



2026:UHC:238-DB

Reserved

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

HON'BLE THE CHIEF JUSTICE MR. G. NARENDAR

AND

HON'BLE SRI JUSTICE SUBHASH UPADHYAY

WRIT PETITION (S/B) NO. 266 OF 2021

Deepali Sharma

.....Petitioner.

Versus

State of Uttarakhand & another

....Respondents.

Counsel for the Petitioner : Mr. Rajendra Dobhal, learned Senior Counsel assisted by Mr. Aditya Pratap Singh and Mr. Shubhang Dobhal, learned counsels.

Counsel for the High Court : Mr. Shobhit Saharia, learned counsel.

Counsel for the State : Mr. Gajendra Tripathi, learned Standing Counsel.

Judgment Reserved on:10.10.2025

Judgment Delivered on:06.01.2026

The Court made the following:

JUDGMENT:(per Hon'ble The Chief Justice Mr. G. Narendar)

Heard Mr. Rajendra Dobhal, learned Senior Counsel along with Mr. Aditya Pratap Singh, learned counsel for the petitioner, Mr. Shobhit Saharia, learned counsel for the High Court and Mr. Gajendra Tripathi, learned Standing Counsel for the State of Uttarakhand.

2. This is not only a case of "*no evidence*", but a case of a, "carefully crafted edifice without a foundation". It could also be termed as "*a mountain made out of a molehill*". The

petitioner has been charged with following misconduct. The charges are extracted with the purpose.

"HIGH COURT OF UTTARAKHAND

NO. /UHC/XV-a-1/Admin/A/2018 Dated: August, 2018

To,

Smt. Deepali Sharma,
Civil Judge (Senior Division),
Hardwar.
(Under Suspension)
(Attached to District Pauri Garhwal)

Madam,

While you being posted at Haridwar as Civil Judge (Senior Division), a complaint dated 10.01.2018 was received against you. In the said complaint, it was alleged by the complainant that you were abusing a minor girl child physically, mentally and emotionally and you had kept her as a maid servant in your house who was made to work whole day. It was also alleged that the said girl was taken on exchange from her parents, as you helped her father in some criminal case. It was further alleged against you that the girl child was living in a miserable state which is beyond words and she was being beaten daily and kept starved for many days. It was also alleged that there were scratches, hurt marks, blood and bruises all over the body of the child. Her hair were pulled and chopped off as a punishment so that she looks like retarded, a bag of bones nearing death.

The said complaint was brought to the knowledge of Hon'ble the Chief Justice and vide order dated 29.01.2018, My Lord was pleased to direct the District Judge, Hardwar to visit the spot and to verify the contents of said complaint and further directed that if contents of the complaint are found correct, to take necessary action in accordance with law.

The District Judge, Hardwar after visiting the spot, verified the contents of the complaint, and accordingly, submitted his report dated 30.01.2018. In the said Report, it has been mentioned that on 29.01.2018 at around 3:15 PM, he alongwith Sri Kanwar Amninder Singh, police team led by Ms. Rachita Juyal and Sri Ashok Sharma, Probation Officer at Child Welfare Committee reached at your residence (residence no. G-10, Judge's Colony, Roshanabad, Hardwar). Two constables

in civil dress also accompanied with video cameras for proper video recording.

It has further been mentioned in the said report that on reaching your official residence, door bell was pressed and a thin and frail girl came at the main gate. At that time the girl was just wearing a black sleeve less frock till her knees and a pyjama, which was above her ankles. The girl was not wearing any woolen clothes or socks or cap or slippers. The girl child was asked if you were at home then you should be called and after 5-6 minutes you came and in your presence the child was asked about her name, she informed that her name is Tanuja @Tiruja Dani. The girl child was apparently examined by Ms. Rachita Juyal and female Sub-Inspectors and female constables and it was found that there were many injury marks on her body and it was also found that there were apparently fresh injuries also on her head. On being asked as to how she got this injury on her head, she stated that she had fallen; but the location of the injury was as such that these injuries cannot be self inflicted.

It is mentioned in the report that you also started giving your explanation that you used to take good care of the girl and the girl child is studying in some school in class IX and her books are also inside the house and that the girl child was made to speak to her father at Haldwani just two days back and her father was also offered some money if required. The girl child was enquired about the details of parents and their address.

