., Morar, by reproducing the statements of the witnesses, merely said that there is no evidence of beating of rape victim in the police station.

71. Further more, the conduct of the Add. S.P. (East) in taking the matter in a most casual and irresponsible manner became more serious, as Chair Person, National Commission For Women, had taken cognizance of news clipping published in the news paper "Hindustan Times" and had written a letter to Shri Vivek Johri, Director General of Police to submit the action taking report/status report before the National Commission For Women. The letter written by Chairperson, National Commission For Women to Shri Vivek Johri, Inspector General of Police, State Of Madhya Pradesh is enclosed in the police case diary.

72. It is really shocking that inspite of the most casual and irresponsible attitude of Add. S.P. (East) in dealing with such a serious allegation, the Superintendent of Police, Gwalior, submitted before the Court, that the enquiry report shall be produced within 3-4

days. Add.S.P. (East) did not do anything in the enquiry. Not a single finding was recorded by Smt. Suman Gurjar Add. S.P. (East). She even did not care to talk to the prosecutrix. This shows that the police officers have no respect for the dignity, life and liberty of rape victims and have no respect for the Court (as direction was given by C.J.M.) and have no respect for National Commission For Women, who had sought report from D.G.P., State of Madhya Pradesh. It is a serious situation, which requires immediate action so that the innocent citizens of India may not further suffer at the hands of the irresponsible police officers.

73. There is another aspect of the matter. C.S.P., Morar had recorded the statements of Sub-Inspector Kirti Upadhyaya and Lady Constable Manisha Jadon, who tried to explain the presence of injuries on the body of the complainant. Sub-Inspector Kirti Upadhyaya had stated that She had already noticed abrasions on the body of the prosecutrix. Lady Constable Manisha Jadon has also stated that at the time videography of statement of the prosecutrix, She had noticed abrasions on the body of the prosecutrix.

74. So far as the statement of Sub-Inspector Kirti Upadhyaya, Lady Constable (who had videographed the statement of the prosecutrix) is concerned, it is palpably incorrect. This Court has already seen the video clippings of the statements of the prosecutrix. Her entire body is covered. No abrasion or bruise is visible. Even otherwise, most of

the injuries were found on the thighs of both legs. Unless and until, the cloths are removed, the injuries could not have been noticed either by Sub-Inspector Kirti Upadhyaya and Lady Constable Manisha Jadon. Further, there was no reason for the above mentioned police officers not to mention the presence of injuries in the police case diary. Further, in the requisition form which was prepared in the night of 31-1-2021 for medical examination of the prosecutrix, there is no reference to the injuries. Thus, it is clear that Sub-Inspector Kirti Upadhyaya and Lady Constable Manisha Jadon had given false statement in the enquiry, and that was conveniently accepted by the C.S.P., Morar. Further, the stand of S.H.O., Police Station Morar, Ajay Singh Pawar and Sub-Inspector Kirti Upadhyaya as well as Lady Constable Manisha Jadon are self contradictory. In report dated 7-4-2021, C.S.P., Morar has mentioned that as per the defence of S.H.O., Police Station Morar, Ajay Singh Pawar, since, the entire body of the prosecutrix was covered, therefore, her injuries were not visible.

75. Thus, viewed from every angle, it is held that the prosecutrix was mercilessly beaten by the police personals in the police station, so that She can withdraw her allegations against Aditya Bhadoria. At the cost of repetition, it is once again mentioned that even the Sub-Inspector Kirti Upadhyaya, did not mention the allegations made by the prosecutrix against Ganga Singh Bhadoria in her statement under

Section 161 of Cr.P.C. Further, the prosecutrix was not allowed to leave the police station, and She was kept (In fact it can be said that She was detained) in the police station for the whole intervening night of 31-1-2021 and 1-2-2021 and thereafter, the prosecutrix was kept (in fact it can be said that She was detained) in the police station for the whole day on 1-2-2021.

76. Now the next question for consideration is that who are the persons who are responsible for beating of the prosecutrix. Undisputedly, the Investigating Officer Sub-Inspector Kirti Upadhyaya is responsible and that is why, even the C.J.M., Gwalior had directed for change of Investigating Officer. Further S.H.O., Police Station Ajay Singh Pawar is also responsible because the prosecutrix has alleged in her statement under Section 164 of Cr.P.C., that before coming to the Court, the T.I. had threatened her to depose according to their directions, otherwise, She has to come back to the Police Station, therefore, it is clear that the prosecutrix was beaten with the permission of S.H.O., Police Station Morar, Ajay Singh Pawar. The prosecutrix could not disclose the name of any wrongdoer who had beaten her. It is a matter of enquiry to find out the names of the lady constables who were on duty in the police station on 1-2-2021. As the prosecutrix has also stated that She was also beaten by Male Constables, therefore, it is necessary to find out the names of those Male constables. Accordingly, the investigating agency is

directed to conduct Test Identification Parade to trace out the assailants.

**Why the prosecutrix was sent to One Stop Center and who had given such order?**

77. The C.S.P., Morar, had joined the Court proceedings on his own along with Superintendent of Police, Gwalior. The Police Case diary reveals that after the statement of the prosecutrix was recorded under Section 164 of Cr.P.C., the C.J.M., Gwalior directed C.S.P., Morar to keep the prosecutrix in a secured place. There is no direction that the prosecutrix should be lodged in One Stop Center.

78. The case diary proceedings reveals that the prosecutrix was sent to One Stop Center on the orders of the C.S.P., Morar. However, the case diary does not contain any written order of C.S.P. Morar. It appears that the prosecutrix was lodged in One Stop Center, Gwalior on the verbal orders of C.S.P., Morar.

79. When C.S.P., Morar was asked by the Court as to why the prosecutrix was sent to One Stop Center, Gwalior and why not to her parental home, then it was submitted by C.S.P., Morar, that there was an oral order by C.J.M., Gwalior. This reply given by C.S.P., Morar cannot be accepted. Courts never give any oral order. Once, the C.J.M., Gwalior had written an order that the prosecutrix be kept in a secured place, then there was no difficulty for him to give a specific direction to lodge the prosecutrix in One Stop Center. Thus, it is



clear that the explanation given by C.S.P. Morar, Gwalior is false and is hereby rejected.

80. Thus, it is clear that after detaining the prosecutrix for the whole intervening night of 31-1-2021 and 1-2-2021, She was forcibly detained in the Police Station for the entire day, and thereafter, She was sent to One Stop Center. Thus, the entire effort of the police was to keep the prosecutrix away from the entire world.

**Whether Sub-Inspector Kirti Upadhyaya had correctly recorded the statement of Dharmendra Dhakad**

81. The respondents have also provided the video clippings of the statement of Dharmendra Dhakad. In his statement, Dharmendra Dhakad has nowhere stated that about one month back, he had attended a Paneer Party in the room of the prosecutrix, but in his statement recorded under Section 161 of Cr.P.C., the Sub-Inspector Kirti Upadhyaya, has added certain allegations on her own. Further, from the video clipping, it is clear that Sub-Inspector Kirti Dhakad is not visible. As per the Police Circulars, the Investigating Officer should also be visible, and the paper on which the statement is being recorded, should also be visible. But in this Video Clipping, since, the Sub-Inspector Kirti Upadhyaya is not visible, therefore, it is not clear as to whether She was writing the statement of Dharmendra Dhakad or not? But one thing is clear that the statements of the witnesses under Section 161 of Cr.P.C. should be recorded verbatim

and the investigating officer, cannot write the statements on his own. Thus, it is clear that Sub-Inspector Kirti Upadhyaya has added certain allegations in the statement of Dharmendra Dhakad on her own. Thus, She is prima facie guilty of manipulating the official record.

**Whether Sub-Inspector Kirti Upadhyaya had rightly recorded the statement of father of the prosecutrix ?**

82. The video clipping of statement of father of the prosecutrix has also been provided. If the statement of father of the prosecutrix written by Sub-Inspector Kirti Upadhyaya and the video clippings are compared, then it is clear that the demeanor of father of prosecutrix is not mentioned in the statement under Section 161 of Cr.P.C. Further, it is also found that the statement of the father of the prosecutrix was not written verbatim. Due to noise in the background, the audio of video clipping of the statement of father of prosecutrix is not good, but one thing is clear that he was taking long pause in between his two sentences. He also doesnot appear to be very comfortable while giving statement. Thus, it is clear that Sub-Inspector Kirti Upadhyaya has manipulated the official record.

**Whether the S.H.O., Police Station Morar Ajay Singh Pawar has tried to level allegations against the J.M.F.C., Gwalior in order to get over the allegations of beating in the police station?**

83. It is mentioned in the case diary proceedings that the prosecutrix was sent to the Court along with Lady Constable

Pratibha. It is also mentioned that after coming back, Lady Constable Pratibha informed that earlier the J.M.F.C. Gwalior, refused to record the statement of the prosecutrix under Section 164 of Cr.P.C. Accordingly, when She came out of the chamber of the J.M.F.C., Gwalior, She and the prosecutrix were surrounded by 5-6 unknown persons and they started insisting that the statement of the prosecutrix must be recorded and accordingly, one Advocate took the prosecutrix in the chamber of the J.M.F.C, Gwalior, where the statement of the prosecutrix was recorded under Section 164 of Cr.P.C. Thus, it is alleged against the J.M.F.C., Gwalior, that although She was not inclined to record the statement of the prosecutrix under Section 164 of Cr.P.C., but under the pressure of an Advocate, her statements were recorded.

84. From the statement of the prosecutrix recorded under Section 164 of Cr.P.C., it is clear that the J.M.F.C., Gwalior has not recorded any thing about pressure by any Advocate. Further, it is well known that J.M.F.C., Gwalior cannot refuse to record the statement of the prosecutrix under Section 164 of Cr.P.C.

85. While making allegations against the J.M.F.C., Gwalior, the Police has also recorded in the Police Case Diary, that Govt Pleader O.P. Sharma, forcibly took the prosecutrix inside the Chamber of the J.M.F.C., Gwalior and got her statement recorded under Section 164 of Cr.P.C. It is also mentioned in the police case diary that Shri O.P.

Sharma, Govt. Pleader is hands in glove with Sonu Sharma who is behind the scene.

86. Therefore, it is clear that in order to fulfill their ill designs, the police officers were not only beating the prosecutrix, but they have gone to the extent of leveling allegations against the J.M.F.C., Gwalior as well as against O.P. Sharma, Govt. Pleader.

**Whether the S.H.O., had travelled beyond his jurisdiction by directing the D.P.O. to provide video footage of CCTV Cameras installed in Court premises.**

87. From the case diary proceedings, it is clear that on 9-3-2021 the S.H.O., Police Station Sirol, Distt. Gwalior wrote a letter to D.P.O., directing him to provide the CCTV footage of the Court premises. The copy of the letter has been filed along with the Return and is at page 190. It is also mentioned in the case diary proceedings that D.P.O. has verbally informed that there are only two cameras in the Court premises, and the CCTV footage of the same can be obtained after taking due permission from District Judge.

88. When the Superintendent of Police, Gwalior was asked as to whether the Investigating Officer/S.H.O., Sirol, Distt. Gwalior can direct the D.P.O. to provide the CCTV footage of the Cameras installed inside the Court premises, then it is rightly submitted by Shri Sanghi, Superintendent of Police, Gwalior, that such type of letter written by S.H.O., Police Station Sirol, Distt. Gwalior was

clearly out of her jurisdiction. If the investigating officer was of the view that the CCTV footage of any camera installed inside the Court premises is necessary for investigation, then the I.O., should have brought this fact to the knowledge of the Superintendent of Police, and the letter of request would have been sent by Superintendent of Police, Gwalior, to the District Judge, Gwalior. But in no circumstances, the I.O., could have directed the D.P.O. to provide CCTV footage of Cameras installed inside the Court premises.

89. Thus, it is clear that in order to fulfill the ill designs of the police authorities, the Investigating Officer, had not only gone to the extent of leveling false allegations against the Judicial Officers, but they also travelled beyond their jurisdiction by directing the D.P.O., to provide the CCTV footage of cameras installed within the Court premises.

**Whether there is any difference in the Medial Opinion given by the Doctors in relation to the injuries sustained by the prosecutrix**

90. The prosecutrix was sent for medical examination for four times i.e.,

(I) In the intervening night of 31-1-2021 and 1-2-2021, but the Doctor refused to carry out internal examination of the prosecutrix. However, under the orders of the Court, the prosecutrix was sent for medical examination on 1-2-2021. As per M.L.C. report, 8 contusions were found on different parts of the body of the

prosecutrix like face, left forearm, right wrist, right lumber region, left thigh, neck etc. Again She was sent for medical examination at 10:30 P.M. on 1-2-2021 and it is alleged that the prosecutrix refused to undergo the medical examination of her private parts.

