

**IN THE COURT OF MR. DHARMESH SHARMA
PRINCIPAL DISTRICT & SESSIONS JUDGE : WEST DISTRICT
TIS HAZARI COURTS : DELHI**

SC No.596/2019

CNR No. DLWT01-008430-2019

RC No. 12(s)/2019

In respect of :-

**State (Central Bureau of Investigation)
ACB, Lucknow, UP**

Versus

- 1. Kuldeep Singh Sengar**
S/o. Sh. Mulayam Singh
R/o. Presently at C-1352
Indiranagar, Lucknow.
Permanently at Sarai Thok
PS Makhi, District Unnao, UP.
- 2. Manoj Singh Sengar**
S/o. Sh. Mulayam Singh
R/o. Presently at 434, Civil Lines
PS Kotwali, Unnao, UP.
Permanently at Sarai Thok
PS Makhi, District Unnao, UP.
(Since dead and case against him stands abated vide order dated 14.01.2020.
- 3. Vinod Mishra**
S/o. Sh. Shiv Dutt Mishra
S/o. Sh. Mulayam Singh
R/o. Sarai Thok, PS Makhi
District Unnao, UP.
- 4. Haripal Singh**
S/o. Late Sh. Samarjeet Singh
R/o. Sarai Thok, PS Makhi
District Unnao, UP.

5. **Naveen Singh**
S/o. Sh. Haripal Singh
R/o. Sarai Thok, PS Makhi
District Unnao, UP.
6. **Komal Singh**
S/o. Sh. Krishna Pal Singh Chauhan
R/o. Puranispansari
PS Makhi, District Unnao, UP.
7. **Arun Singh**
S/o. Sh. Devesh Singh
R/o. Nawabganj
PS Ajgain, District Unnao, UP.
8. **Gyanendra Singh**
S/o. Late Sh. Ram Murti Singh
R/o. Nawabganj
PS Ajgain, District Unnao, UP.
9. **Rinku Singh @ Prakhar Singh**
S/o. Sh. Narendra Pal Singh
R/o. 1/102, Vijay Khand
Gomti Nagar, Lucknow.
10. **Awadhesh Singh**
S/o. Sh. Jeet Bahadur Singh
R/o. Presently at Bandhuhar, Civil Lines
PS Kotwali, District Unnao, UP.
Permanently at Hamirdev Thok, PS Makhi
District Unnao, UP.
11. **Ashish Kumar Pal**
S/o. Sh. Suraj Pal
R/o. Aunti Samadpur, PS Lalauli
Post Datauli, District Fatehpur, UP. Accused Persons

Appearances:

Mr. Anurag Modi, PP for the CBI along-with Inspector Pawan Kumar.
Sh. S.P.M. Tripathi, Advocate for accused Kuldeep Singh Sengar (A-1)
Mr. Rajiv Mohan and Mr. Nishant Madan, Advocates for accused Vinod Mishra (A-3), Gyanendra Singh (A-8) and Awadesh Singh (A-10).
Sh. Ravi Gopal, Advocate for accused Haripal Singh (A-4) and Naveen Singh (A-5).
Sh. Akhand Pratap Singh, Advocate for accused Komal Singh (A-6)
Sh. D.K. Devesh and Sh. Piyush Upadhyay, Advocates for accused Arun Singh (A-7)
Sh. Anupam Dwivedi, Advocate for accused Rinku Singh (A-9)
Sh. V.S. Dhangar, Advocate for accused Ashish Kumar Pal (A-11)
Sh. Dharmender Kumar Mishra, Ms. Poonam Kaushik, Sh. M.Z. Ali, Sh. Vivek Kumar, Sh. Ravi Kumar, Sh. I.M. Hashmi, Sh. Mohd. Salman and Ms. Sandhay Kohili, Advocates for victim girl 'AS' and LRs of deceased Mahinder Singh, Advocate.
Dr. Ashutosh, Advocate for complainant Mahesh Singh.

ORDER ON THE POINT OF COGNIZANCE

JURISDICTION OF THIS COURT

1. The statistics on the Website of Government of India, Ministry of Road Transport and Highways, show that every minute a person dies in a road accident in our country. The statistics further reveal that in 2019, there had taken place 4,49,002 motor accidents resulting in 1,51,113 deaths and injuring about 5,41,361 persons. Only a handful of people abide by road safety measures, while majority are known for reckless and negligent driving, flouting the traffic rules and norms and it is only seldom that people get concerned with the rising road accidents and incidents of road rage. On 28th July 2019, a collision between the offending truck bearing No. UP 71 AT 8300, driven by the accused

Ashish Kumar Pal, s/o. Suraj Pal (A-11) and Maruti Swift VDI car bearing No. DL 1CL 8643, took place resulting in the death of two lady passengers besides grievously injuring the driver, namely Mahinder Singh, Advocate, who later on succumbed to the injuries as also the victim 'AS' (name of the victim withheld as she was a victim of sexual assault in case bearing SC No. 448/2019, FIR No. 96/2018, RC No. 08(S)/2018, PS: CBI/ACB, Lucknow under Section 120-B read with Sections 363/366/376(i)/506 IPC & Sections 3 & 4 of Protection of Children from Sexual Offences (POCSO) Act, 2012 titled 'Central Bureau of Investigation ACB, Lucknow, UP vs. Shashi Singh & Ors.'. The accident instantly flared public sentiments and aroused grave suspicion of foul play in the minds of the general public due to extensive coverage given to it by the print and electronic media which berserk leading to allegations against the State Police machinery for allegedly trying to protect a powerful politician who was a sitting MLA in the State of UP. The cascading effect of this resulted in the Hon'ble Supreme Court taking *suo motu* cognizance by way of Writ Petition (Criminal) No. 01/19, directing that the investigation be entrusted in the hands of the Central Bureau of Investigation (CBI) and be conducted in a time bound manner. Consequently the trials of connected cases with regard to the victims were transferred to this Court vide order dated 01.08.2019 also to be conducted and concluded in a time bound manner.

2. The instant case was registered as Crime Case/FIR No. 305/2019 dated 29.07.2019 at PS Gurubaksh Ganj, Rai Bareilly, State of UP under Section 120B read with Section 302/307/506 IPC on the

basis of written complaint of complainant Mahesh Singh, s/o. Mangal Singh, who was lodged in Rai Bareilly Jail vide GD No. 25 on 29.07.2019 at 12.45 p.m. The investigation in the present FIR No. 305/2019 dated 29.07.2019 was entrusted to CBI u/s. 5 of the Delhi Police Establishment Act, 1946 dated 30.07.2019 in furtherance of request u/s. 6 of the said Act by the State of UP. The present final report u/s. 173 Cr.P.C. was filed initially before the Court of Ld. Special Judge, CBI, Lucknow on 11.10.2019. However in view of the directions of the Hon'ble Supreme Court dated 01.08.2019, the same was directed to be forwarded to this Court, ergo the final police report under Section 173 Cr.P.C. was filed before this Court on 14.10.2019. Summarily, on completion of investigation, the CBI reached the finding to the effect that there was no evidence regarding criminal conspiracy hatched as amongst the named persons in the FIR with the truck driver and/or the cleaner or for that matter owner of the offending truck. The CBI now prays that the accused Ashish Kumar Pal (A-11) may be summoned and tried for the offence punishable under Section 304A/338/279 of the IPC as per law, whereas as against named persons A-1 to A-10, it seeks prosecution for commission of offence under Section 120B read with 506 Part-II of the IPC. Further, it is stated that no case for proceeding against accused Cleaner/Helper, Mohan Srinivas is made out.