It has further been mentioned in the report that while the child was replying to the questions posed to her, you were prompting the girl child to say nice things about you and when questions were being asked to the girl child, you were trying to give answers or put words in the mouth of the girl child. In the report it is stated that the girl child was asked to show where she sleeps. She took Ms. Rachita Juyal inside the house to show where she sleeps. The girl child informed that she sleeps on the floor near the dining table. On being asked about her clothes, she took the team near the servant room and toilet and 4-5 clothes were lying on the floor outside the servant room in which there were two high neck cotton thin sweaters and one red colour sweater.

It is mentioned in the report that you were continuously interfering during questioning of the child and it was observed that there is swelling on her feet and it appeared that there

was infection between her feet fingers and it was noted that girl child is not being given proper and sufficient food.

It is further stated in the report that when the team was rescuing the child, you objected the same and even demanded the order of Hon'ble High Court be shown to her in this regard. Inspect of your unwarranted objections the custody of the girl child was taken and memo of recovery was prepared and girl child was brought to the S.S.P. Haridwar.

It is further stated in the report that minor child disclosed that she was working with you from last three years and during these three years you used to beat the child with sticks, metal objects and on one of the occasion you hit her on head with brass statue. She also disclosed that on many occasion no food was provided by you to the girl child because of which on one of the days i.e. 28.01.2018 the girl child went to the house of Mr. Kanwar Amninder Singh for food and she requested Mr. Kanwar Amninder Singh not to tell you that she came to his house for food as she was scared that you will beat her. The girl child also disclosed that her father was sent to jail in some criminal case in which you helped her in release of her father because of this help her father gave the girl child to you.

It is further mentioned in the report that when police had rescued the girl child from your house and was brought to the S.S.P. Office; there you entered in the room where girl Tanuja @Tiruja Dani was sitting and there you alleged that it was a conspiracy by the High Court against you and that the High Court deliberately wants to cause harm to your career; you were asked to leave the room but you were repeatedly levelled allegation against the High Court. It is also stated that you were asked to sign the recovery memo but you refused to sign.

In the report it is also stated that girl child was taken to Mission Hospital (District Hospital) Haridwar for medical examination, and on medical examination as many as 20 injuries were on the body of the girl Tanuja @Tiruja Dani. Thereafter girl child was sent to Shri Ram Ashram, a registered children Home at Haridwar. It is further stated in the report that statements of the girl child, Mr. Kanwar Amninder Singh, etc. were recorded by Mr. Varun Kumar, A.D.J. Haridwar. The perusal of the statements of the rescued child and Sri Kanwar Amninder Singh, 1st ADJ sufficiently shows that the rescued girl child Tanjua @Tiruja Dani, aged 15 years (DoB: 10-01-2003), was kept by you at your residence as domestic servant since

last 3 (three) years and the girl was doing all household work in your residence and that the girl was being ill-treated, beaten, starved by you. The injuries on the body of Tanuja @Tiruja sufficiently and loudly speak about the beating, ill-treatment and torture inflicted by you on the minor girl child. The girl child was not being given any money for the work being done by her.

The said report dated 30.01.2018 was brought to the knowledge of Hon'ble the Chief Justice and Hon'ble the Chief Justice was pleased to place you under suspension with immediate effect in contemplation of inquiry. Accordingly, a charge-sheet is issued to you with following charges:

CHARGE No.1

It is alleged against you that while you being posted at Haridwar as Civil Judge (Sr. Div.), you had kept a minor girl child as a domestic servant at your official residence. It was found that the girl in your residence; disclosed her name as Tanuja @Tiruja Dani. The said girl child was apparently examined by Ms. Rachita Juyal and female Sub-Inspectors and female constables and it was found that there were many injury marks on her body and it was also found that there were apparently fresh injuries also on her head.

It is alleged against you that the said minor girl was working with you from last three years and during these three years you used to beat the child with sticks, metal objects and on one of the occasion you hit her on head with brass statue. She also disclosed that on many occasion no food was provided by you to the girl child because of which on one of the days i.e. 28.01.2018 the girl child went to the house of Mr. Kanwar Amninder Singh for food and she requested Mr. Kanwar Amninder Singh not to tell you that she came to his house for food as she was scared that you will beat her.