91. However, another medical examination of the prosecutrix was conducted on 2-2-2021 at 9:30 P.M., and the Doctor did not find any abrasion, but multiple bruises were found over B/L thighs, bruising and swelling over Left Cheek bone and tenderness was found behind the ears. Although the Doctor has not given the duration of these injuries and has merely mentioned that as per the information given by the victim, the incident happened 3-4 days back, but one thing is clear that there is a difference in the medical opinion of two Doctors. The medical report given on 2-2-2021, corroborates with the allegations of the prosecutrix that She was beaten by belts. As already pointed out, the bruises were found on both thighs, cheek and behind ears. Thus, it is clear that She was beaten by belts and most probably was also slapped. Thus, it is also a matter of investigation, that why two different medical reports were given by Doctors because in one report, abrasions were found and another report bruises were found. The investigating officer is also directed to investigate into the role of the Doctor who had given the medical report dated 1-2-2021.

**Whether Medical Report dated 1-2-2021 was given by the Doctor**

**immediately or not?**

92. From the police case diary proceedings, it is clear that the medical report dated 1-2-2021 was received in the police station on 18-2-2021. The case diary proceedings dated 10-2-2021 reveals that a letter was written to C.S.P., Morar, to the effect that he had got the prosecutrix medically examined but the medical report has not been sent. It appears that the C.S.P., Morar, sent the medical report to the police station on 18-2-2021. It is true that C.S.P., Morar, was conducting an enquiry into the allegations of beating by the police, but the file of Add. S.P. (East) shows that enquiry report dated 12-2-2021, was submitted by C.S.P. to the Add. S.P. (East) which was received by Add. S.P. (East) on 13-2-2021. There is nothing in the case diary or in the file of Add. S.P.(East) as to on what date, the C.S.P., Morar had received the medical report dated 1-2-2021. But one thing is clear. After preparing enquiry report dated 12-2-2021, there was no occasion for the C.S.P., Morar to keep the medical report of the prosecutrix dated 1-2-2021 with him. But still, he retained the said medical report with him and was sent to the Police Station on 18-2-2021, whereas a letter of request dated 10-2-2021 was already made by the Investigating Officer.

93. As already pointed out, there is no diary proceedings dated 2-2-2021, but the case diary contains the Medical Report of the prosecutrix which was prepared on 2-2-2021 at 9:30 P.M. From the

case diary proceedings, it is clear that this medical report was sent to investigating officer on 3-2-2021, which was included in the case diary on 4-2-2021 i.e., much prior to receipt of medical report dated 1-2-2201.

94. Since, the medical report dated 2-2-2021 is in conformity with the allegations made by the prosecutrix, therefore, it is held that multiple bruises/tenderness were found on the thighs of both legs, left cheek bone and behind the ears.

**Whether free and fair investigation has been done in the matter or not?**

95. As already pointed out, the police started harassing the prosecutrix immediately after She reached Police Station, as the S.H.O., Police Station Morar, Ajay Singh Pawar, C.S.P. Morar, and M.2 were aware of the fact that the prosecutrix has alleged commission of rape and She is residing in the house of Ganga Singh Bhadoria.

96. As already pointed out, although the prosecutrix had reached Police Station at 21:04:09, but the F.I.R. was lodged at 23:50 i.e., after near about 3 hours.

97. As already pointed out the Sub-Inspector Kirti Upadhyaya deliberately omitted the allegations made against Ganga Singh Bhadoria in the statements of the prosecutrix recorded on 31-1-2021.

98. As already pointed out, that immediately after lodging of F.I.R.,



Ganga Singh Bhadoria came to the Police Station and without recording his statement, he was directed to provide the video clipping of CCTV footage installed in his house.

99. As already pointed out, the prosecutrix was illegally kept (In fact detained ) in the police station for the whole night.

100. As already pointed out, the prosecutrix was illegally kept ( In fact detained) in the police station for the entire next day.

101. As already pointed out, the prosecutrix was mercilessly beaten by the police personals on 1-2-2021 and thereafter She was compelled to change her version.

102. As already pointed out, no questions were asked to the prosecutrix as to why She had disclosed her incorrect age, therefore, the explanation given in the case diary for recording of supplementary statements is false.

103. As already pointed out, the statement of the prosecutrix under Section 164 of Cr.P.C. was recorded, in which She made specifically allegations of beating by the police.

104. As already pointed out, the matter was reported by J.M.F.C., Gwl to C.J.M. Gwalior who also verified from the prosecutrix regarding the allegations of beating which was endorsed by the prosecutrix.

105. As already pointed out, the C.S.P., Morar, without any authority of law, sent the prosecutrix to One Stop Center, Gwalior on

1-2-2021.

106. As already pointed out, the investigating officer in case diary proceedings has leveled allegations against the J.M.F.C., Gwalior as well as against Shri O.P. Sharma, Govt. Pleader. Again, during the course of arguments, the C.S.P., Morar, made a false submission that the prosecutrix was admitted in One Stop Center on the verbal orders of the C.J.M., Gwalior.

107. This Court has already come to a conclusion that Sub-Inspector Kirti Upadhyaya was manipulating the official records, and the statements of the witnesses and prosecutrix were not recorded as disclosed by them in the video graphy. It is also not known, as to whether the F.I.R. itself was written properly or not and whether any allegation against Ganga Singh Bhadoria was in omitted in F.I.R. or not?

108. This Court has already come to a conclusion that without any authority of law, the investigating officer, tried to obtain the CCTV footage of the Court premises from D.P.O., Gwalior, without giving any information to the District Judge, Gwalior and Superintendent of Police.

109. From the case diary proceedings it is clear that Ganga Singh Bhadoria had come to the Police Station in the night of 31-1-2021 and he was asked to provide the CCTV footage of cameras installed in his house.

110. However, this Court failed to understand, that why the investigating officer, did not go to the house of Ganga Singh Bhadoria to seize the DVR of CCTV and why he gave opportunity to Ganga Singh Bhadoria to provide CD of CCTV recording, as per his convenience specifically when the S.H.O., Police Station Morar, Ajay Singh Pawar as well as Sub-Inspector Kirti Upadhyaya knew fully well that the prosecutrix has leveled certain allegations against Ganga Singh Bhadoria also.

111. It is not out of place to mention here that the prosecutrix was a maid servant of Ganga Singh Bhadoria and the incident is alleged to have taken place in his house. Even then, the investigating officer/S.H.O., Police Station Morar, Ajay Singh Pawar, did not try to prepare the spot map on 1-2-2021 but on the other hand they were busy in beating the prosecutrix and were busy in pressurizing her to change her statement.

112. Thus, it is clear that for the reasons best known to the S.H.O., Police Station Morar, Ajay Singh Pawar, and Sub-Inspector Kirti Upadhyaya could not collect courage to go to the house of Ganga Singh Bhadoria where the incident took place. Spot map is an important part of investigation and it was deliberately ignored by the S.H.O., Police Station Morar, Ajay Singh Pawar and Sub-Inspector Kirti Upadhyaya.

113. It is not out of place to mention here that the prosecutrix was

sent to One Stop Center in the night of 1-2-2021 and on 2-2-2021 at about 11 A.M., a habeas Corpus Petition was filed in the High Court, and on 3-2-2021, the prosecutrix was produced before the Division Bench of this Court through Video Conferencing and on the said date, the prosecutrix expressed her desire to go to her parental home.

114. It also appears from the Police case diary, that the investigating officer was changed, and the S.H.O., Police Station Sirol, Distt. Gwalior, took over the investigation on 3-2-2021.

115. The S.H.O., Sirol, Distt. Gwalior/changed I.O., found that even the spot map was not prepared. It is also observed in the case diary proceedings dated 3-2-2021, that the video clippings of the statements of the witnesses have not been kept in the police case diary and the attention of this lapse was drawn to the Senior Officers. Unfortunately, no one paid heed, and even when the case diary was produced before this Court, the case diary was not containing the video clippings of the statements of the witnesses. Thus, it is clear that the S.H.O., Police Station Morar Ajay Singh Pawar, and Sub-Inspector Kirti Upadhyaya as well as Lady Constable Manisha Jadon had kept the video clippings with them. The video clippings which have been made available to the Court contains different captions.

(I) The video clipping of statement of prosecutrix recorded on 31-1-2021 contains a caption **Whatsapp Video 2021-02-02 at 2:37:57 P.M.**, whereas statement of prosecutrix in which she had leveled

allegations against Dharmendra contains a caption **Whatsapp Video 2021-02-02, at 2:39:15 P.M.**, Second supplementary statement recorded on 1-2-2021 contains a caption **Whatsapp video 2021-02-02 at 5:41:00 P.M.**, the statement of Dharmendra Dhakad contains a caption **Whatsapp Video 2021-02-02 at 5:21:56 P.M.**, and the statement of the father of the prosecutrix contains a caption **Whatsapp Video 2021-02-02 at 2:34:30 P.M.** Only the S.H.O., Police Station Morar, Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya and Lady Constable Ms. Manisha Jadon would be in a position to explain the meaning of above mentioned captions. Therefore, the investigating officer is directed to investigate on this issue also. However, one thing is clear that no inference can be drawn from the above mentioned **Whatsapp Video** that at what time and on what date, the videography was done. However, one thing is clear. The video clippings were not kept in the case diary in accordance with law or even in the Police Station, otherwise, there was no occasion for caption like **Whatsapp Video**. Thus, it is clear that the S.H.O., Police Station Morar Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya and Lady Constable Manisha Jadon had transmitted the video clippings through **Whatsapp platform**. The Counsel for the State could not explain that under what provisions of law, the police officers can transmit the video clippings through **Whatsapp platform**. Thus, it clearly shows that the S.H.O., Police

Station Morar Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya and Lady Constable Manisha Jadon has violated the privacy of the prosecutrix and have acted contrary to law as well as contrary to police circulars. Further more, the case diary proceedings dated 3-2-2021 also clearly show that the video clipping were not kept in the Police Case Diary, whereas as per the provisions of Section 163(3) of Cr.P.C., the statements of the witnesses can also be recorded by video graphy. Therefore, the videoclippings of the statements of the witnesses can be regarded as statements under Section 161 of Cr.P.C.

116. Be that as it may.

117. On 4-2-2021, the statement of the prosecutrix was once again recorded by the S.H.O., Police Station Sirol, Distt. Gwalior/changed I.O., and in that statement, the prosecutrix once again re-iterated the same allegations which She had leveled in her statement under Section 164 of Cr.P.C. It is also mentioned in the case diary proceedings dated 4-2-2021 that the Add. S.P. (East) directed the S.H.O., Police Station Sirol, Distt. Gwalior/changed I.O., not to investigate into the allegations of beating by the police and the S.H.O., Police Station Sirol, Distt. Gwalior/changed I.O. was directed to investigate into the allegations of rape only.

118. On 5-2-2021, the spot map was prepared and torn cloths of the prosecutrix were also seized.

119. In her videographed statement of the prosecutrix recorded by

Sub-Inspector Kirti Upadhyaya on 31-1-2021, the prosecutrix had specifically alleged that her cloths were torn, but the S.H.O., Police Station Morar Ajay Singh Pawar and Sub-Inspector Kirti Upadhyaya could not collect courage to go to the spot and to seize the torn cloths of the prosecutrix. They did not go to the spot for collecting incriminating/supporting evidence. Even the room of the prosecutrix was not sealed. Only the changed I.O., prepared the spot map and seized the torn cloths from the prosecutrix.

120. The case diary contains an Absconding Panchnama of Aditya Bhadoria to the effect that on 4-2-2021, he was not found at his address, but there is no mention of above mentioned fact in the case diary proceedings of 4-2-2021.

121. The case diary contains an Absconding Panchnama of Aditya Bhadoria to the effect that on 5-2-2021, he was not found at his address, but in the case diary, there is no mention that Aditya Bhadoria was searched, but it is mentioned that friend of Aditya Bhadoria was not found.