FACTUAL BACKGROUND

3. The complainant Mahesh Singh alleged in his complaint leading to lodging of FIR No. 305/2019 that the incident of 28.07.2019 viz. the collision between the offending truck and the ill-fated Maruti Swift car, was the result of a conspiracy hatched by accused Kuldeep

Singh Sengar (A-1) along-with his associates Manoj Kumar Sengar (A-2), (since dead and proceedings stand abated against him vide order dated 14.01.2020) Vinod Mishra (A-3), Haripal Singh (A-4), Naveen Singh (A-5), Komal Singh (A-6), Arun Singh (A-7), Gyanendra Singh (A-8), Rinku Singh @ Prakhar Singh (A-9), Awadhesh Singh (A-10), Ashish Kumar Pal (A-11) and other 15/20 unknown persons, alleging further that the aforesaid persons planned a collision with the car with the intention to kill the rape victim 'AS', his wife and sister-in-law besides Mr. Mahinder Singh, Advocate. He also alleged that in order to execute the conspiracy, the Personal Security Officers (PSOs) who were deployed with the rape victim and her family members were withdrawn which is why they were not accompanying the victims in the ill-fated Maruti car, and that rather it was the PSOs who passed on such information to the accused Kuldeep Singh Sengar (A-1) and his henchmen so as to cause the collision in a well planned manner. He alleged that the family members of the complainant had been threatened several times by (A-1) and other co-accused persons besides their cronies so as to force them to resile/retract from their statements in the pending cases against the accused Kuldeep Singh Sengar (A-1) & others and arrive at a compromise. Mahesh Singh in the complaint alleged that the accused Kuldeep Singh Sengar (A-1) was making calls through mobile phone of Vinay Mishra @ Simple Mishra and contacted his henchmen and also family members of the complainant, threatening them to keep quiet and settle the matter or else they will be harmed and he raised his suspicion that driver and owner of the offending Truck were having nexus with accused Kuldeep Singh Sengar (A-1).

4. The CBI states that during the course of the investigation, they collected all the relevant documents from various Police Stations, Office of Superintendent of Police, Unnao, as also voluminous registers from Jails at Sitapur, Lucknow and Rai Bareilly; and gathered evidence with regard to loading and unloading of *morang* यानि बालू (coarse sand) and documents of the offending truck and the ill-fated car, CCTV footage of movement of two vehicles recorded sometime before the accident at the Toll Plaza that raise a strong inference that the probable time of accident was 12.48 PM on 28.07.2019; and that it was found that the victim 'AS' alongwith her two aunts was travelling in the ill-fated Maruti car, which was being driven by her Advocate Mohinder Singh and they were going to meet the complainant Mahesh Singh, who was lodged in the Rai Bareilly Jail. It is stated that apart from recording the statements of the victim 'AS' and other witnesses, including the PSOs and several other persons, during investigation, the CBI reconstructed the entire scene of crime with the help of CFSL experts soliciting opinions from the Experts of the Central Road Research Institute (CRRI) & IIT, New Delhi besides obtaining report of the RTO with regard to the technical inspection of two vehicles; and that during investigation polygraph Test of the accused driver and cleaner of the offending vehicle besides Forensic Psychological opinion were conducted; and that the Call Data Records (CDRs) of the driver *vis-a-vis* other accused persons including the cleaner and owner of the offending truck were collected and analyzed.

5. That search and seizure were conducted under Section 91 Cr.P.C. against the accused persons in terms of application dated 03.08.20019 allowed by the Ld. CJM/ Special Judge (CBI), Unnao; and that charge sheet has been filed citing as many as 198 witnesses. The gist of the findings on such investigation by the CBI is as under :-

(i) As many as 17 complaints were made by the victim 'AS' and her family members against the accused Kuldeep Singh Sengar (A-1) and their associates to the Police Authorities alleging threats advanced by them or their cronies so that the victim 'AS' and her family members reach a compromise in respect of murder case of her father in the month of April, 2018 or else she as well as her family members were threatened with death;

(ii) The investigation revealed that baring allegations levelled by the victim 'AS' and her family members, no independent evidence could be substantiated and the statements of wife of the complainant and his sister-in-law could not be recorded as they had expired in the fatal collision;

(iii) It was found that the allegations of the complainant Mahesh Singh that he had been shifted to Rai Bareilly at the behest of his rival accused Kuldeep Singh Sengar (A-1) MLA of Unnao was not substantiated as he had himself represented that he be rather transferred to Rai Bareilly Jail;

(iv) That on 28.07.2019, his wife Smt. Pushpa Singh and his sister-in-law alongwith Advocate Mohinder Singh decided to meet him in Rai Bareilly Jail and it transpires from the statement of victim 'AS' that she had no prior plan to go alongwith them and suddenly

she decided to accompany her aunts and the Advocate in the morning on that fateful day and the allegation that her security personnel passed on any information with regard to movement of the victim 'AS' and her family members were not substantiated;

(v) That the victim made a statement that the police security personnel did not accompany the victim on the day of collision as there was no space for them to stay in home at Village Makhi and she rather stated that they had not given any prior information to the security personnel regarding their plan to visit Rai Bareilly Jail to meet the complainant Mahesh Singh, which fact was corroborated by the statements given by the security personnel viz. HC Mithlesh Kumar, PC Dharampal, PS Chander Bhan, PC Parul and PC Kalinde Dubey, who were on duty with the victim at Village Makhi;

(vi) That during the investigation, the statement of PSOs deputed along with the victim 'AS' or family members were recorded, who stated that they had never heard or seen anyone giving threats to the victim or her family members in any manner in their presence;

(vii) That the allegations of complainant Mahesh Singh that on 19.07.2019, one Bhajan came to meet him in Rai Bareilly Jail and advanced threats to his life and his family members at the behest of brother (A-1) viz., Pappu Singh, who was a history-sheeter resident of Jalim Khera, Village Makhi, District Unnao but the same were found to be not substantiated by the jail records; and that no visit was made by Dinesh Pal Singh @ Mansa Ram on 19.07.2019 in Jail. However, he indeed visited and met with the accused Kuldeep Singh Sengar (A-1) on 14.07.2019;

(viii) That during investigation, it is established that the details of loading/unloading of the consignment of *morang यानि बालू* (coarse sand) and its movement before the collision were found to be genuine and it was on its way to load the bricks as per direction of his owner; and that it was also revealed that the truck owner on 27.07.2019 had decided that 3-4 trucks of Devendra Kishore Pal, owner would upload bricks from Shakti Brick Field, Lalganj on 28.07.2019.; and that Shri Devendra Kishore Pal, owner of truck at about 10:30 AM on 28.07.2019 instructed accused driver Ashish Kumar Pal to reach the proposed site for uploading of bricks at Lalganj and contact Shri Prem, driver who was already loading the bricks at Lalganj; and thus it has been established that the truck driver Ashish Kumar Pal and helper/cleaner Mohan Srinivas were travelling on the road for further loading the bricks in a routine course and there was no mens-rea regarding conspiracy prior to the unfortunate incident; and that no involvement of Scorpio UP-7700 of Kuldeep Singh Sengar (A-1) even was found in the accident.