After recovery of the child, she was brought to S.S.P. Office, Haridwar and from there she was taken to Mission Hospital (District Hospital) Haridwar for medical examination, and on medical examination as many as 20 injuries were found on the body of girl Tanuja @Tiruja Dani. The perusal of the statements of the rescued child, Sri Kanwar Amninder Singh, 1st ADJ and the medical examination sufficiently shows that the rescued girl child Tanuja @Tiruja Dani, aged 15 years (DoB: 10-01-2003), was kept by you at your residence as domestic servant since last 3 (three) years and the injuries on the body of Tanuja @Tiruja Dani sufficiently and loudly speak about the

beating, ill-treatment and torture inflicted by you on the minor girl child. The girl child was not being given any money for the work being done by her.

Aforesaid acts of your amounts to grave misconduct and by your aforesaid acts, you did not show required integrity and devotion as was required from you being a Government Servant/ Judicial Officer.

You are, therefore, guilty of grave misconduct and you have violated Rule 3(1) and Rule 3(2) of The Uttarakhand Government Servants' Conduct Rules, 2002.

Following evidence shall be read against you in support of the above said Charge no.1:-

(i) Complaint dated 10.01.2018.

(ii) Report dated 30.01.2018 of District Judge, Hardwar.

(iii) Fard Baramadgi dated 29.01.2018.

(iv) Medical report dated 29.01.2018.

(v) Statement of the girl child, namely, Tanuja @Tiruja recorded by Sri Varun Kumar, 4th Additional District & Sessions Judge, Hardwar.

(vi) Statement of Sri Kanwar Amninder Singh, 1st Additional District & Sessions Judge, Hardwar recorded by Sri Varun Kumar, 4th Additional District & Sessions Judge, Hardwar.

(vii) Sri Rajendra Singh, District & Sessions Judge, Hardwar.

(viii) Ms. Rachita Juyal, ASP, Hardwar.

(ix) Sri Ashok Sharma, Probation Officer, Hardwar.

(x) Dr. R.K. Singhal, Hap Milap Mission District Hospital, Hardwar.

(xi) Any other witness, which may be necessary in course of the Departmental Inquiry.

You are, therefore, required to submit your written statement with regard to the above-mentioned Charge within 21 days from the date of issuance of charge-sheet.

In the written statement, it should be clearly stated as to whether you admit or deny the charge. It also be mentioned as to whether you want to cross-examine any of the witnesses and whether you want to submit documentary or oral evidence in support of your defence.

If, in the specified period, you either do not appear or do not submit your written statement, then it shall be presumed that you have nothing to say and disciplinary proceedings will be proceeded against you ex parte.

By order of the Hon'ble Court

Registrar General

Enclosure(s): As above."

3. The facts, in a nutshell, are that a complaint was received on 10.01.2018. The complaint was by way of an anonymous e-mail rendering the complaint an anonymous complaint (later the sender has been identified because of the efforts of the petitioner). The contents of the complaint are as under:-

"Respected Sir,

This is to bring to your notice that civil judge Mrs. Deepali Sharma, posted at Haridwar is grossly abusing a minor girl (child) she has kept as a maid servant in her house both physically, mentally and emotionally. This girl has been taken in exchange for a favor from her parents who are in Haldwani or somewhere there and who were litigants or so in Mrs Deepali's court. The girl child is in a miserable state which is beyond words as she is being beaten daily and starved. She has scratches, hurt marks, blood and bruises all over her face, back of arms and body. The girl gets no food for days and is without clothes. She is kept wearing a vest and cotton pajama in severe winter of Haridwar. The entire day, the girl is made to work and tortured. Her hair has also been pulled and chopped off as a punishment so she looks retarded. The girl now looks like a bag of bones nearing death. She begged me for food and help. I called the child helpline number 1098 many times but they seem disinterested in the case. Please rescue the girl child from the evil clutches of Mrs Deepali Sharma and her mother and kindly rehabilitate the child with her parents. Many people in Haridwar court are aware of the situation but are very scared to make a complaint. It was my duty as a human being to help save that child so I have taken this initiative to bring the matter to your notice. I trust in God that he will help save this poor child's life through you.