122. On 9-4-2021, Brijmohan Singh Chouhan, who is the maternal uncle of suspect Aditya Bhadoria provided one C.D. to investigating officer, which was allegedly containing the videoclipping of 1-2-2021(Most probably of Court premises). He also provided two photographs i.e., photographs of one boy claimed to be Sonu Sharma and prosecutrix and also provided two photographs of a person, who

is claimed to be Sonu Sharma by Brijmohan Chouhan and also provided one photograph of a person claimed to be Shaymu Pandit. Although the photographs are in the case diary but the C.D. provided by Brijmohan Singh Chouhan is not in the case diary. **However, the case diary doesnot contain any diary proceedings of 9-2-2021, whereas the case diary contains the seizure memo dated 9-2-2021. *It is really surprising that although the Investigating Officer Priti Bhargava, Town Inspector is alleged to have seized the above mentioned documents, but the police case diary doesnot contain proceedings regarding any such seizure. Thus, it is clear that even the changed investigating officer had started dancing to the tunes of Ganga Singh Bhadoria, and was collecting and receiving documents from them, without making any reference of the same in the police case diary.***

123. As per the case diary, Aditya Singh was searched in his house, but his family members expressed ignorance about his whereabouts. But the case diary doesnot contain any abscondence panchnama dated 10-2-2021 of Aditya Bhadoria. Again in diary proceedings dated 12-2-2021, it is mentioned that Aditya Bhadoria was searched in his house, but his family members were not in a position to tell about his whereabouts. But the police case diary doesnot contain Abscondence Panchnama dated 12-2-2021. Thus, it is clear that even the changed Investigating Officer had started manipulating the



investigation, and was making false entries in the Police case diary proceedings. *It is not out of place to mention here that the case diary contains one application made by Ganga Singh Bhadoria to the Changed investigating officer on 3-2-2021. Thus, it is clear that immediately after taking over the investigation, the changed investigating officer was also in constant touch with Ganga Singh Bhadoria. It is further shocking that although Ganga Singh Bhadoria had met with changed Investigating Officer (it is endorsed by the changed I.O., that application was given by Ganga Singh Bhadoria personally by mentioning “ स्वयं ”, and had given an application in his defence, but there is no reference of the same in the case diary proceedings dated 3-2-2021.*

124. It also appears that Ganga Singh Bhadoria, made a similar application to Superintendent of Police, Gwalior on 4-2-2021 and the same was marked to S.H.O., Police Station Morar, Ajay Singh Pawar, and S.H.O., Police Station Morar Ajay Singh Pawar received the same on 8-2-2021. Since, the investigating officer was already changed, therefore, it was marked to T.I., Police Station Sirol, Distt. Gwalior, and as per the endorsement made by changed I.O., She received this application on 24-2-2021 by hand. The word “ स्वयं ” *clearly indicates, that this application must have been handed over by Ganga Singh Bhadoria, but in case diary proceedings dated 24-2-2021, there is no such reference.*

125. Case diary proceedings dated 16-2-2021, 18-2-2021, 24-2-2021, mentions that Aditya Bhadoria and his friends were searched but there whereabouts were not found, but there is no abscondence panchnama in the case diary. Thus, it appears that false entries were being made by Changed Investigating Officer also.

126. In case diary proceedings dated 25-2-2021, there is a reference of applications made by Ganga Singh Bhadoria to Superintendent of Police, Gwalior and Inspector General of Police, Gwalior and accordingly, letter was written to D.P.O., to obtain video footage of CCTV cameras installed in Court premises. In case diary proceedings dated 9-3-2021, there is reference of application given by Ganga Singh Bhadoria as well as application given by father of the prosecutrix to the Superintendent of Police, and thereafter, the investigating officer immediately changed her investigation and started looking for Sanjay Nai and Shaymu Pandit as alleged by Ganga Singh Bhadoria. On the same day, the father of Shaymu Pandit came to the police station and denied the involvement of his son Shaymu Pandit.

127. It also appears that on 26-3-2021, a notice was issued and its reply was given by Govind Sharma, which is in the police case diary. It is specifically mentioned in the reply, that Govind Sharma tried to hand over the reply personally to the investigating officer, but She refused to accept it and accordingly, the same was sent through

registered post. In the reply, it is specifically mentioned that in connection with the present case, he was summoned in the police station for number of times and was made to sit in the police station for no reasons and accordingly on 4-2-2021, he had also made a complaint to the Superintendent of Police. The said application is also in the case diary. Thus, it is clear that right from the very beginning, the police was not trying to collect the correct facts but was trying to implicate other persons without any basis but only on the request of Ganga Singh Bhadoria. Similarly, the case diary contains a reply sent by Sanjay Savita by registered post, in which there is an endorsement that the investigating officer has refused to accept the same, therefore, it is being sent by registered post.

128. The case diary also contains an application made by Ganga Singh Bhadoria dated 2-2-2021, in which he has mentioned that the prosecutrix has refused to undergo the medical examination of her private parts. This application was also received by changed investigating officer personally on 5-2-2021. It is really surprising that according to the prosecution, the prosecutrix had refused to undergo the medical examination of her private part on 1-2-2021 at 10:35 P.M., and Ganga Singh Bhadoria was aware of this fact. Thus, it is clear that Ganga Singh Bhadoria was keeping a close watch on the investigation which is not possible without the help of the investigating officer or any other police personal posted in the police

station. From the police case diary, it is clear that Ganga Singh Bhadoria was making applications constantly to the Superintendent of Police, Gwalior which were being marked to changed Investigating Officer.

129. In application dated 7-3-2021, the father of the prosecutrix had also made a complaint to the Superintendent of Police, Gwalior that under the orders of the High Court, the custody of the prosecutrix has been handed over to him, but still the police is harassing and is pressurizing them to withdraw the complaint. Although this application was also marked to changed investigating officer, but nothing was done on this application.

130. Thus, it is clear that the police was simply acting on the dictations of Ganga Singh Bhadoria and was neither investigating on the complaint made by the prosecutrix, nor took cognizance of complaint made by father of the prosecutrix.

131. On 27-5-2021, Ganga Singh Bhadoria, made one more application and the contents of the application clearly shows that he was aware of each and every investigation which was being done in the matter. In this letter it is mentioned that false case has been registered at the behest of Shyamu Pandit. It is also mentioned that during investigation, the police has collected the CDR (Call details), according to which Shyamu Pandit had talked to the prosecutrix from 1<sup>st</sup> Jan 2021 till 19 Jan 2021, and thereafter the SIM of Shyamu

Pandit was deactivated. Thereafter, he talked to the prosecutrix from another SIM from 20 Jan 2021 till 31 Jan 2021, whereas this SIM is registered in the name of Ravi son of Rajendra Prasad village Barona Distt. Bhind. It was also mentioned that Sandeep Sharma by putting the prosecutrix under pressure has succeeded in getting her statement recorded under Section 164 of Cr.P.C. against Aditya Bhadoria and himself. **It is also mentioned that inspite of the direction given by the police, the house has not been vacated.** Thus, it is clear that the investigating officer had gone to the extent of pressuring the prosecutrix to vacate the house of Ganga Singh Bhadoria and therefore, father of the prosecutrix had made a complaint of harassment by the police, but no action was taken, but on the contrary, the police was involved in making an attempt to get the house of Ganga Singh Bhadoria vacated. Thus, it is clear that the police was out and out to destroy all evidences which were against Aditya Bhadoria and Ganga Singh Bhadoriya.

132. It appears that Mamta Sharma, wife of Sandeep Sharma had also made an application to the Superintendent of Police, Gwalior regarding false implication of her husband Sandeep Sharma, but no heed was paid. In the complaint made by Mamta Sharma, it is specifically mentioned that her husband Sandeep Sharma was present in the Court premises in connection with his Court case. Thus, it is clear that Sandeep Sharma, did not try to hide his presence in the

Court premises on 1-2-2021.

133. Court is a public place and every person, who is facing trial or whose case is fixed or persons for other works like preparation of affidavits etc come to the Court. Therefore, even if some person is seen behind another person who has been brought to the Court by a police personal, then it cannot be said that the witness is being taught. But still, the police on the application made by Ganga Singh Bhadoria immediately directed the D.P.O., to collect the CCTV footage of cameras installed in Court premises. It is also not out of place to mention here that the lady Constable who was accompanying the prosecutrix in the Court premises, also did not record the incident in the Court premises from her mobile as alleged by her, as per the case diary. Thus, it is clear that the allegation that the prosecutrix was tutored by Govt. Pleader O.P. Sharma, and the J.M.F.C., Gwalior, recorded the statement of the prosecutrix under the pressure of Govt. Pleader O.P. Sharma are not only false but are contemptuous.

**Whether the Investigating Officer was following the direction given by the Superintendent of Police, Gwalior.**

134. The Superintendent of Police, Gwalior by its letter dated 24-2-2021, 16-4-2021 had directed the Investigating officer to arrest the accused persons or to initiate the proceedings under Section 82 and 83 of Cr.P.C. In reply, the Investigating Officer, by her letter dated 15-5-2021 informed the Superintendent of Police, Gwalior, that some

more time would be required to arrest Aditya Bhadoria and his friend. The case diary also contains various letters written by Superintendent of Police, Gwalior for early conclusion of investigation, but still the Investigating Officer was proceeding on her own snails' speed.

135. By supervision report no. 11/2021 dated 5-2-2021, the Superintendent of Police, Gwalior had directed to record the statement of Ganga Singh Bhadoria, but no action was taken on said letter.

136. Thus, it is clear that even the changed Investigating Officer was not listening to the directions of Superintendent of Police, Gwalior.

**Whether diversion of investigation to Shyamu Pandit and others was due to evidence collected during investigation or it was on the dictations of Ganga Singh Bhadoria.**

137. The case diary reveals that on 31-1-2021, Ganga Singh Bhadoria was present in the police station and he was directed to provide the recording of CCTV cameras installed in his house to verify that movements of assailants.

138. The case diary contain a seizure memo dated 13-3-2021 by which the DVR, one CD and one Photo were seized from Brijmohan Singh Chouhan, maternal uncle of Aditya Bhadoria. According to this C.D., it was alleged that on 31-1-2021 at about 7:22:22 PM one person with mask was seen entering inside the house of Ganga Singh Bhadoria, who according to Ganga Singh Bhadoria was Shyamu

Pandit.

139. Although Ganga Singh Bhadoria had started claiming from 3-2-2021 itself, that Shaymu Pandit had come to his house in the night of 31-1-2021 at about 7:22 and went back at about 18:15 (timings appear to be wrongly mentioned). However, the CD of recording of CCTV camera was made available by Ganga Singh Bhadoria on 13-3-2021. The case diary also contains a notice dated 1-2-2021 issued to Ganga Singh Bhadoria to supply recording of CCTV footage. This Court has already held that the police could have seized the DVR of the CCTV camera installed in the house of Ganga Singh Bhadoria on 1-2-2021 itself, but instead of doing that, full opportunity was given to Ganga Singh Bhadoria to manipulate the recording. The Police Case diary contains a photograph of a person wearing cap and mask with one polythene in his hand and according to the recording time, the timings of this photo is 07:22:22 P.M.

140. From the timings visible from the photo, it cannot be said that the photograph provided by Ganga Singh Bhadoria through Brijmohan Singh Chouhan is not morphed one. The date and Time in the DVR is always set manually. If the photograph provided by Ganga Singh Bhadoria was the original one, then why it was not provided by Ganga Singh Bhadoria on 1-2-2021 itself, and why he took approximately 1 and a half month to provide the recording of CCTV footage specifically when he was in constant touch with



Superintendent of Police, Inspector General of Police and Investigating Officers.

141. If the date and time in the DVR is changed, then it would reflect the changed date and time. Thus, it is clear that during this 1 and a half month, Ganga Singh Bhadoria had ample opportunity to re-record the things after changing the date and time of recording.

142. Thus, it is clear that the police was giving full opportunity to Ganga Singh Bhadoria to destroy all evidences.

**Why Ganga Singh Bhadoria had let out his house to the prosecutrix.**

143. It is an admitted position that the prosecutrix was working in the house of Ganga Singh Bhadoria and was allowed to stay in the house. It is the claim of the prosecutrix in her statement dated 31-1-2021 which was videographed, that since, She was doing dusting and mopping, therefore, Ganga Singh Bhadoria had allowed her to stay in the house. However, Ganga Singh Bhadoria has claimed in his applications that the prosecutrix was inducted as a tenant. In the case diary proceedings dated 1-2-2021, it is mentioned that Ganga Singh Bhadoria had informed that the prosecutrix was inducted as tenant on monthly rent of Rs. 3500, and *Bua* of the prosecutrix had recommended for the same. Thus, it is clear that Ganga Singh Bhadoria was in touch with *Bua* of the prosecutrix, even then the police did not try to find out the whereabouts of *Bua* of the

prosecutrix. It is really surprising that a young girl aged about 19 having no sources of income as well as having no information of background was inducted as a tenant by Ganga Singh Bhadoria and also did not give any information and details of the newly inducted tenant to the nearby police station. Thus, the stand of the prosecutrix that She was employed as a maid servant for dusting and mopping purposes and was allowed to stay on the ground floor appears to be more convincing.

**Why the torn cloths of the prosecutrix were not seized on the date of incident itself**

144. According to the prosecution story, the torn cloths of the prosecutrix were seized in the One Stop Center on 5-2-2021. It is really surprising that the prosecutrix was with the police for the whole night of 31-1-2021 and whole day of 1-1-2021, but still her cloths were not seized, specifically when in her statement which was videographed, the prosecutrix had specifically stated that She was disrobed forcibly and her cloths were torned. However, the Sub-Inspector Kirti Upadhyaya in the statement of the prosecutrix written under Section 161 of Cr.P.C., conveniently omitted the fact that her cloths were torned and were removed by miscreants. Thus, in view of material difference between the statement of the prosecutrix which was videographed and the statement which was written by Sub-Inspector Kirti Upadhyaya, it is clear that the police personals were

trying to divert the investigation right from day one. Therefore, S.H.O., Police Station Morar Ajay Singh Pawar, and Sub-Inspector Kirti Upadhyaya did not seize the torn cloths of the prosecutrix which She was also wearing when She came to police station.