(viii) That the blackening of the number plate of the truck in question was done on 30.06.2019 under instructions of the truck owner Devender Kishore Pal since he had defaulted payment of his loans and in order to save the vehicle from being confiscated by the recovery agents of the finance company;

(ix) It is also established that only two persons, accused driver and cleaner were present in the truck at the time of accident and both had fled from the spot after the collision and that accused driver had left his shoes behind in a nearby agricultural fields on his escape route after the same were stuck in the mud due to heavy rains in the area at the time of accident, which shoes were recovered during

investigation;

(x) That the version of the accused driver Ashish Kumar Pal (A-11) and cleaner was consistent with each other and a detailed analysis of their location before and after the accident and CDRs during the period 25.06.2019 to 28.06.2019 did not reveal any kind of criminal conspiracy besides the fact the scientific test (BEOS) did not link them to any conspiracy to intentionally cause the accident;

(xi) That investigation revealed that deceased Mohinder Singh, Advocate had made two calls to his son Karamvir Singh from his mobile No. 8957765221 at 12:46:58 and later 12:48:28 and Karamvir Singh made a statement to the CBI that while he was talking to his father on mobile, he heard the sound of 'थड थड थड' and then the other end of the connection went dead;

(xii) That the investigation revealed that the incident occurred on a narrow stretch of road, which was without any divider, coupled with the fact that it was raining and the offending truck being driven from the side of Rai Bareilly towards Gurubaksh Ganj was on the wrong side while the Maruti car coming from the opposite side was being driven at high speed resulting in the collision as the truck practically blocked the lane of the car;

(xiii) During investigation it was found that Harpal Singh, whose son Shubham Singh (to be checked) was involved allegedly in the gang-rape of 'AS' had come in the morning of 08.07.2019 and entered the house of complainant 'AS' and threatened them with dire consequences and having regard to the previous enmity between the parties and series of complaints against one another, there is

inference that he had a strong motive in threatening the complainant 'AS' and her family members.

NOTICE TO THE COMPLAINANT MAHESH SINGH, VICTIM 'AS' AND LRs OF DECEASED ADVOCATE MOHINDER SINGH

6. On the CBI filing the final report discarding the critical aspect of there existing criminal conspiracy to commit murder or attempt to murder of the victim 'AS' and her family members and / or Advocate Mohinder Singh and coming with the case of a road accident in terms of Section 304A/338 IPC against accused Ashish Kumar Pal (A-11), this Court vide order dated 09.12.2019 directed that notices be issued to the complainant Mahesh Singh, victim 'AS' and LRs of deceased Advocate Mohinder Singh for their response.

7. On behalf of the complainant Mahesh Singh, an application titled "interim written submissions" has been filed, which has been considered in the nature of a "protest petition" challenging the findings arrived at after investigation as also the prosecution / CBI case simplicitor for death and injuries due to rash and negligent driving. In a nutshell, it is stated that the accused Kuldeep Singh Sengar (A-1) and his family members have been having a long standing rivalry and holding grudges against him; and that many false and malicious criminal cases were foisted against him in the year 2017; and that the vindictive attitude of accused Kuldeep Singh Sengar (A-1) reached highest kind of barbarism when he did not even spare the niece of the complainant 'AS'; and that accused Kuldeep Singh Sengar (A-1) not only raped her in 2018 but also after few days got her kidnapped, gang raped and sold for prostitution,

and even his real brother i.e. father of the victim 'AS' was murdered. It is further stated that the complainant Mahesh Singh was arrested on 20.11.2018 in relation to a false case lodged in 2002 just one month before the fatal accident in question and on 28.07.2019, shifted from Unnao jail to Rai Bareilly jail.

8. Levelling allegations against the officials of the CBI, it is stated that initially accused Kuldeep Singh Sengar(A-1) was not arrested for the conspiracy to commit murder of his brother (father of complainant "AS") and pursuant to criminal conspiracy hatched by (A-1) from jail itself to take revenge, he got killed his wife and sister-in-law and even his Advocate in the accident at Akhrauta Village, PS Gurubaksh Ganj, Rai Bareilly, UP. It is stated that his wife, sister-in-law and Advocate alongwith the victim 'AS' were coming in the Swift car to meet him in the Rai Bareilly jail and the accident was stage managed at the behest of the accused Kuldeep Singh Sengar (A-1) so as to prevent her from giving evidence against him. It is also submitted that even his Advocate Mohinder Singh was not spared by the henchmen of A-1, who on every date of hearing used to threaten him for representing his case and that of victim 'AS', and in particular he was manhandled by the opposite counsel of accused, namely accused Awadhesh Singh (A-10) and that a commotion took place when perokars of accused Kuldeep Singh Sengar were found making video of his wife and sister-in-law outside the Court premises at Unnao and though the matter was brought to the notice of Ld. Judge dealing with their cases but nothing was done.

9. It is also stated that the offending truck was admittedly coming from the opposite side of the road and the accident was not unintentional or due to rash and negligent driving but a deliberate act to kill the occupants of the car, which is fortified from the attempts that were made to deliberately tamper with the number plate and colour the same in black so that the real culprits could run away; and that the CBI officials in collusion with accused Kuldeep Singh Sengar and higher ups overlooked the fact that many witnesses relating to the incident and accident were threatened and coerced to give divergent statements so as to arrive at botched up findings; and that the officials of the CBI rather did not allow them to leave Lucknow Trauma Centre where victim / injured 'AS' was hospitalized after the accident; and that the CBI officials used to speak to them in a very abusive and derogatory language using standard dialogues "और कितनो को फसाआेगी...चल चल....आजा अंदरऔर बता".

10. It was urged that the officials of the CBI did not fairly and truthfully record the statement of 'AS' and even her statement under Section 164 Cr.P.C. was not recorded as also that of other key witnesses; and that the entire investigation was done by them with a view to give a clean chit to the real culprits and the CBI has deliberately chosen to conceal the fact that his wife and Mohinder Singh, Advocate during conversation with him had disclosed that accused Naveen Singh and Vinod Mishra used to follow them in a Safari car. In the said circumstances, the filing of final police report is challenged submitting

that it was a case of criminal conspiracy to murder the complainant 'AS' at the behest of accused Kuldeep Singh Sengar and his henchmen, which was executed in a planned manner on 28.07.2019. Dr. Ashutosh highlighting such points in the written submissions vehemently urged referring to the site plan (1045 D-110) that the width of the road hasn't been deliberately divulged and it is doubtful from the way the investigation has been done that the driver and the cleaner of the offending truck were the same person, who escaped the scene of crime.