Yours sincerely,

A well meaning Citizen"

4. On a plain reading of the above complaint, what can be inferred is that;

(i) the petitioner has kept her as a maid servant;

(ii) the petitioner has been grossly abusing minor girl;

(iii) the minor child has been abused physically, mentally and emotionally;

(iv) the parents of the minor child were litigants and the petitioner having favoured them in the litigation pending before the petitioner, the minor child was given in exchange;

(v) on 10.01.2018, the minor child approached the complainant;

(vi) the minor is in a miserable state because she is being beaten daily and starved;

(vii) the minor child has scratches, hurt marks, blood and bruises all over her face, back of arms and body;

(viii) the minor child is not fed for days together and is without clothes;

(ix) the minor child was wearing a vest and cotton pajama, though it was winter night;

(x) the minor child is made to work whole day and is tortured;

(xi) her hair had been pulled and chopped off as punishment, and hence, looks retarded;

(xii) the minor looks like a bag of bones nearing death;

(xiii) the minor begged for food and help;

(xiv) the complainant called the Child Helpline No.1098 many times, but they were disinterested in the case;

(xv) the complainant prays that the minor child be saved from the evil clutches of Mrs. Deepali Sharma and her mother and rehabilitate the child with her parents;

(xvi) the complainant states that many people in Haridwar Court are aware about the situation, but are scared to make a complaint;

(xvii) the complainant being a human being, thought it his duty to take the initiative and bring the matter into the notice of the Chief Justice, and;

(xviii) the complainant states that God will help and save the poor minor child through the Hon'ble Chief Justice.

5. What can be deduced from the above complaint is that;

(i) the complainant was aware about the situation of the minor as on 10.01.2018 itself;

(ii) that the complainant had given food on 10.01.2018 itself;

(iii) that the complainant had an opportunity to examine the body of the minor child, as it is categorically stated that there was scratches, hurt marks, blood and bruises all over her face, back of the arms and body;

(iv) that the hair had been pulled and chopped off as a punishment and she looked retarded;

(v) that attempt was made by the complainant to call the helpline, but to no avail.

6. That the above inferences drawn have a bearing because it is an admitted fact that the petitioner and the minor child lived in a house inside a secured compound called "Judges' Colony, Roshanabad, Haridwar", and it is an admitted fact that there are five houses in the compound, out of which, two houses are occupied by the officers of the rank of Additional District Judge, two by Magistrates and one by the petitioner. One of the Additional District Judge's is PW1 and was the immediate neighbor, and abutting the Judges' Colony Compound, the houses of District Judge, District Magistrate/ Collector and the Senior Superintendent of Police are situated. The Magistrate (in-charge) of the Juvenile Justice Board was the opposite door neighbour. The presence of the above persons is narrated herein to test the veracity of the contents of the complaint, more particularly, the

allegation of daily beatings, and the allegation of bleeding wound on the head as on 10.01.2018. If any act of violence is used on a minor child that results in a bleeding wound, then common sense and logic would lead one to presume that the minor child would have screamed in pain. The allegation of daily beating pre-supposes the presence of the complainant at the time of beating and witnessing the same. It speaks of daily occurrences, implying thereby that the "anonymous complainant" was a resident or a daily visitor for otherwise he or she could not have witnessed the events every day. We say so, in view of the fact that the "Judges Colony" was a compounded enclave with entry restricted.

7. We have perused the original record and have come across the medical certificate in a form and format never before this Court has seen. The examination form neither records as an admission form, or an outpatient form. The script is undecipherable and there is no signature of the Doctor who examined, nor is there a case history recorded by the examining doctor, nor is the examining doctor or any other doctor holding the post, been examined, and even more surprising is that the original of the said medical certificate is not available. The absence of recording the case history is surprising, as the victim was the best person to have confided with the doctor the identity of the assailant and the manner, in which, they were caused. In all, twenty injuries are

recorded and the age of the injuries is recorded as between 1-2 days, and even more surprising is that it is attested by a staff nurse and a pharmacist, and it is recorded that the bodily examination is carried out in their presence. This is a practice this Court have never come across where the examining doctor gets the examination done in the presence of witnesses and gets the witnesses to attest the medical certificate, and we need not delve deep to ascertain the veracity of the opinion.

8. The complaint speaks of injuries all over the body, i.e. on 10.01.2018, examination is carried out on 29.01.2018, and the age of the wounds states that they are 1-2 days old. If the wounds are 1 or 2 days old, then which are injuries that were observed by the complainant on 10.01.2018? The complainant details all the injuries on 10.01.2018 itself. 19 days of a winter month and the young age would logically lead one to presume that the wounds would have healed. What surprises this Court even more is the laudable objective of the complainant, who states that the complaint is made only because the complainant felt human and was shocked by the presence of blood all over the head and face, yet *"the 'human' complainant failed to take custody of the child and admit her to hospital."* Viewed from this angle, it casts a shadow over the truthfulness of the allegations, which gets strengthened by the absence of the original of the medical

certificate and the absence of a medically qualified witness to speak about and prove the contents of the medical (wound) certificate. The persons who have been examined are the staff nurse and the pharmacist.