145. It is true that generally, the cloths of the prosecutrix are sealed by the Doctor and thereafter they are handed over to the Police Personals. But in the present case, it appears that the prosecutrix was not permitted to change her cloths by the police personals and She was compelled to wear the same cloths from 31-1-2021 till 2-2-2021 (The cloths were seized from the prosecutrix from One Stop Center, Gwalior on 5-2-2021). Further, from the Medical Report dated 2-2-2021 which was prepared at 9:30 P.M., it is clear that the Doctor has written that the prosecutrix has not changed her cloths. Further more, when the Investigating Officer can seal the cloths on 5-2-2021, then why the prosecutrix was compelled to wear the same torn Kurta, Salwar and Chunni which according to her were torn during the commission of offence? However, this aspect is to be looked into by the investigating officer.

**Whether Rojnamcha Sanhas of Police Station Morar contains the timings of investigation.**

146. A copy of the Rojnamchsanha which is also called General Diary is maintained as per the provisions of Section 44 of Police Act. A copy of the Rojnamchasanhas are sent to the office of

Superintendent of Police, on daily basis. Earlier a separate book was maintained and the original sanhas were sent to the office of Superintendent of Police, and the carbon copy of the same were retained in police station, but with passage of time, the Rojnamchasanha book has been replaced by Computer entries. Therefore, the print of Rojnamchasanhas which are maintained in the office of Superintendent of Police, Gwalior, was supplied. As the Rojnamchasanhas were sent after the case was reserved for orders, therefore, the police officer who brought the Rojnamchasanhas informed that since, the print out which was taken out from the ID of Superintendent of Police Gwalior was not reflecting time of recording of Rojnamchasanhas, therefore, the print out of Rojnamchasanhas of the Police Station Morar were separately taken out.

147. Whether non print of timings in the Rojnamchasanhas which are available in the office of Superintendent of Police, Gwalior is due to any technical flaw or otherwise, is not known, but one thing is clear from the Rojnamchasanhas maintained at Police Station Morar, the timings of each and every event has not been mentioned. It is clear that the Rojnamchasanhas were written at the end of the day, and after comparing with the case diary proceedings and the Rojnamhasanhas, it is clear that almost all the Rojnamhachasanhas are cut and paste. But only Rojnamchasanhas written at serial no. 58,

74, 80, 81 dated 1-2-2021 (intervening night of 31-1-2021) and Rojnamchasanha no. 8 dated 1-2-2021 written on the morning of 1-2-2021 are not the cut paste. Be that as it may.

148. This Court did not get any assistance from the Rojnamchasanhas of Police Station Morar, except that a A.S.I. Vishram Singh was sent at 7:48 A.M. on 1-2-2021 to give information to the father of the prosecutrix.

149. Thus, it is found that most of the Rojnamchasanhas did not contain the timings of any particular investigation done by the investigating officer.

150. Thus, in nutshell, the following circumstances would emerge :

151. The prosecutrix was employed as maid servant in the house of Ganga Singh Bhadoria on 18-12-2020 and the prosecutrix was residing in the house of Ganga Singh Bhadoria where the incident is alleged to have taken place.

(a) The prosecutrix informed Dial 100 on 31-1-2021 at 20:29:09 about commission of rape.

(b) The headquarter of Dial 100 informed Unit Gwl 43 about the event at 20:30:35 on 31-1-2021.

(c) The headquarter of Dial 100 informed S.H.O., P.S.Morar about the incident on 31-1-2021 at 20:32:33.

(d) The headquarter of Dial 100 informed DPCR at 20:33:52.

(e) The headquarter of Dial 100 informed CSP Morar at 20:35:30

(f) The headquarter of Dial 100 sent sms to Mobile No. 8085188394 at 20:36:18

(g) The headquarter of Dial 100 sent sms to Mobile No. 7587612701 (Must be of some police officer) at 20:36:19

(h) The headquarter of Dial 100 sent sms to Mobile No. 7587600013 (Must be of some Police Officer) at 20:36:20

(i) The headquarter of Dial 100 sent sms to Mobile No. 9425964313 (Must be of some Police Officer) at 20:36:51

(j) The headquarter of Dial 100 sent sms to Mobile No. 9479993002 (Must be of some Police Officer) at 20:36:52

(k) CCSP Morar was informed about incident at 20:36:53

(xii) At 20:46:28 the headquarter of Dial 100 sent informed ASP on Mobile No. 9479993002 who informed that P.S. Morar doesnot fall within his jurisdiction.

(l) M.2 (Most Probably Add. S.P.) was informed about incident at 20:48:21

(m) FRV reached on the spot at 20:51:48

(n) FRV reached police station along with prosecutrix at 21:04:09

*Thus, it is clear that after the incident was reported by the prosecutrix on Dial 100, then S.H.O., Police Station Morar, Ajay Singh Pawar, C.S.P., Morar, M.2( Most Probably Add. S.P.) were informed even before the FRV could reach on the spot. Further, it is clear that the prosecutrix was dropped by the F.R.V. at police*

*station Morar at 21:04:09.*

(o) F.I.R. was lodged at 23:50.

*That means the prosecutrix was made to wait in the police station for approximately 3 hours, but the fact that the prosecutrix had reached police station at 21:04:09 is not mentioned in the Police case diary.*

*Even the Police case diary doesnot indicate, that the M.2, C.S.P., Morar and S.H.O., Police Station Morar, Ajay Singh Pawar were already informed about the incident at 20:32:33 onwards.*

(p) The Statement of the prosecutrix under Section 161 of Cr.P.C. was reduced in writing and it was also videographed.

*However, there is material omission in the written statement of the prosecutrix and the statement which was videographed. In video clipping the prosecutrix has alleged that when She raised an alarm for her protection, then Ganga Singh Bhadoria also came there and after calling her by caste name, extended a threat that the prosecutrix should not narrate the incident to any body, otherwise, She would be killed. However, Sub-Inspector Kirti Upadhyaya, conveniently omitted the allegations against Ganga Singh Bhadoria in the written statement of the prosecutrix.*

(q) Ganga Singh Bhadoria also reached Police Station and he was advised to preserve and provide the CCTV footage of cameras which are installed in his house and a notice in this regard was also given.

(r) However, Brijmohan Singh Chauhan, maternal uncle of Aditya Bhadoria provided the DVR of CCTV on 13-3-2021 i.e., after approximately 1 and a half month.

*Thus, full opportunity was given to Ganga Singh Bhadoira to manipulate the recording of CCTV footage of cameras installed in his house, and recording of CCTV camera installed in the house of Ganga Singh Bhadoria was not seized by the police in the intervening night of 31-1-201 and 1-2-2021. On the contrary, in the case diary proceedings dated 1-2-2021, it is mentioned that when Ganga Singh Bhadoria was called in Police Station, then he was directed to see the recording of CCTV footage and he informed that one boy had come to his house at 7:22 P.M. Thus, it is clear that Ganga Singh Bhadoria must have visited police station for number of times in the night of 31-1-2021.*

(s) The mobile and duplicate Adhar Card of prosecutrix was seized and the prosecutrix was taken for medical examination and in the prescription form for medical examination, no injuries were mentioned by the police on the body of the prosecutrix.

(t) The Out Patient Record of Distt. Hospital, Morar indicates, that the OPD Slip was prepared at 12:26:43 A.M., on which Dr. Reena Saxena has mentioned that since, the prosecutrix has disclosed her age as 15 years, therefore, She cannot conduct her internal examination in absence of her guardians. The Medico-Legal Form



indicates, that Dr. Reena Sexena had refused to carry out her internal examination at 2:20 A.M.

(u) Although Shri Raghuvanshi, during the course of arguments had stated that the prosecutrix was brought back to the police station at 4 A.M., but the Rojnamchasanha indicates, that the prosecutrix was brought back to the police station at 2:54 A.M.

(v) Rojnamchasanha No. 81 indicates that the prosecutrix was kept in Urja Mahila Desk in the police station itself.

(w) On 1-2-2021, as per Rojnamhasanha no. 8 recorded at 7:48, A.S.I. Vishram Singh was sent to inform the father of the prosecutrix.

**From thereafter, neither the Rojnamchasanha nor the case diary proceedings contain the timings of the events.**

(x) The statement of the father of the prosecutrix was recorded and was also got videographed.

*On comparison, it is found that the written statement of father of the prosecutrix and the video clipping of statement of father of prosecutrix is different on certain issues.*

*Further, none of the videography of statements of the witnesses/prosecutrix are in accordance with the police circulars.*

(y) The first supplementary statement of the prosecutrix was recorded in which she is looking terrified.

*It is clear from the video clippings the Sub-Inspector Kirti Upadhyaya was taking notes of the statement but was not writing*

*the same verbatim.*

*The video clipping was prepared from the right side of the prosecutrix. Her head is covered with chunni and thus, her left side of face is not visible in video clipping (The Doctor had found swelling on left cheek of the prosecutrix)*

(z) The prosecutrix was taken to the house of Dharmendra Dhakad.

(aa) The statement of Dharmendra Dhakad was recorded and videographed.

*In the video clipping, the investigating officer is not visible, and there are differences in the written statement and the video clipping and the fact of enjoying Paneer party in the room of Prosecutrix is not in the video clipping.*

(bb) The Second supplementary statement of prosecutrix was recorded and was also videographed.

*In the video clipping the prosecutrix is looking terrified and is not answering fluently and is taking long pauses.*

*As the face of the prosecutrix was covered with Chunni and due to light in the background, it is not possible to find out as to whether there are any injuries on her left cheek and behind ears or not?*

(cc) The prosecutrix was sent for recording of her statement under Section 164 of Cr.P.C.

(dd) The prosecutrix, apart from re-iterating the allegations which she had leveled in her videographed statement before the investigating

officer, made serious allegations against the police personals regarding her beating. In her statement under Section 164, the prosecutrix had also alleged that before leaving the police station for the Court, the S.H.O., Police Station Morar, Ajay Singh Pawar had threatened her that She should depose in accordance with their directions, otherwise, She has to come back to the Police Station.

(ee) The J.M.F.C., Gwalior, immediately brought this fact to the knowledge of C.J.M., Gwalior, who immediately summoned the C.S.P., Morar and also verified from the prosecutrix. The prosecutrix once again made allegations of beating by the police.

(ff) In order to overcome the allegations of beating, it was mentioned in the police case diary, that initially the J.M.F.C., Gwalior, refused to record the statement of the prosecutrix under Section 164 of Cr.P.C. When the lady constable came out of the chamber of the J.M.F.C., Gwl, they were surrounded by 5-6 persons who started pressuring that the statement would be recorded and the prosecutrix has to make a statement as per their wish and one Advocate forcibly took the prosecutrix inside the chamber of the J.M.F.C. and the statement under Section 164 of Cr.P.C. was recorded. In the case proceedings it is also mentioned that Shri O.P. Sharma, Govt. Pleader is assisting one Sonu Sharma

***Thus, in order to overcome the allegations of beating, the police went to the extent of leveling allegations against the J.M.F.C.,***

***Gwalior and Govt. Pleader.***

(gg) A separate order was passed by C.J.M., Gwl, directing for change of investigating officer and also to keep the prosecutrix at a secured place.

(hh) The prosecutrix was sent for medical examination.

(ii) Since, the internal examination of the prosecutrix was not done, therefore, She was once again sent for medical examination. As per medico-legal Examination report, the prosecutrix was brought to the Hospital at 10:30 P.M. and as per the endorsement written at 10:35 P.M., the prosecutrix refused to undergo medical examination.

(jj) Thereafter, without any order from the Court, the C.S.P., Morar sent the prosecutrix to One Stop Center instead of sending her to her parental home.

***During the course of arguments, it was wrongly stated by C.S.P., Morar, that the prosecutrix was sent to One Stop Center, on the verbal orders of the C.J.M., Gwl***

(kk) This Court after considering the various facts and circumstances, has come to a conclusion that the prosecutrix was beaten mercilessly before her 1<sup>st</sup> and 2<sup>nd</sup> supplementary statements.

(ll) The case diary proceedings doesnot contain the steps which were taken by the investigating officer on 2-2-2021, but the case diary contains a Medico-Legal Examination Form prepared on 2-2-2021 at 9:30 P.M. and Doctor found **Multiple Bruises on B/L thigh and**

**tenderness as well as bruising and tenderness on left cheek bone, and mild tenderness behind the ears.**

(mm) The Doctor has not given the duration of the injuries but has cleverly mentioned that as per victim, incident happened 3-4 days back, whereas in the medical report dated 1-2-2021, it is mentioned that duration of injuries is 24-48 hours.

(nn) There is material contradictions in the medical report dated 1-2-2021 and 2-2-2021. In report dated 1-2-2021, the Doctor had opined 8 abrasions were found, whereas in report dated 2-2-2021, multiple bruises were found.

***The prosecutrix had alleged that she was beaten by police personals by belt, and her allegations finds corroboration from Medico-Legal Examination Report dated 2-2-2021.***

(oo) Neither the spot map was prepared, nor the room of the prosecutrix was sealed. The CCTV footage of the house of Ganga Singh Bhadoria were also not seized, but ample time was granted to Ganga Singh Bhadoria to provide CCTV footage as per his convenience. Thus, it is clear that Gana Singh Bhadoria had full opportunity to manipulate the recording of CCTV footage of his cameras.