MR. DHARMENDER MISHRA LD COUNSEL FOR COMPLAINANT 'AS' & LRs OF DECEASED MAHENDER SINGH, ADVOCATE

11. On notice to the complainant/victim 'AS', no written 'protest petition' is filed but very extensive arguments were advanced by Mr. Dharmender Mishra Advocate dissecting the conclusion of the investigation *vis-a-vis* statement of the witnesses, challenging the reliability of the site plan(s) and call records analysed by the CBI during the investigation. **The gist of the legal submissions** made by Mr. Mishra are: that it was the solemn and legal duty of the CBI to investigate if there was a conspiracy to cause the accident and thereby kill the victim 'AS' and cause harm to her other family members, and then to investigate, collect and gather legally admissible factual and circumstantial evidence as to the identity of the real culprits. It was urged that there was no investigation worth its salt by the CBI and right from the very beginning, the CBI has directly proceeded to discard the theory of the case falling u/s. 302 read with Section 120B of the IPC.

12. It was urged that the local police deliberately delayed the lodging of the FIR, which was lodged on 29.07.2019 at 12.45 PM at PS Gurubaksh Ganj, Rai Bareilly, UP, so much so that neither the site plan nor the statement of eye witnesses were recorded; and that it was the version of the so called driver accused Ashish Kumar Pal (A-11), which was heavily relied upon to orchestrate the theory of it being a case of rash and negligent driving, which could be inferred from the manner of questioning of the accused driver investigation (D-145). Mr. Mishra also harped on the circumstance that the PSOs were not accompanying the victim(s) in the background of the case that father of the victim 'AS' had been killed and there was a constant threat to the life of victim 'AS' and her family members; and that it is strange that the number plate of the offending vehicle was found to be painted in black or by applying grease from 30.06.2019 onwards how freely it was allowed to be driven around; and it was vehemently urged that while the news of the accident was aired via electronic media without any delay on 28.07.2019, how come the FIR No. 305/2019 was registered at PS Gurubaksh Ganj at 12.45 PM on the following day; and that it is strange that the local police came to identify the victims soon after the accident but yet got recorded in the FIR/GD that some अज्ञात (unknown persons) were dead and injured; and that strangely the CBI rather attempted to blame the driver of the ill-fated Swift car attributing contributory negligence that he was driving the car at fast speed while speaking on his mobile phone.

13. Mr. Mishra strenuously urged that the accused persons very cunningly were able to create false receipts and other documents

concerning transport of *morang यानि बालू* and very conveniently the accused driver and cleaner were arrested on 30.07.2019 and surprisingly, the statement of witnesses were not recorded on 28.07.2019 and on 29.07.2019, and thus there is not enough material to prosecute the police officials u/s. 217 of the IPC, notwithstanding that the CBI simply allowed them to go scot-free. It is then vehemently urged that the CBI cuts a sorry figure when it comes to analysis of CDRs of the accused driver, cleaner and owner of the offending truck. It was pointed out that that as per the case of the CBI the offending truck crossed the Toll Plaza at 12.33 PM, it is patently apparent it covered a distance of 2.20 Kms only in ten minutes or so to reach the place of accident and it raises an inference that the truck was deliberately being driven at slow speed or perhaps halted somewhere along the way to the spot; and that since the movement of the Swift car was being tracked, communication was sent by the accused conspirators to the driver accused who then accelerated and drove it at fast speed in a calculated and preconceived manner going on the wrong side of the road and deliberately causing the collision.

14. It was then urged that while the CBI itself claims that accused Kuldeep Singh Sengar (A-1) was provided with a mobile phone by the Jail Authorities, any of the dump data from the Cell Towers nearby the jail were not analyzed so as to connect the dots and it goes to show that the ill-fated car was tracked and the movements were monitored by henchmen of accused Kuldeep Singh Sengar (A-1). Much was argued about involvement of a JCB in fabricating the damage to the offending

truck and disturbing the scene of crime and creating a false story with regard to the manner in which the accident occurred; and it was pointed out that the photographs taken by the CBI do not give a clear picture of the side of the driver; and that the eyewitnesses, who had captured the scene of crime using their mobile phones were not approached nor any proclamation was issued to solicit assistance from the eyewitness soon after the accident. It was urged that where the accused persons have been found to have created false stories, the burden to prove u/s.106 of the Evidence Act shifts upon them to prove their innocence;

15. Mr. Mishra time and again reminding the Court about the background of the entire case against the accused Kuldeep Singh Sengar (A-1) and other accused persons that were investigated by the police with regard to alleged case of rape of victim 'AS' and murder of her father, vociferously urged that there was a deep rooted conspiracy to silence the victim 'AS' and also to cause harm to her family members; and that the CDRs would show that while one Sunil Yadav was in direct contact with accused driver Ashish Kumar Pal (A-11), Manoj Singh (A-2), Vinod Mishra (A-3), Haripal Singh (A-4), Naveen Singh (A-5) and Arun Singh (A-7) on one side and Vikas Mishra not son but brother of Simple Mishra and Vinod Mishra (A-3) on the other side were in contact with one another and the whole strategy was implemented in a well planned manner. The Court was taken through the statements of witnesses, viz. witness No. 107 Vipin Yadav and PW-8 Vinit Singh besides PW-2 Shashi Kant Yadav and therefore, it was vehemently urged that it is a fit case where cognizance be taken for the offence u/s.

120B read with Section 302 of the IPC against the accused persons.

LEGAL SUBMISSIONS BY ANURAG MODI, Ld. PP FOR THE CBI

16. Mr. Anurag Modi, Ld. PP for the CBI was brief and concise to the point and took me through the statements of the eye witnesses No. 105, 106, 107, 108 and 109 who categorically stated to the CBI in their statements that it was raining and the visibility was low on the fateful day and the offending truck came on the wrong side of the road at fast speed resulting in the accident and then the driver and the cleaner ran away from the spot; and that the antecedents of the driver and cleaner besides the owner were thoroughly investigated. While the mobile phone of the driver was found, the mobile set of the cleaner had not been examined as it had been claimed and retrieved by one Sonu and Deepak while claiming the dead body of deceased Dharam Sheela (D-113). It was urged that the plea of Mr. Mishra that JCB was brought in to cause fabricated damage to the truck is wrong as the axle of the truck had broken down; and a whole lot of CDRs that had been analyzed did not establish any link with the accused Kuldeep Singh Sengar (A-1) and it was a case of motor accident simplicitor, in which unfortunate as it may be soon deceased Mohinder Singh, Advocate contributed as he was driving the ill-fated car at high speed while talking on his mobile phone with his and in that crucial moment was not able to manouvre the car so as to avoid the collision or apply breaks in time more so since there was blind curve; and that the entire movements and the track of the truck and the aspect of transport of *morang* यानि बालू besides instruction by the

owner to collect brick consignment were thoroughly investigated and found to be true; and that the theory that there was a conspiracy could not be established as the victim 'AS' herself stated to the police that she decided to go along-with her aunts all of a sudden on the morning of 28.07.2019 and she did not inform the PSOs. Referring to the decision in Ajay Kumar Parmar vs. State of Rajasthan, (2012) 12 SCC 406, it was urged that at the stage of cognizance, this Court cannot appreciate the evidence in a meticulous manner in the nature of dissecting the evidence as is done on conclusion of evidence in a trial and this Court can not render a finding with regard to the probative value of the evidence collected during the investigation. It was thus urged that that cognizance of offences u/s.304A/338 of the IPC be taken against the accused driver Ashish Kumar Pal (A-11) and u/s. 506 (Part II) of the IPC against remaining accused persons i.e. A-1 to A-10.