9. It is alarming because all the persons involved are trained judicial officers. The Inquiry Officer was of the rank of Additional District Judge, the Presenting Officer was of the rank of the Chief Judicial Magistrate, P.W.1 was of the rank of the Additional District Judge, and neighbor of the petitioner, P.W.3 was the then District and Sessions Judge, Haridwar district, and yet, the manner and method, in which, they have gone about in demonstrating the charges is shocking. The lapses, more particularly, the omission to have the medical certificate spoken through a qualified doctor leaves us aghast.

10. That apart, it has been the consistent stand of the petitioner to question the validity of the order directing inquiry. Perusal of the files does not reveal any note of the then Chief Justice Mr. Justice K.M. Joseph, who later was elevated to the Hon'ble Apex Court in August, 2018, and this coupled with the fact that no Call Detail Records (CDR) of P.W.1, P.W.3 and the then Registrar General (In-charge) have been placed to demonstrate at least the conversations attributing knowledge to the then Chief Justice. Apparently, the e-mail ID to which the complaint is addressed is not that

of the Chief Justice, but that of the High Court which is handled by the Computer Section. The omission to place the CDRs despite the persistence of the petitioner casts a cloud over the very initiation of the inquiry.

11. That apart, the omission to examine the best witnesses, i.e. the peons who were rendering duty in the house of the petitioner or examining the other neighbours would also cast a cloud on the probity of the inquiry. These are some of the lapses and lacunae, why this Court refers to the proceedings as "*a carefully crafted edifice without a foundation*".

12. What is even more surprising is the failure to examine the then Registrar General/ Registrar General (In-charge) who claim to have been telephonically ordered by the then Hon'ble Chief Justice (i) to direct an inquiry, and; (ii) to issue an order of suspension.

13. That apart, the refusal of the High Court to ascertain the identity of the complainant is also puzzling, that too in the face of the circulars advising against anonymous complaints. The note dated 29.01.2018 records the signatory as the Registrar (Infrastructure) and the note prepared by him reads as under:-

"A complaint dated 10.01.2018 was received in the High Court's Email account from email address nitukumar321@rediffmail.com against Ms. Deepali Sharma,

Civil Judge (Senior Division), Haridwar. Said complaint is addressed to Hon'ble the Chief Justice. Said complaint is being reproduced hereinafter.

"Respected sir,

This is to bring to your notice that Civil Judge Mrs. Deepali Sharma, posted at Haridwar is grossly abusing a minor girl (child). She has kept as a maid servant in her house both physically, mentally and emotionally. The girl has been taken in exchange for a favor from her parents who are in Haldwani or somewhere there and who were litigants or so in Mrs. Deepali's court. The girl child is in a miserable state which is beyond words as she is being beaten daily and starved. She has scratches, hurt marks, blood and bruises all over her face, back of arms and body. The girl gets no food for days and is without clothes. She is kept wearing a vest and cotton pajama in severe winter of Haridwar. The entire day, the girl is made to work and tortured. Her hair has also been pulled and chopped off as a punishment so she looks retarded. The girl now looks like a bag of bones nearing death. She begged me for food and help. I called the child helpline number 1098 many times but they seem disinterested in the case. Please rescue the girl child from the evil clutches of Mrs. Deepali Sharma and her mother and kindly rehabilitate the child with her parents. Many people in Haridwar court are aware of the situation but are very scared to make a complaint. It was my duty as a human being to help save that child so I have taken this initiative to bring the matter to your notice. I trust in God that he will help save this poor child's life through you.

Yours sincerely,

A well meaning Citizen

Today, i.e., on 29.01.2018, Respected Registrar General has informed that he has apprised Hon'ble the Chief Justice about the said complaint and His Lordship has directed that District Judge, Haridwar be directed to visit the spot and to verify the contents of said complaint and if contents of the complaint are found correct, to take necessary action in accordance with law.

His Lordship has further directed to ask for a report from the District Judge after the inquiry along with the report of action taken in the matter.

Respected Registrar General has informed that approval from Hon'ble the Chief Justice has been taken by him telephonically and has directed me to send a letter to District Judge, Haridwar immediately.

In compliance of the directions given by Respected Registrar General, a confidential letter No.431/Admin.A/2017 dated 29.01.2018 along with the copy of complaint has been sent to District Judge, Haridwar to do the needful immediately."