(pp) The Superintendent of Police, Gwalior directed the Add. S.P. (East) to conduct an enquiry into the allegations of beating by police personals and to submit the report within 5 days.

(qq) The Add. S.P. (East) in her turn, assigned the enquiry to C.S.P., Morar, which clearly shows a hostile and inhuman attitude of the police authorities towards to atrocities complained by the rape victim.

(rr) The Add. S.P. (East), even did not care to talk to the Prosecutrix.

(ss) On 3-2-2021, Smt Priti Bhargava, S.H.O. Police Sirol was assigned investigation, who found that neither the spot map was prepared nor the video clippings of the statements of the witnesses are in the case diary.

(tt) On 3-2-2021, the prosecutrix was produced before the High Court through Video conferencing in a habeas corpus petition and W.P. No. 2571 of 2021 was heard and reserved on 3-2-2021 and order was pronounced on 9-2-2021. During the Video Conferencing, the prosecutrix had expressed her willingness to go to her parental home.

(uu) Ganga Singh Bhadoria was constantly making applications to Inspector General of Police, Superintendent of Police, and Investigating Officers. He was in constant touch with Investigating Officers, and contents of some of his applications indicate that he was aware of each and every development in the investigation.

(vv) The father of the prosecutrix also made a written complaint to the Superintendent of Police, which was forwarded to the Investigating Officer, but one thing is clear that no cognizance of the complaint of father of the prosecutrix was taken.

(ww) Although Ganga Singh Bhadoria against whom allegations of

threatening were made by the prosecutrix was not made an accused, but at the same time, he was personally making applications to the Investigating Officer and every time it was being written by the Investigating Officer that Aditya Bhadoria is not found at his residence. Except that, there is nothing on record to show that any effort was made by the investigating Aditya Bhadoria.

(xx) Although Ganga Singh Bhadoria was present in the police station on 31-1-2021 and was in constant touch with the Inspector General of Police, Superintendent of Police and Investigating Officer, but his statements were not recorded.

(yy) Right from day one, not only the police was harassing the Prosecutrix, but had diverted the investigation and from 1-2-2021 was trying hard that the prosecutrix should change her version.

(zz) An attempt was made by the I.O. Smt. Priti Bhargava to obtain CCTV footage of District Court premises through D.P.O. without taking the Superintendent of Police in confidence.

(aaa) In Rojnamchasanha even the Court reader was roped in, in order to develop a false story that the statement of the prosecutrix under Section 164 of Cr.P.C. was tutored one and was recorded under pressure.

(bbb) Although there is reference to the information given by Constable Satyendra that the prosecutrix was tutored inside the Court premises, but no videography of such an incident was done either by

the lady constable or male constable Satyendra.

(ccc) Since, one Sonu Sharma had come to the Court, therefore, Ganga Singh Bhadoria tried to make a mountain out of a mole.

(ddd) From the allegations in the applications made by Ganga Singh Bhadoria, it is clear that Ganga Singh Bhadoria was aware of the fact that the prosecutrix would be taken to the Court for recording of her statement under Section 164 of Cr.P.C., therefore, he was keeping a watch and has also provided the photographs of the prosecutrix, Sonu Sharma, while they were in Court premises.

(eee) The National Commission for Women had also taken cognizance of beating of the prosecutrix in the police custody and wrote a letter to D.G.P., State of Madhya Pradesh, asking for action taking report, but inspite of that the Add. S.P. (East) did not take pains to conduct the enquiry on her own and assigned the same to C.S.P., Morar.

(fff) C.S.P., Morar submitted his report dated 12-2-2021, from which it is clear that after reproducing the statements of witnesses, directly jumped to a conclusion that there is no proof of beating in the police station.

(ggg) C.S.P., Morar thereafter, submitted his report, that the explanation given by S.H.O., Police Station Morar, Ajay Singh Pawar on certain aspects is not acceptable.

(hhh) However, C.S.P., Morar, again submitted his fresh report on 4-



6-2021 to the Add. S.P. (East) which was reproduction of first report.

(iii) On 4-6-2021, Add. S.P. (East) directed her Reader to place the report along with evidence and documents, but did not take any pains to even look into the ocular and documentary evidence.

(jjj) From the application dated 28-5-2021, made by Ganga Singh Bhadoria, it is clear that even police had pressurized the prosecutrix to vacate the house of Ganga Singh Bhadoria, and that is why, the father of the prosecutrix had made a complaint of harassment by the police.

(kkk) Thus, it is clear that the police was interested in destroying the evidence against Ganga Singh Bhadoria and his grand son Aditya Bhadoria.

(lll) Although the parents of Aditya Bhadoria are still alive but they did not come forward in support of Aditya Bhadoria.

(mmm) No steps were taken to apprehend Aditya Bhadoria and his friends and even no proceedings were initiated under Section 82 and 83 of Cr.P.C. against the culprits inspite of repeated directions by the Superintendent of Police, Gwalior.

(Innn) Section 46(4) of Cr.P.C. reads as under :

***Section 46. Arrest how made***

(4) Save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or

the arrest is to be made.

When a woman cannot be arrested after sunset and before sunrise, then how police can keep a rape victim in the police station for the whole night? Undisputedly, no orders from the competent Court were obtained for keeping the rape victim in the police station for the whole night. No orders from the Senior Officers like Superintendent of Police or Inspector General of Police were obtained. Thus, it is clear that the detention of the prosecutrix in the police station for the whole intervening night of 31-1-2021 and 1-2-2021 is a glaring example of violation of Fundamental Rights of the rape victim under Article 21 of the Constitution of India.

(ooo) There is nothing in the case diary dated 1-2-2021, that since, the prosecutrix refused to leave the police station, therefore She was kept in Police Station, Morar. Even the case diary proceedings dated 1-2-2021 doesnot contain anything in this regard. The fact of keeping the prosecutrix in Urja Desk, Police Station Morar is mentioned in Rojnamchasanha only.

(ppp) As per the medico-legal Examination Form dated 2-2-2021, the Prosecutrix was referred to Orthopadician, but She was never taken to Orthopedician.

152. *Thus, from the facts and circumstances it is clear that the prosecutrix is the maid servant of Ganga Singh Bhadoria and conclusion can be drawn that before the prosecutrix could reach*

*Police Station Morar, the ill designs of S.H.O., Police Station Morar, Ajay Singh Pawar, and Sub-Inspector Kirti Upadhaya had started taking shape and the prosecutrix was made to wait for near about 3 hours in the police station and the F.I.R. was lodged belatedly. Sub-Inspector Kirti Upadhaya not only did not mention the allegations made by the prosecutrix against Ganga Singh Bhadoria in her videographed police statements, but even Ganga Singh Bhadoria came to police station and he was requested to provide the recording of CCTV cameras installed in his house, instead of seizing the same immediately. Even the police did not visit the place of incident which is the house of Ganga Singh Bhadoria. The prosecutrix was in fact detained in the Police Station for the entire night and on the next day, She was mercilessly beaten and her two supplementary statements were recorded and every effort was made to compel the prosecutrix to change her version. Thereafter, when the prosecutrix leveled allegations of beating by police, the S.H.O, Morar went to the extent of leveling allegations against the J.M.F.C. and Govt. Pleader. Even during the course of arguments, the C.S.P., Morar leveled false allegations against the C.J.M., Gwalior, that he had verbally directed the C.S.P., Morar to lodge the prosecutrix in One Stop Center. Multiple bruises were found on the body of the prosecutrix and inspite of the fact that the house of the prosecutrix*

*is situated at a distance of 25 Kms from the police station, but She was sent to One Stop Center. Even the spot map was not prepared. No attempts were made to apprehend Aditya Bhadoria and his friend, but attempts are being made to divert the investigation at the behest of Ganga Singh Bhadoria. No attempt was made to seal the room of the prosecutrix and to collect incriminating/material evidence from the spot.*

153. Thus, it is held that the police has not conducted the investigation in a free and fair manner and the entire efforts of police are tainted and outcome of its ill design.

**Whether the S.H.O., Police Station Morar, Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya, and other police officers are guilty of criminal act or not?**

154. This Court after detailed appreciation of facts, has come to a *prima facie* conclusion that S.H.O., Police Station Morar, Ajay Singh Pawar (Shri Ajay Singh Pawar) and Sub-Inspector Kirti Upadhyaya are directly and indirectly involved in merciless beating of the prosecutrix in the Police Station. According to the prosecutrix, initially She was beaten by lady police and on second occasion, even the Male police also joined hands in beating her. She has also stated that T.I. had threatened her that She should depose before the Magistrate in accordance with the wishes of the police department, otherwise, She has to come back to the police Station and She would

be beaten even if She dies.

155. Thus, it is held that Ajay Singh Pawar and Sub-Inspector Kirti Upadhyaya as well as other police personals are *prima facie* guilty of beating the prosecutrix in the police station.

**Whether any direction for registration of F.I.R. can be given against the police personals, specifically when they have not been made party to this petition?**

156. It is a trite law that an accused has no right of pre-audience before registration of F.I.R.

The Supreme Court in the case of **Chandra Deo Singh Vs. Prakash Chandra Bose** reported in (1964) 1 SCR 639 has held as under :

7. Taking the first ground, it seems to us clear from the entire scheme of Chapter XVI of the Code of Criminal Procedure that an accused person does not come into the picture at all till process is issued. This does not mean that he is precluded from being present when an enquiry is held by a Magistrate. He may remain present either in person or through a counsel or agent with a view to be informed of what is going on. But since the very question for consideration being whether he should be called upon to face an accusation, he has no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. It would follow from this, therefore, that it would not be open to the Magistrate to put any question to witnesses at the instance of the person named as accused but against whom process has not been issued; nor can he examine any witnesses at the instance of such a person. Of course, the Magistrate himself is free to put such questions to the witnesses produced before him by the complainant as he may think proper in the interests of justice. But beyond that, he cannot go.....

Further, order under Section 156(3) of Cr.P.C. is issued always at pre-cognizance stage and whenever such an order is issued then the police has to register the F.I.R. The Supreme Court in the case of **Mohd. Yusuf Vs. Afaq Jahan** reported in (2006) 1 SCC 627 has held as under :

**11.** The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

The Supreme Court in the case of **Lalita Kumari Vs. State of U.P.**, reported in (2014) 2 SCC 1 has held as under :

**120.1.** The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

The Supreme Court in the case of **Satishkumar Nyalchand Shah v. State of Gujarat**, reported in (2020) 4 SCC 22 has held as under :

10.....It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation, as observed by this Court in *W.N. Chadha; Narender G. Goel and Dinubhai Baghabhai Solanki*. In *Dinubhai Baghabhai Solanki* after considering another decision of this Court in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In *Sri Bhagwan Samardha*, this Court in para 11 held as under : (*Sri Bhagwan Samardha case*, SCC p. 743)

“11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

The Supreme Court in the case of **Dinubhai Boghabhai Solanki v. State of Gujarat**, reported in **(2014) 4 SCC 626** has held as under :

50.....These observations make it abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation. In the present case, the appellant was not even an accused at the time when the impugned order was passed by the High Court. Finger of suspicion had been pointed at the appellant by independent witnesses as well as by the grieved father of the victim.

The Supreme Court in the case of **Union of India Vs. W.N.**

**Chadha** reported in **1993 Supp (4) SCC 260** has held as under :

**89.** Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.

**90.** Under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

**91.** In *State of Haryana v. Bhajan Lal* this Court to which both of us (Ratnavel Pandian and K. Jayachandra Reddy, JJ.) were parties after making reference to the decision of the Privy Council in *Emperor v. Khwaja Nazir Ahmad* and the decision of this Court in *State of Bihar v. J.A.C. Saldanha* has pointed out that: (SCC p. 359, para 40)

“... the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation....”

**92.** More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by



a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

(Underline supplied)

\* \* \* \*

**98.** If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

The Supreme Court in the case of **Anju Choudhary Vs. State of U.P.** reported in **(2013) 6 SCC 384** has held as under :

**30.** Section 154 of the Code places an unequivocal duty upon the police officer-in-charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three-Judge Bench judgment of this Court in *State of U.P. v. Bhagwant Kishore Joshi*, a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of an FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty-bound to register an FIR. Then the question that arises is whether a

suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

**31.** The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1860 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the first information report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer-in-charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the officer-in-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be predominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage, secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in *Union of India v. W.N. Chadha* clearly spelled out this principle in para 98 of the judgment that reads as under:

(SCC p. 293)

“98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.”

\* \* \* \*

33. While examining the above stated principles in conjunction with the scheme of the Code, particularly Sections 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

34. Even in the cases where report under Section 173(2) of the Code is filed in the court and investigation records the name of a person in column (2), or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

The Supreme Court in the case of **Samaj Parivartan Samudaya v. State of Karnataka**, reported in **(2012) 7 SCC 407** has held as under :

50. There is no provision in CrPC where an investigating

agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners.