17. I have given my thoughtful consideration to the submissions made at the Bar by the Id PP for the CBI and the Id counsels for the complainant party. I have meticulously gone through the entire record forming part of the final report/charge sheet. My decision is as follows:

PROPOSITION OF LAW

COGNIZANCE OF OFFENCE ON FILING OF FINAL REPORT/CHARGE SHEET

18. First thing first, on the filing of the Final report/charge sheet by the CBI, this Court issued notice to the complainant parties, as

described hereinabove, based on the settled position in law that since the alleged offences have been diluted and no case is being made out by the CBI under section 302 & 307 read with section 120 B of the IPC, there was a legal mandate to issue notices to the complainant parties, and after hearing them there are three legal recourse available to this Court, for which reference can be made to decision in **Bhagwant Singh v. Commr. of Police**, (1985) 2 SCC 537 at page 539, wherein after examining the provisions of section 154, 156 , 157 190 and 173 of the CrP.C, the following proposition of law was proclaimed:

Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. ...{paragraph 4}

19. Therefore, on receiving the final report/charge sheet, this Court issued notice to the complainant parties and their detailed objections to the findings of the investigation by the CBI have been enumerated above. However, before this Court proceeds to decide

which or what course of legal action be adopted, it has to address a whisper of protest by Shri S.P.M.Tripath, Id counsel for the accused Kuldeep Singh Senger (A-1) who half heartedly canvassed that this Court has already taken cognizance when it decided to issue notice to the accused person. The submission is misconceived, ill-conceived and fallacious since it should be appreciated that this charge sheet was filed when the other four criminal cases transferred by the Hon'ble Supreme Court vide order dated 01.08.2019 were also pending for trial before this Court and this Court saw no reason either to hold the proceedings in this Court in camera in the instant case or for that matter to exclude the accused persons. A-1 to A-10 from being present during the hearing on the pleas of the complainant parties. Needless to state that at this stage of taking cognizance A-1 to A-10 had no ***locus standi*** to make submission on the findings given by the CBI one way or the other in the charge sheet and the plea of Id counsel for A-1 is dealt with only to be rejected.

20. Incidentally, It would not be out of place to refer to the well settled legal position in criminal jurisprudence that mere presentation of the complaint or charge sheet and receipt of the same in the court does not mean that the Magistrate has taken cognizance of the offence. In **Narsingh Das Tapadia v. Goverdhan Das Partani & Anr.**, AIR 2000 SC 2946, it was held that the mere presentation of a complaint cannot be held to mean that the Magistrate has taken the cognizance. In Subramanian Swamy v. Manmohan Singh & Anr., (2012) 3 SCC 64, the Hon'ble Supreme Court explained the meaning of the word 'cognizance' holding that "...In legal parlance cognizance is taking judicial notice by the court of

law, possessing jurisdiction, on a cause or matter presented before it so as to decide whether there is any basis for initiating proceedings and determination of the cause or matter judicially". This point of law was reiterated in the case of **S.R. Sukumar v. S.S. Sunaad Raghuram**, (2000) 7SCC 183. There is no gainsaying that such proposition of law applies *mutatis mutandi* to the Court of Sessions.

FAIR INVESTIGATION IN CRIMINAL JURISPRUDENCE

21. Thirdly, it is also pertinent to mention that at the stage of cognizance this Court cannot embark on a detailed scrutiny or appreciation of the evidence collected by the investigative agency culminating in the final report/charge sheet and reflect on its probative value. It cannot dissect the evidence in a surgical manner as if it is rendering a judgment on conclusion of evidence in a trial. At this stage of cognizance, this Court has to ascertain whether the investigation has been such that *prima facie* can be said to be fair and impartial thus eliciting truth of the matter. So the question is: Whether the investigation was defective by the CBI leaving certain aspects unanswered so as to shield the real culprits and/or present a distorted or perfunctory scenario of the alleged commission of offences? In **Samaj Parivartan Samudaya v. State of Karnataka**, (2012) 7 SCC 407 explaining 'fair investigation' in criminal jurisprudence it was held that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation in accordance with law and to ensure that the guilty are punished. It was held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it

has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction.

22. In the case of **Vinay Tyagi v. Irshad Ali**, (2013) 5 SCC 762, the expression “fair and proper investigation” in criminal jurisprudence was held to encompass two imperatives; firstly, the investigation must be unbiased, honest, just and in accordance with law; and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction. In the case of **NHRC v. State of Gujarat**, (2009) 6 SCC 767 : (2009) 3 SCC (Cri) 44] it was proclaimed unambiguously that discovery, investigation and establishment of truth are the main purposes of the courts of justice and indeed are *raison d'être* for their existence.

23. In case of **Ram Bihari Yadav v. State of Bihar**, 1998(4) SCC 517, making observations with regard to lapses by perfunctory investigation or omission by the IO, it held that such aspects can not destroy the credibility of the prosecution case if there is gather direct testimony of the eyewitnesses supported by medical/forensic evidence. In the case **Paras Yadav v. State of Bihar**, (1999) 2SCC 126, it was held that:-

“if the lapse or omission is committed by the investigating agency or because of negligence, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not, the contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.”