Thus, it is clear that unless and until FIR is registered, or complaint filed under Section 200 of Cr.P.C. is registered and summons are issued, the accused persons have no say in the matter. Accordingly, non-joinder of Police Personals in this writ petition, would not be a hurdle in issuing any direction for registration of F.I.R.

157. During the course of arguments, a question was asked to the Superintendent of Police, Gwalior as to whether the act of beating a rape victim in the police station is a serious act or not and in case, the allegations are found true, then what action is provided under the law. Then it was submitted by Shri Amit Sanghi, Superintendent of Police, Gwalior that beating a rape victim in the police station is a serious act on the part of the police personals and in such cases, criminal offence is to be registered against them, apart from Departmental Enquiry.

158. Accordingly, in the light of the reply submitted by Shri Amit Sanghi, Superintendent of Police, as well in the light of discussion mentioned above, the Superintendent of Police, Gwalior is directed to register F.I.R. against S.H.O., Police Station Morar Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya and other unknown police personals for beating the prosecutrix in the police station. Since, the prosecutrix was illegally detained in the police station for the whole night, therefore, offence under Section 341 of I.P.C. and any other offence which according to S.P., Gwalior is made out, be also registered. Further, the S.H.O., Police Station Morar, Shri Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya and Lady Constables who had videographed the statements of prosecutrix are guilty of not keeping the video clippings of the statements of the prosecutrix properly and in accordance with law and the same have been transmitted on Whatsapp platform, therefore, *prima facie* they are responsible for revealing the identity of the rape victim, therefore, offence under Section 228-A of I.P.C. be also registered against them.

159. Further, this Court has already come to a conclusion that Sub-Inspector Kirti Upadhyaya has made material changes in the statements of the prosecutrix and other witnesses written by her under Section 161 of Cr.P.C., therefore, based on the video

clipping of the statements of prosecutrix and witnesses, it is directed that offence under Section 467,468, 471 of I.P.C. etc. be also registered against Sub-Inspector Kirti Upadhyaya.

160. Further, this Court has come to a conclusion that S.H.O., Police Station Morar, Ajay Singh Pawar, Sub-Inspector Kirti Upadhyaya were out and out to help out Ganga Singh Bhadoria and went to extent of ensuring that the evidence against Ganga Singh Bhadoria, and his grand son Aditya Bhadoria is not collected and is destroyed. Thus, they are also prima facie guilty of offence under Section 201 of I.P.C. The investigating agency would be free to implicate every public and private person, who is found involved in commission of aforesaid offences.

161. Further, in view of allegations made by the prosecutrix against Ganga Singh Bhadoria in her videographed statement dated 31-1-2021, it is directed that Ganga Singh Bhadoria be also added as an accused in Crime No. 87/2021 registered at Police Station Morar and since he had humiliated and threatened the prosecutrix, therefore, offence under Section 3(1)(r)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Section 506 Part II of I.P.C. be also added in addition to any other offence, which according to Superintendent of Police, Gwalior is made out against Ganga Singh Bhadoria.

162. The present Investigating Officer is also *prima facie* found to

be guilty of negligence and manipulating the investigation and it is also found that the police has gone to the extent of pressurizing the prosecutrix to vacate the house of Ganga Singh Bhadoria.

163. So far as the role of C.S.P. Morar is concerned, the same cannot be said to be in accordance with law. He was already informed by headquarter of Dial 100 about the incident reported by the prosecutrix, but even then he did not try to supervise the matter. Even when he was summoned by the C.J.M., Gwalior, he did not send the prosecutrix to her parental home and without any order of the Court or without any order of the Superior Officer, directed for lodging the prosecutrix in One Stop Center. Thus, the whole intention of C.S.P., Morar was to some how keep the prosecutrix away from the rest of the world. Thus, he is *prima facie* guilty of dereliction of duties. Further, C.S.P., Morar during the course of arguments had tried to level allegations against the C.J.M., Gwalior, by saying that the prosecutrix was lodged in the One Stop Center on the verbal directions of C.J.M., Gwalior. This explanation was false because in every document it has been mentioned that the prosecutrix was sent to One Stop Center on the orders of the C.S.P. Morar.

164. Since, this Court has held that Smt. Suman Gurjar, Add. S.P. (East), Shri Ajay Singh Pawar (S.H.O., Police Station Morar), Sub-Inspector Kirti Upadhyaya, Smt. Priti Bhargava (S.H.O., Police Station Sirol, Distt. Gwalior), C.S.P. Morar have shown undue favor

to Ganga Singh Bhadoria and has not done the investigation/enquiry in a free and fair manner, and the Add. S.P. (East) even did not touch the file of enquiry and instead of conducting an enquiry by herself, entrusted the same to the C.S.P., Morar, therefore, the Director General of Police/competent officers are directed to initiate departmental enquiry against the above mentioned police officers as well as against those who were involved in beating the rape victim in the police station.

165. Since, the presence of above mentioned police officers in their police stations would not be conducive, therefore, the Director General of Police is directed to transfer all the above mentioned police officers out of Gwalior and Morena Range immediately.

**The prayer 7(1) of the writ petition is answered accordingly.**

**Whether the Investigating Officer should be changed or the Investigating Agency should be changed.**

166. During the course of arguments, it was submitted by Shri Amit Sanghi, Superintendent of Police that he may be granted one more opportunity and he would handover the investigation to another Add. S.P., who is an IPS Officer and he would personally monitor the same.

167. Considered the submissions made by Shri Amit Sanghi. It is an unfortunate case, where the police was listening to the persons against whom allegations were made and even the rape victim was



detained in the police station for the whole night and the whole next day and thereafter without any orders of the Court or Superior Officers, the prosecutrix was sent to One Stop Center, instead of sending her to her parental home. Even the prosecutrix was mercilessly beaten in the police station in order to pressurize her to change her version. The investigating officer, went to the extent of pressuring the prosecutrix to vacate the house of Ganga Singh Bhadoria. The Investigating Officers, even did not care to follow the instructions of the Superintendent of Police, and no proceedings under Section 82 and 83 of Cr.P.C. were initiated against the culprits in spite of the direction of the Superintendent of Police. The unfortunate part is that when the Superintendent of Police had already come to know that a serious allegation of beating in the police station has been leveled by the prosecutrix, even then he did not talk to the prosecutrix. Even the Add. S.P. (East) did not talk to the prosecutrix. The applications made by Ganga Singh Bhadoria were entertained and the entire investigation was done on the dictations of Ganga Singh Bhadoria, whereas it is settled law, that the accused has no right to dictate that in what manner the investigation is to be done.

168. The Supreme Court in the case of **Romila Thapar Vs. Union of India** reported in **(2018) 10 SCC 753** has held as under :

**24.** Turning to the first point, we are of the considered

opinion that the issue is no more res integra. In *Narmada Bai v. State of Gujarat*, in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the offence committed by them. Para 64 of this decision reads thus: (SCC p. 100)

*“64. ... It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them.”*

(emphasis supplied)

**25.** Again in *Sanjiv Rajendra Bhatt v. Union of India*, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus: (SCC p. 40)

*“68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in *Union of India v. W.N. Chadha*, *Mayawati v. Union of India*, *Dinubhai Boghabhai Solanki v. State of Gujarat*, *CBI v. Rajesh Gandhi*, *CCI v. SAIL* and *Janata Dal v. H.S. Chowdhary*.”*

(emphasis supplied)

**26.** Recently, a three-Judge Bench of this Court in *E. Sivakumar v. Union of India*, while dealing with the appeal preferred by the “accused” challenging the order of the High Court directing investigation by CBI, in para 10 observed: (SCC pp. 370-71)

*“10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In para 129 of the impugned judgment, reliance has been placed on *Dinubhai Boghabhai Solanki v. State of Gujarat*, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on *Narender G. Goel v. State of Maharashtra*, in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the*

peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity.”

169. The next question for consideration is that whether only the accused is entitled for free and fair investigation or whether the victim is also entitled for free and fair investigation. The Supreme Court in the case of **Nirmal Singh Kahlon Vs. State of Punjab** reported in **(2009) 1 SCC 441** has held as under :

**28.** An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said object at any point of time may consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases.

The Supreme Court in the case of **Zahira Habibulla H. Sheikh v. State of Gujarat**, reported in **(2004) 4 SCC 158** has held as under :

18.....When the investigating agency helps the accused, the witnesses are threatened to depose falsely and the prosecutor acts in a manner as if he was defending the accused, and the court was acting merely as an onlooker and when there is no fair trial at all, justice becomes the victim.

170. It is true that an accused is also entitled for free and fair investigation, but under the garb of free and fair investigation, the police personals cannot go to the extent of harassing the rape victim, as well as beating her in the police station in order to pressurize her to change her version, as well as deliberately omitting the allegations in the statement of the rape victim in order to save accused.

171. Thus, it is clear that the police personals have not only acted on the dictations of Ganga Singh Bhadoria, but also diverted the investigation right from the very beginning as per the dictations of Ganga Singh Bhadoria. Therefore, the submission made by the Superintendent of Police, Gwalior to give one more chance to change the Investigating Officer cannot be accepted, specifically when the police officers are involved and the entire attempt of the police officers is to save its officers and to prove that the prosecutrix has made false allegations at the behest of other persons.

**Whether this Court can suo motu direct for transfer of investigation to other Agency or not?**

172. The Supreme Court in the case of **D.K. Basu Vs. State of W.B.** reported in **(1997) 1 SCC 416** has held as under :

**9.** The importance of affirmed rights of every human being need no emphasis and, therefore, to deter breaches thereof becomes a sacred duty of the Court, as the custodian and protector of the fundamental and the basic human rights of the citizens. Custodial violence, including torture and death in the lock-ups, strikes a blow at the rule of law, which demands that the powers of the executive should not only

be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law-enforcing officers is a matter of deep concern in a free society. These petitions raise important issues concerning police powers, including whether monetary compensation should be awarded for established infringement of the Fundamental Rights guaranteed by Articles 21 and 22 of the Constitution of India. The issues are fundamental.

**10.** “Torture” has not been defined in the Constitution or in other penal laws. “Torture” of a human being by another human being is essentially an instrument to impose the will of the “strong” over the “weak” by suffering. The word *torture* today has become synonymous with the darker side of human civilisation.

“Torture is a wound in the soul so painful that sometimes you can almost touch it, but it is also so intangible that there is no way to heal it. Torture is anguish squeezing in your chest, cold as ice and heavy as a stone, paralyzing as sleep and dark as the abyss. Torture is despair and fear and rage and hate. It is a desire to kill and destroy including yourself.”

— Adriana P. Bartow

**11.** No violation of any one of the human rights has been the subject of so many Conventions and Declarations as “torture” — all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. “Custodial torture” is a naked violation of human dignity and degradation which destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilisation takes a step backward — flag of humanity must on each such occasion fly half-mast.

**12.** In all custodial crimes what is of real concern is not only infliction of body pain but the mental agony which a person undergoes within the four walls of police station or lock-up. Whether it is physical assault or rape in police custody, the extent of trauma, a person experiences is

beyond the purview of law.

**13.** “Custodial violence” and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948, which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights, stipulates in Article 5 that: “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.” Despite the pious declaration the crime continues unabated, though every civilised nation shows its concern and takes steps for its eradication.

The Supreme Court in the case of **State of W.B. v. Committee for Protection of Democratic Rights**, reported in **(2010) 3 SCC 571**

has held as under :

**68.** Thus, having examined the rival contentions in the context of the constitutional scheme, we conclude as follows:

(i) The fundamental rights, enshrined in Part III of the Constitution, are inherent and cannot be extinguished by any constitutional or statutory provision. Any law that abrogates or abridges such rights would be violative of the basic structure doctrine. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account in determining whether or not it destroys the basic structure.

(ii) Article 21 of the Constitution in its broad perspective seeks to protect the persons of their lives and personal liberties except according to the procedure established by law. The said article in its broad application not only takes within its fold enforcement of the rights of an accused but also the rights of the victim. The State has a duty to enforce the human rights of a citizen providing for fair and impartial investigation against any person accused of commission of a cognizable offence, which may include its own officers. In certain situations even a witness to the crime may seek for and shall be granted protection by the State.

(iii) In view of the constitutional scheme and the jurisdiction conferred on this Court under Article 32 and on the High Courts under Article 226 of the Constitution the power of judicial review being an integral part of the basic structure of the Constitution, no Act of Parliament can exclude or curtail the powers of the constitutional courts with regard to the enforcement of fundamental rights. As a matter of fact, such a power is essential to give practicable content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. Moreover, in a federal constitution, the distribution of legislative powers between Parliament and the State Legislature involves limitation on legislative powers and, therefore, this requires an authority other than Parliament to ascertain whether such limitations are transgressed. Judicial review acts as the final arbiter not only to give effect to the distribution of legislative powers between Parliament and the State Legislatures, it is also necessary to show any transgression by each entity. Therefore, to borrow the words of Lord Steyn, judicial review is justified by combination of “the principles of separation of powers, rule of law, the principle of constitutionality and the reach of judicial review”.

(iv) If the federal structure is violated by any legislative action, the Constitution takes care to protect the federal structure by ensuring that the Courts act as guardians and interpreters of the Constitution and provide remedy under Articles 32 and 226, whenever there is an attempted violation. In the circumstances, any direction by the Supreme Court or the High Court in exercise of power under Article 32 or 226 to uphold the Constitution and maintain the rule of law cannot be termed as violating the federal structure.

(v) Restriction on Parliament by the Constitution and restriction on the executive by Parliament under an enactment, do not amount to restriction on the power of the Judiciary under Articles 32 and 226 of the Constitution.

(vi) If in terms of Entry 2 of List II of the Seventh Schedule on the one hand and Entry 2-A and Entry 80 of List I on the other, an investigation by another agency is permissible subject to grant of consent by the State concerned, there is no reason as to why, in an

exceptional situation, the Court would be precluded from exercising the same power which the Union could exercise in terms of the provisions of the statute. In our opinion, exercise of such power by the constitutional courts would not violate the doctrine of separation of powers. In fact, if in such a situation the Court fails to grant relief, it would be failing in its constitutional duty.

(vii) When the Special Police Act itself provides that subject to the consent by the State, CBI can take up investigation in relation to the crime which was otherwise within the jurisdiction of the State police, the Court can also exercise its constitutional power of judicial review and direct CBI to take up the investigation within the jurisdiction of the State. The power of the High Court under Article 226 of the Constitution cannot be taken away, curtailed or diluted by Section 6 of the Special Police Act. Irrespective of there being any statutory provision acting as a restriction on the powers of the Courts, the restriction imposed by Section 6 of the Special Police Act on the powers of the Union, cannot be read as restriction on the powers of the constitutional courts. Therefore, exercise of power of judicial review by the High Court, in our opinion, would not amount to infringement of either the doctrine of separation of power or the federal structure.

The Supreme Court in the case of **State of Punjab v. Central Bureau of Investigation and Ors.**, reported in **(2011) 9 SCC 182** has held as under:-

“30. In the peculiar facts and circumstances of the case, the High Court felt that justice would not be done to the case if the investigation stays in the hands of the local police and for these reasons directed that the investigation of the case be handed over to the CBI. The narration of the facts and circumstances in paragraphs 2 to 9 of this judgment also support the conclusion of the High Court that investigation by an independent agency such as the CBI was absolutely necessary in the interests of justice.

31. Moreover, even though the High Court in the impugned order dated 11.12.2007 did make a mention that in case



challan has been filed, then the petition will stand as having become infructuous in the order dated 12.12.2007, the High Court has stayed further proceedings before the trial court in the case arising out of FIR No.82 of PS City I, Moga, till further orders. Thus, the High Court was of the view that even though investigation is complete in one case and charge sheet has been filed by the Police, it was necessary in the ends of justice that the CBI should carry out an investigation into the case.

32. In the recent case of State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others [(2010) 3 SCC 571] a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extra-ordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482 CrPC to direct investigation by CBI for securing the ends of justice.

33. In the facts and circumstances of this case, however, the High Court has held that the state local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to the CBI. In other words, this was one of those extraordinary cases where the direction of the High Court for investigation by the CBI was justified.”

173. Although the petitioner has only prayed for change of Investigating officer, but as the petitioner had no access to the case diary, therefore, She was not aware of the fact that in what manner the police has manipulated the investigation. But once, this Court has come to a conclusion that the Police Officers were doing tainted investigation with oblique motive, then this Court would be failing in

discharging its Constitution obligation to uphold the life and liberty of a rape victim, if the local police is still permitted to continue with the investigation.

174. The Supreme Court in the case of **R.S. Sodhi v. State of U.P.** reported in **1994 Supp (1) SCC 143** has held as under :

2.....We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book. We direct accordingly.

The Supreme Court in the case of **Kashmeri Devi v. Delhi Admn.**, reported in **1988 Supp SCC 482** has held as under :

5. After hearing learned counsel for the parties and on perusal of the record we are satisfied that prima facie the police have not acted in a forthright manner in investigating the case, registered on the complaint of Sudesh Kumar. The circumstances available on record prima facie show that effort has been made to protect and shield the guilty officers of the police who are alleged to have perpetrated the barbaric offence of murdering Gopi Ram by beating and torturing. The appellant has been crying hoarse to get the investigation done by an independent authority but none

responded to her complaint. The Additional Sessions Judge while considering the bail application of Jagmal Singh, Constable, considered the autopsy report and observed that doctor had postponed giving his opinion regarding the cause of death although the injuries were ante-mortem. The learned Sessions Judge referring to a number of circumstances observed that the investigating officer had converted the case from Section 302 IPC to Section 304 IPC on flimsy grounds within hours of the registration of the case even without waiting for the post-mortem report. The learned Sessions Judge further observed that it was a prima facie case of deliberate murder of an innocent illiterate poor citizen of Delhi in police custody and investigation was partisan.

6. We are in full agreement with the observations made by the learned Sessions Judge. As already noted during the pendency of the writ petition before the High Court and special leave petition before this Court the case was further converted from Section 304 IPC to Section 323/34 IPC. Prima facie the police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority so that truth may be known.

The Supreme Court in the case of **Rubabuddin Sheikh v.**

**State of Gujarat**, reported in (2010) 2 SCC 200 has held as under :

80. We have already discussed the decisions cited from the Bar on the question that after the charge-sheet being filed whether the investigation could be handed over to the CBI Authorities or to any other independent agency from the State police authorities. We have already distinguished the decisions cited by the State that they related to the power of the court to monitor the investigation after the charge-sheet was filed. The scope of this order, however, cannot deal with the power of this Court to monitor the investigation, but on the other hand in order to make sure that justice is not only done, but also is seen to be done and considering the involvement of the State police authorities and particularly the high officials of the State of Gujarat, we are compelled even at this stage to direct the CBI Authorities to

investigate into the matter. Since the high police officials of the State of Gujarat are involved and some of them had already been in custody, we are also of the view that it would not be sufficient to instil confidence in the minds of the victims as well as of the public that still the State police authorities would be allowed to continue with the investigation when allegations and offences were mostly against them.

**81.** In the present circumstances and in view of the involvement of the police officials of the State in this crime, we cannot shut our eyes and direct the State police authorities to continue with the investigation and the charge-sheet and for a proper and fair investigation, we also feel that CBI should be requested to take up the investigation and submit a report in this Court within six months from the date of handing over a copy of this judgment and the records relating to this crime to them.

The Supreme Court in the case of **Mithilesh Kumar Singh v.**

**State of Rajasthan** reported in (2015) 9 SCC 795 has held as under :

**12.** Even so the availability of power and its exercise are two distinct matters. This Court does not direct transfer of investigation just for the asking nor is transfer directed only to satisfy the ego or vindicate the prestige of a party interested in such investigation. The decision whether transfer should or should not be ordered rests on the Court's satisfaction whether the facts and circumstances of a given case demand such an order. No hard-and-fast rule has been or can possibly be prescribed for universal application to all cases. Each case will obviously depend upon its own facts. What is important is that the Court while exercising its jurisdiction to direct transfer remains sensitive to the principle that transfers are not ordered just because a party seeks to lead the investigator to a given conclusion. It is only when there is a reasonable apprehension about justice becoming a victim because of shabby or partisan investigation that the Court may step in and exercise its extraordinary powers. The sensibility of the victims of the crime or their next of kin is not wholly irrelevant in such situations. After all transfer of investigation to an outside agency does not imply that the transferee agency will necessarily, much less falsely implicate anyone in the commission of the crime. That is

particularly so when transfer is ordered to an outside agency perceived to be independent of influences, pressures and pulls that are commonplace when State Police investigates matters of some significance. The confidence of the party seeking transfer in the outside agency in such cases itself rests on the independence of that agency from such or similar other considerations. It follows that unless the Court sees any design behind the prayer for transfer, the same must be seen as an attempt only to ensure that the truth is discovered. The hallmark of a transfer is the perceived independence of the transferee more than any other consideration. Discovery of truth is the ultimate purpose of any investigation and who can do it better than an agency that is independent.

\* \* \* \*

**15.** Suffice it to say that transfers have been ordered in varied situations but while doing so the test applied by the Court has always been whether a direction for transfer, was keeping in view the nature of allegations, necessary with a view to making the process of discovery of truth credible. What is important is that this Court has rarely, if ever, viewed at the threshold the prayer for transfer of investigation to CBI with suspicion. There is no reluctance on the part of the Court to grant relief to the victims or their families in cases, where intervention is called for, nor is it necessary for the petitioner seeking a transfer to make out a cast-iron case of abuse or neglect on the part of the State Police, before ordering a transfer. Transfer can be ordered once the Court is satisfied on the available material that such a course will promote the cause of justice, in a given case.

175. If the fact of this case are considered, then it is clear that the police officers of Police Station Morar and Sirol are involved in tainted investigation with oblique motive. Even the Add. S.P. (East) did not show any interest in conducting an enquiry into the allegations of merciless beating of the rape victim inside the police station. Even the C.J.M., Gwalior directed for transfer of

investigation to some other officer, but still the things did not improve, and even the changed investigating officer started dancing to the tunes of Ganga Singh Bhadoria. **Under these circumstances, this Court is left with no other option but to direct for transfer of investigation of Crime No. 87/2021 registered at Police Station Morar, Distt. Gwalior to CBI. The Superintendent of Police, Gwalior is directed to handover the entire original documents including the file of Add. S.P. (East) to the CBI. The Director of CBI, is directed to assign this investigation to a Senior Officer.**

176. *It is made clear that facts of the case have been considered in detail in order to find out as to whether the investigation which was being done by the police was free and fair or was tainted one. Therefore, all the observations are confined to this writ petition only, and the Investigating Officer is directed to investigate the matter in a free and fair manner.*

177. **CBI is also directed to collect the record of phone calls of Ganga Singh Bhadoria, Add. S.P. (East), C.S.P., Morar, S.H.O. Police Station Morar Ajay Singh Pawar, S.H.O., Police Station Sirol Smt. Priti Bhargava, Sub-Inspector Kirti Upadhyaya from 31-1-2021 onwards to find out that for how many times, Ganga Singh Bhadoria had talked to the above mentioned officers. If it is found that Ganga Singh Bhadoria was in touch with any of the above mentioned Police Officer, then not only the CDRs shall be immediately forwarded to**

the Director General Of Police, State of Madhya Pradesh for taking immediate action against the erring police officer under Service Law, but the CBI shall also register the offence under Section 201 etc. of I.P.C.

178. **Before parting with this order, this Court would like to deal with the CCTV cameras installed in Police Station Morar, which were reported to be out of order.**

179. In the enquiry report submitted by Shri R.N. Pachouri, C.S.P., Morar, it is mentioned that the CCTV Cameras installed in Police Station Morar are out of order from 25-7-2020. Thus, it is clear that the Superintendent of Police, Gwalior, C.S.P., Morar, S.H.O., Police Station Morar, Ajay Singh Pawar and Incharge CCTV Camera, Police Control Room, Gwalior did not ensure that the CCTV cameras installed in the Police Station should remain in working condition.

180. The Supreme Court in the case of **D.K. Basu v. State of W.B.**, reported in **(2015) 8 SCC 744** has held as under :

**31.** There are, apart from the above, few other recommendations made by the Amicus like installation of CCTV cameras in all police stations and prisons in a phased manner, and appointment of non-official visitors to prisons and police stations for making random and surprise inspections. Initiation of human proceedings under Sections 302/304 IPC in each case where the enquiry establishes culpability in custodial death and framing of uniform definition of custodial death and mandatory deployment of at least two women constables in each district are also recommended by the Amicus.

**32.** As regards installation of CCTV cameras in police stations and prisons, with a view to checking human rights

abuse, it is heartening to note that all the States have in their affidavits supported the recommendation for installation of CCTV cameras in police stations and prisons. In some of the States, steps appear to have already been initiated in that direction. In the State of Bihar, CCTV cameras in all prisons and in 44 police stations in the State have already been installed. So also the State of Tamil Nadu plans to equip all police stations with CCTV cameras. The State of Haryana has stated that CCTV cameras should be installed in all police stations, especially, at the entrance and in the lockups. The Union Territories of Andaman & Nicobar and Puducherry have also installed CCTV cameras in most of the police stations. Some other States also appear to be taking steps to do so. Some of the States have, however, remained silent and non-committal on the issue.

**33.** We do not for the present consider it necessary to issue a direction for installation of CCTV cameras in all police stations. We are of the opinion that the matter cannot be left to be considered by the State Governments concerned, having regard to the fact that several other State Governments have already taken action in that direction which we consider is commendable. All that we need say is that the State Governments may consider taking an appropriate decision in this regard, and appropriate action wherever it is considered feasible to install CCTV cameras in police stations. Some of these police stations may be located in sensitive areas prone to human rights violation. The States would, therefore, do well in identifying such police stations in the first instance and providing the necessary safeguard against such violation by installing CCTV cameras in the same. The process can be completed in a phased manner depending upon the nature and the extent of violation and the experience of the past.