24. In another case **State of Karnataka v. K. Yarappa Reddy** (1999) 8 SCC 715, a critical issue arose about manipulation in the station house diary by the IO, the Hon'ble Supreme Court observed as under:

“19. But can the above finding (that the station house diary is not genuine) have any inevitable bearing on the other evidence in this case? If the other evidence, on scrutiny, is found credible and acceptable, should the court be influenced by the machinations demonstrated by the Investigating Officer in conducting investigation or in preparing the records so unscrupulously? It can be a guiding principle that as investigation is not the solitary area for judicial scrutiny in a criminal trial, the conclusion of the Court in the case cannot be allowed to depend solely on the probity of investigation. It is well-nigh settled that even if the investigation is illegal or even suspicious the rest of the evidence must be scrutinized independently of the impact of it. Otherwise the criminal trial will plummet to the level of the investigating officers ruling the roost. The court must have predominance and pre-eminence in criminal trials over the action taken by investigating officers. Criminal justice should not be made the casualty for the wrongs committed by the investigating officers in the case. In other words, if the court is convinced that the testimony of a witness to the occurrence is true the court is free to act on it albeit the investigating officer's suspicious role in the case.” (Emphasis supplied by me)

25. Another aspect of the law that requires some discussion is the circumstances in which further investigation or a fresh investigation may be ordered u/s 173 (8) Cr. PC. In the case of **Babubhai v. State of Gujarat**, (2010) 12 SCC 254 observations in **Manu Sharma v. State (NCT of Delhi)**, (2010) 6 SCC 1, were recalled to the effect that it is not only the responsibility of the investigating agency but as well as of the courts to ensure, that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. It

underlined, that the equally enforceable canon of criminal law is that high responsibility lies upon the investigating agency, not to conduct an investigation in a tainted and unfair manner and that such a drill should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law de hors his position and influence in the society as nobody stands above law. It propounded that the word “ordinarily” applied under Section 173 (8) of the Code, did attest that if the investigation is unfair and deliberately incomplete and has been done in a manner with an object of helping a party, the court may direct normally for further investigation, and not for reinvestigation. It was however added as a sequitur that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for *de novo* investigation as well. It was observed that:

“if an investigation has not been conducted fairly, the resultant charge sheet would be invalid. It was held as well, that such investigation would ultimately prove to be a precursor of miscarriage of criminal justice and the court in such a contingency would be left to guess or conjecture, as the whole truth would not be forthcoming to it. It was held that fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and thus the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasised that where non-interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation.”

26. The sum and substance of the aforesaid academic discussion is that the Court is mandated to consider the case of prosecution independently of the defective investigation carried out by

the I.O. The overall facts and circumstances of the case coupled with the documents available on record are to be thus considered holistically by the Court *de hor* the lapses by the Investigative machinery in order to ascertain as to whether and what offence is made out against the accused persons or not.

LAW ON CONSPIRACY

27. Shorn off long academic discussion, in the causa celebre **State through Superintendent of Police, CBI/SIT v. Nalini**, 1999 (5) SCC 235, the Hon'ble Supreme Court summarized the broad principles governing the law of conspiracy as under:

“591. Some of the broad principles governing the law of conspiracy may be summarized though, as the name implies, a summary cannot be exhaustive of the principles.

Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed.

Acts subsequent to the achieving of object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

Conspiracy is hatched in private or in secrecy. It is rarely possible

to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

Conspirators may, for example, be enrolled in a chain - A enrolling B, B enrolling C, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrolls. There may be a kind of umbrella-spoke enrollment, where a single person at the center doing the enrolling and all the other members being unknown to each other, though they know that there are to be other members. These are theories and in practice it may be difficult to tell whether the conspiracy in a particular case falls into which category. It may, however, even overlap. But then there has to be present mutual interest. Persons may be members of single conspiracy even though each is ignorant of the identity of many others who may have diverse role to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and every one who joins in the agreement. There has thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of object of conspiracy but also of the agreement. In the charge of conspiracy court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise

inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand that "this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders".

As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement, which is the gist of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts, and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who

commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.”

28. Making an attempt to summarise the aforesaid position in law, in order to establish a conspiracy, the first and the primary condition to establish conspiracy is meeting of minds of two or more persons for doing an illegal act or an act by illegal means. It is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators take active part in the commission of each and every conspiratorial act. Indeed, since conspiracy is seldom an open affair, it may be inferred from the circumstantial evidence. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. Even Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators.

REASONS FOR DECISION

29. It is in the light of aforesaid well-settled principles governing the stage of cognizance, effect of defective or perfunctory investigation and the law of conspiracy, reverting back to the instant case, as per the documents filed by the CBI along-with final report / charge-sheet the initial site plan was prepared on 29.07.2019 (D-13 at page 5) by Inspector Rakesh Kumar Singh of PS Gurbaksh Ganj, Raebareli, which

is reflected in CD-I dated 29.07.2019 (D-13) from page 9 to 19 and perusal of the hand written recordings in the said case diary reveals that soon after the accident, Kamlesh Bahadur Singh, Chowki Incharge (PW-99), अटौरा चौकी had reached the place of occurrence, which is Rae Bareli, Lal Ganj Highway, पूरे छौली, सुल्तानपुर खेड़ा मोड़, which records that due to traffic situation photographs of the place of occurrence were taken, and incidentally there are only seven photographs (Page 22 to 28); and that a JCB was called and both vehicles were towed to one side of the road to ease the traffic situation. However, this CD-I records that identity of the dead woman and three critical passengers of the ill-fated Swift Car who were removed to KGM Trauma Center could not be established; and that no other information with regard to accident could be ascertained at the spot.

30. This CD-I further records that it was in the night time i.e. on 28.07.2019 that identities of the deceased lady Dharamshila and Pushpa Singh were established. The record also goes to show that DD No. 40 was recorded 20:30 hours on 28.07.2019 that an unknown lady (अज्ञात महिला) was brought dead to the Hospital, which has reference to Dharamshila aged about 50 years. Although CD-I records that name of owner and mobile number Devender Kishore Pal S/o Nanku Prasad 9369194704 was painted on the body of the offending truck, a day after vide GD No. 33 recorded on 29.07.2019 at 07.01 p.m. reveals that since the owner, driver or cleaner were not identified and / or present at the place of occurrence, the vehicle was seized under Section 207 of the MV

Act. Any how, it further records that the owner of the truck Devender Kishore Pal on being contacted revealed that the offending Truck was being driven by his driver Ashish Pal, who was employed with him for about three months before the accident and he also revealed the name of the Cleaner employed with him for about three years.

31. The aforesaid finding with regard to the identity of the victims having not established is contrary to another writing in the CD-I that it was Chowk Incharge Arvind Pratap Singh, who reached the place of occurrence and he identified not only the injured Advocate, namely Mahender Singh but also the complainant 'AS' as the victim of rape case against MLA Kuldeep Singh Sengar. Interestingly, there was a written letter/reply taken from the owner of the truck Devender Kishore Pal, which has a cutting with regard to the date - '8' number in '28' changed to 29.07.2019 (D-13 page 21) and then CD-I goes to record statement of eye witness Gaya Prasad S/o Late Sh. Ramautaur(PW-105), who stated that it was raining and the offending Truck was being driven at a fast speed on the wrong side of the road and the Car also came at a fast speed from the opposite side and the Truck driver applied the break, upon which the truck skidded towards the left side (घूम गया) and the Car struck on the side of right side Tyre of the truck and got entangled (कार फंसी हुई थी). It records that no eye witnesses were found but further perusal of the course of investigation in the CD No.III dated 30.07.2019 (D-13) page No. 32 to 33 reveals that the statement of eye witness Sharad Yadav S/o Ram Kumar, Arjun S/o Dev Nath (PW- 98) and Vishal

S/o Ramu (PW-106) were recorded, who gave **ditto** version of the manner in which the accident occurred thereby corroborating the version of first witness Gaya Prasad S/o Late Sh. Ramautaur(PW-105). A bare perusal of such statements under section 161 Cr. P.C also reveals that front number plate of the Truck clearly visible bearing registration number UP-71 but other portion was blackened while the number plate in the rear of the truck reflected the registration number as UP-71-8300, which is apparent on perusal of the photographs at page No. 17 to 22 in the FSL report D-74.