**34.** In regard to CCTV cameras in prison, we see no reason why all the States should not do so. CCTV cameras will help go a long way in preventing violation of human rights of those incarcerated in jails. It will also help the authorities in maintaining proper discipline among the inmates and taking corrective measures wherever abuses are noticed. This can be done in our opinion expeditiously and as far as possible within a period of one year from the date of this order.



**H.P.**, reported in (2018) 5 SCC 311 has held as under :

9. We are in agreement with the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in *Karnail Singh v. State of Haryana*, SCC para 34 noted that technology is an important part in the system of police administration. It has also been noted in the decisions quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation. By the videography, crucial evidence can be captured and presented in a credible manner.

10. Thus, we are of the considered view that notwithstanding the fact that as of now investigating agencies in India are not fully equipped and prepared for the use of videography, the time is ripe that steps are taken to introduce videography in investigation, particularly for crime scene as desirable and acceptable best practice as suggested by the Committee of the MHA to strengthen the Rule of Law. We approve the *Centrally Driven Plan of Action* prepared by the Committee and the timeline as mentioned above. Let the consequential steps for implementation thereof be taken at the earliest.

11. We direct that with a view to implement the *Plan of Action* prepared by the Committee, a Central Oversight Body (COB) be set up by the MHA forthwith. The COB may issue directions from time to time. Suggestions of the Committee in its report may also be kept in mind. The COB will be responsible for further planning and implementation of use of videography. We direct the Central Government to give full support to the COB and place necessary funds at its disposal. We also direct that the COB may issue appropriate directions so as to ensure that use of videography becomes a reality in a phased manner and in first phase of implementation by 15-7-2018 crime scene videography must be introduced at least at some places as per viability and priority determined by the COB.

12. We place on record the suggestion of the learned Amicus Curiae that funding for this project may be initially by the Center to the extent possible and a central server may be set up. These suggestions may be considered by the COB. We also note that law and order is a State subject.

13. We may also refer to a connected issue already dealt with by this Court in *D.K. Basu v. State of W.B.* This Court directed that with a view to check human rights abuse CCTV cameras be installed in all police stations as well as in prisons. There is need for a further direction that in every State an oversight mechanism be created whereby an independent committee can study the CCTV camera footages and periodically publish report of its observations. Let the COB issue appropriate instructions in this regard at the earliest. The COB may also compile information as to compliance of such instructions in the next three months and give a report to this Court.

The Supreme Court in the case of **Paramvir Singh Saini Vs.**

**Baljit Singh** reported in (2021) 1 SCC 184 has held as under :

8. The majority of the compliance affidavits and Action-Taken Reports fail to disclose the exact position of CCTV cameras qua each police station. The affidavits are bereft of details with respect to the total number of police stations functioning in the respective State and Union Territory; total number of CCTV cameras installed in each and every police station; the positioning of the CCTV cameras already installed; working condition of the CCTV cameras; whether the CCTV cameras have a recording facility, if yes, then for how many days/hours, have not been disclosed. Further, the position qua constitution of Oversight Committees in accordance with the order dated 3-4-2018<sup>2</sup>, and/or details with respect to the Oversight Committees already constituted in the respective States and Union Territories have also not been disclosed.

9. Compliance affidavits by all the States and Union Territories are to be filed, as has been stated earlier, by either the Principal Secretary of the State or the Secretary, Home Department of the States/Union Territories. This is to be done by all the States and Union Territories, including those who have filed so-called compliance affidavits till date, stating the details mentioned in para 8 of this order. These affidavits are to be filed within a period of six weeks from today.

10. So far as constitution of Oversight Committees in accordance with our order dated 3-4-2018 is concerned, this should be done at the State and district levels. The State Level Oversight Committee (hereinafter referred to as “the

SLOC”) must consist of:

- (i) The Secretary/Additional Secretary, Home Department;
- (ii) Secretary/Additional Secretary, Finance Department;
- (iii) The Director General/Inspector General of Police; and
- (iv) The Chairperson/member of the State Women’s Commission.

**11.** So far as the District Level Oversight Committee (hereinafter referred to as “DLOC”) is concerned, this should comprise of:

- (i) The Divisional Commissioner/Commissioner of Divisions/Regional Commissioner/Revenue Commissioner Division of the District (by whatever name called);
- (ii) The District Magistrate of the District;
- (iii) A Superintendent of Police of that District; and
- (iv) A mayor of a municipality within the District/a Head of the Zila Panchayat in rural areas.

**12.** It shall be the duty of the SLOC to see that the directions passed by this Court are carried out. Amongst others, the duties shall consist of:

- (a) Purchase, distribution and installation of CCTVs and its equipment;
- (b) Obtaining the budgetary allocation for the same;
- (c) Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;
- (d) Carrying out inspections and addressing the grievances received from the DLOC; and
- (e) To call for monthly reports from the DLOC and immediately address any concerns like faulty equipment.

Likewise, the DLOC shall have the following obligations:

- (a) Supervision, maintenance and upkeep of CCTVs and its equipment;
- (b) Continuous monitoring of maintenance and upkeep of CCTVs and its equipment;
- (c) To interact with the Station House Officer (hereinafter referred to as “the SHO”) as to the functioning and maintenance of CCTVs and its equipment; and
- (d) To send monthly reports to the SLOC about the functioning of CCTVs and allied equipment.

(e) To review footage stored from CCTVs in the various police stations to check for any human rights violation that may have occurred but are not reported.

**13.** It is obvious that none of this can be done without allocation of adequate funds for the same, which must be done by the States'/Union Territories' Finance Departments at the very earliest.

**14.** The duty and responsibility for the working, maintenance and recording of CCTVs shall be that of the SHO of the police station concerned. It shall be the duty and obligation of the SHO to immediately report to the DLOC any fault with the equipment or malfunctioning of CCTVs. If the CCTVs are not functioning in a particular police station, the SHO concerned shall inform the DLOC of the arrest/interrogations carried out in that police station during the said period and forward the said record to the DLOC. If the SHO concerned has reported malfunctioning or non-functioning of CCTVs of a particular police station, the DLOC shall immediately request the SLOC for repair and purchase of the equipment, which shall be done immediately.

**15.** The Director General/Inspector General of Police of each State and Union Territory should issue directions to the person in charge of a police station to entrust the SHO of the police station concerned with the responsibility of assessing the working condition of the CCTV cameras installed in the police station and also to take corrective action to restore the functioning of all non-functional CCTV cameras. The SHO should also be made responsible for CCTV data maintenance, backup of data, fault rectification, etc.

**16.** The State and Union Territory Governments should ensure that CCTV cameras are installed in each and every police station functioning in the respective State and/or Union Territory. Further, in order to ensure that no part of a police station is left uncovered, it is imperative to ensure that CCTV cameras are installed at all entry and exit points; main gate of the police station; all lock-ups; all corridors; lobby/the reception area; all verandahs/outhouses, Inspector's room; Sub-Inspector's room; areas outside the lock-up room; station hall; in front of the police station compound; outside (*not inside*) washrooms/toilets; Duty Officer's room; back part of the police station, etc.

**17.** CCTV systems that have to be installed must be

equipped with night vision and must necessarily consist of audio as well as video footage. In areas in which there is either no electricity and/or internet, it shall be the duty of the States/Union Territories to provide the same as expeditiously as possible using any mode of providing electricity, including solar/wind power. The internet systems that are provided must also be systems which provide clear image resolutions and audio. Most important of all is the storage of CCTV camera footage which can be done in digital video recorders and/or network video recorders. CCTV cameras must then be installed with such recording systems so that the data that is stored thereon shall be preserved for a period of 18 months. If the recording equipment, available in the market today, does not have the capacity to keep the recording for 18 months but for a lesser period of time, it shall be mandatory for all States, Union Territories and the Central Government to purchase one which allows storage for the maximum period possible, and, in any case, not below 1 year. It is also made clear that this will be reviewed by all the States so as to purchase equipment which is able to store the data for 18 months as soon as it is commercially available in the market. The affidavit of compliance to be filed by all States and Union Territories and Central Government shall clearly indicate that the best equipment available as of date has been purchased.

**18.** Whenever there is information of force being used at police stations resulting in serious injury and/or custodial deaths, it is necessary that persons be free to complain for a redressal of the same. Such complaints may not only be made to the State Human Rights Commission, which is then to utilise its powers, more particularly under Sections 17 and 18 of the Protection of Human Rights Act, 1993, for redressal of such complaints, but also to Human Rights Courts, which must then be set up in each district of every State/Union Territory under Section 30 of the aforesaid Act. The Commission/Court can then immediately summon CCTV camera footage in relation to the incident for its safe keeping, which may then be made available to an investigating agency in order to further process the complaint made to it.

**19.** The Union of India is also to file an affidavit in which it will update this Court on the constitution and workings of the Central Oversight Body, giving full particulars thereof. In addition, the Union of India is also directed to install

CCTV cameras and recording equipment in the offices of:

- (i) Central Bureau of Investigation (CBI)
- (ii) National Investigation Agency (NIA)
- (iii) Enforcement Directorate (ED)
- (iv) Narcotics Control Bureau (NCB)
- (v) Department of Revenue Intelligence (DRI)
- (vi) Serious Fraud Investigation Office (SFIO)
- (vii) Any other agency which carries out interrogations and has the power of arrest.

As most of these agencies carry out interrogation in their office(s), CCTVs shall be compulsorily installed in all offices where such interrogation and holding of accused takes place in the same manner as it would in a police station.

**20.** The COB shall perform the same function as the SLOC for the offices of investigative/enforcement agencies mentioned above both in Delhi and outside Delhi wherever they be located.

**21.** The SLOC and the COB (where applicable) shall give directions to all police stations, investigative/enforcement agencies to prominently display at the entrance and inside the police stations/offices of investigative/enforcement agencies about the coverage of the premises concerned by CCTV. This shall be done by large posters in English, Hindi and vernacular language. In addition to the above, it shall be clearly mentioned therein that a person has a right to complain about human rights violations to the National/State Human Rights Commission, Human Rights Court or the Superintendent of Police or any other authority empowered to take cognizance of an offence. It shall further mention that CCTV footage is preserved for a certain minimum time period, which shall not be less than six months, and the victim has a right to have the same secured in the event of violation of his human rights.

**22.** Since these directions are in furtherance of the fundamental rights of each citizen of India guaranteed under Article 21 of the Constitution, and since nothing substantial has been done in this regard for a period of over 2½ years since our first order dated 3-4-2018, the Executive/Administrative/police authorities are to implement this order both in letter and in spirit as soon

as possible. Affidavits will be filed by the Principal Secretary/Cabinet Secretary/Home Secretary of each State/Union Territory giving this Court a firm action plan with exact timelines for compliance with today's order. This is to be done within a period of six weeks from today.

181. The above judgment was passed by the Supreme Court on 02-12-2020 and a specific direction was given to comply the directions within a period of six weeks, but unfortunately, due to hostile attitude of the District Police, Gwalior towards the directions issued by the Highest Court of the Country, they did not even try to put the CCTV cameras in working orders which are already installed in the police station .

182. Accordingly, the Director General of Police, State of Madhya Pradesh is directed to immediately implement the directions given by the Supreme Court in the case of **Paramvir Singh (Supra)**. The Superintendent of Police, Gwalior is directed to ensure that every Police Station situated within his jurisdiction has not only the CCTV cameras in working order but the cameras must be installed in such a manner that every room of the concerning Police Station is covered by the CCTV camera.

183. The CBI is directed to provide full protection to the prosecutrix and must ensure that not only her pride and dignity is maintained but She is not pressurized in any manner. Even otherwise, the Supreme Court in the case of **Mahender Chawla Vs Union of India**, reported

in (2019) 14 SCC 615 has formulated a Witness Protection Scheme.

184. Since, the petitioner has not prayed for payment of compensation for violation of her Fundamental Rights under Article 21 of the Constitution of India, therefore, liberty is granted to her to pursue such relief in appropriate forum.

185. With aforesaid observations, the writ petition is **Allowed** with cost of **Rs. 50,000/-**. The cost shall be deposited by the respondents within a period of 10 days from today in the Registry of this Court and the petitioner shall be free to withdraw the same.

186. The Superintendent of Police, Gwalior is directed to keep the original case diary as well as the file of the office of Add. S.P. (East), Record of Dial 100 and the copies of the Rojnamcha sanhas provided to this Court in sealed cover and handover the same to CBI.

187. It was informed by Shri Raghuvanshi that the Pen Drive provided to the Court, which contains the video clippings of three statements of the prosecutrix i.e., first statement recorded on 31-1-2021 and two supplementary statements recorded on 1-2-2021, statement of father of the prosecutrix and statement of Dharmendra Dhakad, is not the original copy, but it has been prepared for the purposes of the Court. Accordingly, the Reader of the Court is directed to retain the Pen Drive and keep the same in the file of this Case in a sealed cover.

188. Accordingly, the original case diary, original file of Add. S.P.



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(East), print out of record of Dial 100, and print out of Rojnamchasanhas be returned to the Superintendent of Police, Gwalior only.

**(G.S. Ahluwalia)**  
**Judge**