32. It appears that a request was made to the service providers to supply Call Data Records of the accused persons viz. Ashish Pal Singh (8318939103) and Mohan Srinivas (7518284266) and the two vehicles involved in the accident were mechanically examined on 29.07.2019 by Ashraf Ali, Sr. Foreman, UPSRTC, Rae Bareli that found that following damages :

"वाहन सं DL1 CL 8642 (कार) एवं UP 71 AT 8300 ट्रक

निरीक्षण स्थल – अटौरा चौकी थाना गुरुबक्शगंज रायबरेली मे कार एवं से

एक आगे खड़ी ट्रक।

समय व दिनांक – 5.20 pm बजे दिनांक 29-07-2019

आज दिनांक 29-7-2019 को कार्यालय पुलिस अधीक्षक रायबरेली के पत्र

सं - एसटी-10/2019 दिनांक 29-7-2019 द्वारा दिये गये निर्देश के

अनुपालन में दिनांक 28-07-2019 को थाना गुरुबक्शगंज क्षेत्र अन्तर्गत

रायबरेली लालगंज रोड पर सुल्तानपुर खेड़ा मोड़ के पास दुर्घटना ग्रस्त वाहन

सं० UP71 AT 8300 ट्रक एवं सिव्फ्ट कार सं० DL 1 CL 8642 का तकनीकी निरीक्षण श्री राम प्रकाश सिंह सम्भागीय निरीक्षक (प्रावि०) श्री मिलन सिंह उप निरीक्षक परिवहन रायबरेली एवं श्री अशरफ अली सिनियर फोरमेन UP SRTC रायबरेली द्वारा संयुक्त रूप से किया गया।

1. वाहन सं० UP 71 AT 8300 ट्रक के निरीक्षण के समय निम्न क्षतिग्रस्त पाया गया -

- (i) दाहिने साईट की बाडी पिछले टायर के पास छतिग्रस्त पायी गयी
- (ii) पिछली दोनो कमानी हैंगर सहित टुट कर गिरी पायी गयी
- (iii) पिछले दोनो टायर दाहिने एवं बांये के दोनो टायर क्षतिग्रस्त है

2. वाहन सं० - सं० DL 1 CL 8642 सिफ्ट कार के निरीक्षण के समय निम्न क्षतिग्रस्त पाया गया -

- (I) आगे का पूरा हिस्सा स्टेयरिंग तक डैमेज पाया गया जिसके आगे काशो, हेड लाइट, चेचिस, इंजन, रेडिएटर, एसी सिस्टम, स्टेयरिंग, डैसबोर्ड, बम्पर, बोनट, आगे का शीशा, पुरा सस्पेन्शन सिस्टम, वाटर पम्प, गियर बाक्श, दाहिने साइड के दोनो दरवाजे आदि डैमेज पाये गये। "

33. It appears that as per GD No. 27 dated 30.07.2019 arrest of the accused driver and cleaner were recorded at 12.32 p.m. and then

perusal of the writing in the CD-III (page 42) recorded on 31.07.2019 reveals that a conclusion was reached by Inspector Rakesh Kumar Singh of PS Gurbax Ganj, Raebareli that no incriminating material was found with regard to allegations of criminal conspiracy to murder the passengers / victims of the Car at the behest of accused Kuldeep Singh Sengar (A-1), which was obviously very convenient because by that time police officials had no access to the CDRs of the accused driver and / or for that matter owner and the cleaner of the truck besides the other accused party.

ANALYSIS OF CDRs OF THE ACCUSED PARTY

34. On perusal of the record it appears that during the investigation by the CBI, the mobile phones of the accused driver (A-11), the Cleaner/helper Mohan Srinivas and the owner Devender Kishore Pal were seized and sent for FSL analysis on 04.08.2019, and thereafter the CDRs of the accused persons, which names are specifically mentioned in memo D-147 were analyzed. During investigation, the version of the accused driver Ashish Pal (A-11) prior to and on the date of the fateful day were examined, which are detailed in the document D-117 titled as a 'Scrutiny Report' and an exhaustive analysis was made of his CDRs **vis-a-vis** CDRs of other accused persons including owner of the Truck, which are D-132 to 136 besides D-107 at page 10. The 'Scrutiny Report' at page 10, reveals that the data from the mobile phone of the driver A-11 made available by the CFSL in the form of its "mirror images" was analyzed viz. call logs, contacts, intalled applications, SMS messages, images, text & video files etc. and such

analyses brought out no incriminating material so as to connect the accused driver A-11 with other alleged conspirators (D-76).

35. During investigation, the material/evidence collected at Attaura Tol Plaza Lal Ganj would show that the ill-fated Swift car had crossed it at 12.35 and the CCTV footage shows that it was raining and the Car probably took about 9 minutes to cover a distance of about 7.5 kms before the accident (D-86) whereas the offending truck crossed Aihar Toll Plaza between 5.10 am to 5.28 a.m on the same day in the morning. Infact the CBI conducted detailed investigation into the path that was followed by the offending truck being driven by accused A-11 and Cleaner / helper, which is D-110 and it *prima facie* corroborates the version of the accused driver and helper cleaner with regard to their business so much so that even the 'Polygraph Test' i.e. D-96 and the 'Forensic Psychological Assessment' D-97 both conducted on 07.08.2019, with reports given on 09.08.2019, revealed no "deceptive responses" on their part. Further, the version of the owner and the other witness with regard to smudging or blackening number plate so as to avoid detection by the recovery officer by the finance company were thoroughly checked ,which findings are recorded in the document obtained forming part of D-52 and D-109.

36. The aforesaid discussion goes to suggest that soon after the incident there appears to be unexplained delay in the registration of FIR and the investigation was not done in a prompt, diligent and fair manner by the local Police headed by Inspector Rakesh Kumar Singh of PS Gurubaksh Ganj, District Fatehpur, UP. Despite the fact that the

investigation had been taken over by the CBI around 9 pm on 30th July, 2019, the following day i.e., on 31st July 2019 a hasty conclusion was drawn thereby holding that the incident was a simple case of motor accident. *Ex facie* there was no investigation worth its salt into the allegations of the complaint by Mahesh Singh. It is pertinent to mention that the photographs of the vehicle in accidental condition were not taken from vantage angles. Infact, the photographs make no sense at all. The statement of the eye witnesses were not recorded promptly and no effort was made to seek video footage of the accidental vehicles from the general public by way of issuing a proclamation for assistance or otherwise.

37. All said and done, as soon as the investigation was handed over to the CBI, the eye witnesses accounts were verified and re-verified in what appears to be a long and excruciating investigative exercise by a team of twenty officers having ranks of Inspectors and SPs. It is but obvious that the crucial lead of the case were the accused driver Ashish Kumar Pal (A-11) and helper cleaner Mohan Srinivas and they were subjected to extensive interrogation including Polygraph and Narco Analysis. A perusal of the charge sheet would show that their versions with regard to the movement of the offending truck transporting *morang* यानि बालू (coarse sand) were checked besides CDRs of their mobile phones. Merely, because the CBI has made clean breast of pointing out that Accused Kuldeep Singh Sengar (A-1) had been provided with a mobile phone surreptitiously by the Jail Authority at Sitapur Jail would not invite an inference that he was involved in the planning the accident in criminal conspiracy with others including the driver and cleaner of the

truck to murder the victim complainant 'AS' and cause harm to her family members. At this stage of the case, the complainant party has not brought any evidence to suggest complicity of the A-1 & others.

38. It *prima facie* appears on perusal of the charge sheet that CDRs of not only accused driver Ashish Kumar Pal (A-11) and helper cleaner Mohan Srinivas but also that of the owner of the offending truck Devender Kishore Pal (PW-137) were thoroughly examined vis-à-vis that of the other accused persons and there were found no direct or remote connection so as to suggest meeting of mind forging a common purpose and planning the collision of the truck with the ill fated car. At this stage of the case, it is not legally permissible to discard the findings of the CBI that the shoe left behind by the accused driver in nearby the agricultural field while running away left, was recovered, which is also shown in observation memo D-98, which is a detailed analysis of path followed by the accused driver with the cleaner while running away from the spot, reflected on page 6 of D-110. Further, there is nothing to disbelieve the version of the CBI that no role was played by the PSOs assigned to the victim / complainant 'AS' and her family members. Each of them were interrogated and their CDRs were analyzed that revealed no incriminating connection, directly or remotely, as between any of them with the accused Kuldeep Singh Sengar (A-1) and other accused persons A-2 to A-10.

39. A *fortiori* no weight can be given to the plea by Mr. Mishra, Ld. Counsel for the complainant party that the documents of the transport of *morang* यानि बालू (coarse sand) are fabricated, as this is not the stage to check their veracity and determine its probative value. Further, certain

contradictions were pointed out as regards the versions of the accused driver Ashish Kumar Pal examined as PW-172 and PW-129 Sushil Yadav, which again cannot be dissected and the same could only be tested during the trial. The plea that a recce had been conducted by the accused driver along with the owner of the truck and PW-129 Sushil Yadav on 23.07.2019 is a figment of wild imagination that cannot be entertained at the stage of cognizance. At this stage, there is no substance in the plea that Kanu Mishra was in contact with accused Ashish Kumar Pal at the time of incident. There was indeed a very diabolical background of the events that had taken place prior to the incident in question but at the stage of considering taking of cognizance of offenses allegedly committed by the accused persons, this Court cannot be swayed by public sentiments, media reports nor the aspect of the conviction of accused Kuldeep Singh Senger (A-1) in SC No. 448/2019, FIR No. 96/2018, RC No. 08(S)/2018, PS: CBI/ACB, Lucknow under Section 120-B read with Sections 363/366/376(i)/506 IPC & Sections 3 & 4 of Protection of Children from Sexual Offences (POCSO) Act, 2012 titled '**Central Bureau of Investigation ACB, Lucknow, UP v. Shashi Singh & Ors.**'. Likewise, no inference can be drawn of the complicity A-1 for the fact that he has suffered conviction with other offenders in another case bearing SC No. 446/2019 RC No. 9(S)/2018 titled **CBI v. Ashok Singh Bhadauria & Others** PS: CBI/ACB/Lucknow, U.P. The earlier judgments 16.12.2019 and 13.03.2020 respectively passed in the aforesaid two cases can not be allowed to be weighed in the mind of this Court so as to form or constitute sufficient ground or material to take cognizance of offenses against the

accused persons for criminal conspiracy to attempt to murder and the victim / complainant 'AS" and her family members.

FINAL CONCLUSION

40. In view of the aforesaid discussion, although the initial investigation by the local police appears to be tainted, lopsided and attempted to reach conclusion hastily to pose the incident as a road side accident to please the superiors and the political masters, however the acts of omissions, lapses and irregularities committed by the local Police have caused no irreparable loss to the foundation of the prosecution. It *prima facie* appears that all the relevant aspects of the incident were thoroughly inquired, scanned and investigated by the CBI and the findings appear to conform to common sense, logic and fair play. There are no grounds to suggest that investigation conducted by the CBI has been perfunctory, ill motivated or unsubstantiated in any manner. However, aforesaid observations should not be misconstrued as if this Court is giving the CBI a clean sheet. Neither this Court is giving any certificate to the CBI about the quality of investigation conducted in this case nor it is demanded as such by the CBI. There is no gainsaying that many aspects of the investigation shall be tested during the course of the trial. Lastly, this Court is not tying the hands of the CBI to conduct further investigation and in case they come across any incriminating material linking the accused party with any kind of criminal conspiracy to murder or attempt to murder any member of the complainant party.

41. In the said view of the discussion, I have no hesitation in holding the findings of the CBI in the final report / charge sheet that there is no case against the accused persons so as to take cognizance and proceed against them under Section 302 and 307 of IPC r/w Section 120 B of IPC can not be faulted. There are no grounds to suspect the fidelity, accuracy, and sincerity of the investigation conducted by the CBI. The objections of the complainant party read like an engrossing thrilling story but based on mere surmises and conjectures. This is not the stage to doubt each and every aspect of the investigation by the CBI, which is coming out with a plausible version of the incident. As was reflected by this Court at the beginning of this order, this accident had a cascading effect leading to public outcry and intervention by the Hon'ble Supreme Court resulting in giving voice to the otherwise voiceless complainant party in their quest for justice.

42. Accordingly, the objections of the complainant party are hereby dismissed. Cognizance of the offence is taken against the accused driver under Section 304-A, 338 r/w Section 279 of IPC and under Section 120B read with Section 506 Part-II of IPC against the accused persons namely, Kuldeep Singh Sengar (A-1) alongwith his associates Vinod Mishra (A-3), Haripal Singh (A-4), Naveen Singh (A-5), Komal Singh (A-6), Arun Singh (A-7), Gyanendra Singh (A-8), Rinku Singh @ Prakhar Singh (A-9), Awadhesh Singh (A-10) and the summons / process be issued to the accused persons accordingly.

43. Since the offenses, for which cognizance has been taken,

are triable exclusively by the Court of Metropolitan Magistrate, the present matter be sent to the Court of Ld. CMM, Special Judge, CBI, Rouse Avenue Courts, New Delhi further proceedings as per law.

Announced in the open Court
on 31st July, 2021

(DHARMESH SHARMA)
Principal District & Sessions Judge/
Tis Hazari Courts: Delhi