14. It is pertinent to note that the signatory was, in fact, discharging duties as Registrar General (In-charge). The note records that the Registrar General had conveyed the information to the Chief Justice and obtained his approval telephonically and that the Registrar General had informed him telephonically that the then Hon'ble Chief Justice had directed that the District Judge, Haridwar be directed to visit the spot and to verify the contents of the complaint and if contents of the complaint are found correct, to take necessary action in accordance with law, but unfortunately, neither the then Registrar General, nor the Registrar General (In-charge), [Registrar (Infrastructure)], who has issued the confidential letter directing the District Judge, Haridwar to do the needful immediately on 29.01.2018 are examined.

15. The next note dated 30.01.2018 records that the confidential report has been received from the District Judge, Haridwar on 30.01.2018 itself and along with the report,

medical report, statement of P.W.1, i.e. neighbour of the petitioner, statement of the minor victim, and the letter of Ms. Rachita Juyal, Circle Officer Sadar addressed to the Senior Superintendent of Police, Haridwar and letter of the Senior Superintendent of Police, Haridwar addressed to the District and Sessions Judge, Haridwar, letter of the Child Welfare Committee, Administrative Order of the District Judge, Haridwar appointing the 4th Additional District Judge, Haridwar to record the statement of the minor victim have been forwarded.

16. It is surprising to note that though the Magistrate heading the Juvenile Justice Board was available in the said Judges' Colony itself, yet a Senior Judge of the rank of the Additional District Judge has been assigned the duty to record the statement of the minor child.

17. The note yet again refers to telephonic communication and also refers to instructions by the Registrar General to the signatory to forward the report to the e-mail of the then Hon'ble Chief Justice and the e-mail account of the then Registrar General implying thereby that neither the then Hon'ble Chief Justice, nor the then Registrar General were available.

18. It is further pertinent to note that neither have these e-mails been produced, nor do the office records bear a

copy of the same. Yet again, the note further refers to instructions having been issued by the then Hon'ble Chief Justice to the then Registrar General, and the then Registrar General having conveyed the same to the then Registrar General (In-charge) to immediately issue an order of suspension.

19. Thus, it is apparent that electronic mode of communication has been claimed to have been predominantly used, even to the extent of getting the concurrence of the then Hon'ble Chief Justice for issuing an order of suspension. If that be so, it was imperative that proof of the same ought to have been placed, more so, when the petitioner was questioning the authenticity of the orders claimed to have been passed by the then Hon'ble Chief Justice.

20. What causes disbelief is why a complaint of such "serious proportions" was not brought to the notice to the then Chief Justice immediately as records reveal that the last working date of the High Court was 12.01.2018. Assuming lapses, then it was imperative to produced and place in the inquiry the copies of the e-mail communications, by which, the matter is said to have been e-mailed or Whatsapp communication, which is claimed to be the mode of exchange of information between the High Court and the then Hon'ble Chief Justice. We say so, in view of the fact that the person

accused was a "Judicial Officer". Such material ought to have been produced at least after the petitioner raised queries about the authenticity of the proceedings directing an inquiry and report, and further directing the suspension of the officer. The omission to place these material could have been overlooked, had such a query not been raised by the petitioner. What is even more startling is that though the entire controversy surrounded a minor victim and the genesis for the inquiry being the act of employing a minor child as a maid servant, the same is not one of the charges that was framed against the delinquent officer. Page No.6 of the records, reveals a note by the Assistant Registrar, whereby the note records a representation from the petitioner stating that the minor victim had been admitted to school and she had completed her 8th standard in the year 2016 and passed out with first division from Government Junior High School, Roshanabad and was presently studying in 9th standard at Adarsh Shishu Niketan (ASN Inter College), Dheerwali, Jwalapur while staying with her and that as the order of suspension has been passed without an opportunity, she has sought for an opportunity of personal hearing with the then Hon'ble Chief Justice and the Hon'ble Administrative Judges of Haridwar and Tehri Garhwal.

21. This explanation regarding the minor child having been admitted to a school and pursuing education has been

made by the petitioner at the earliest point of time on 05.02.2018, i.e. in less than a week of the so called raid of the house. The note does not bear signature of the Registrar General. The next records is a note put up to the then Hon'ble Chief Justice, putting up the request of the police, i.e. the letter of the Senior Superintendent of Police, Haridwar dated 31.01.2018 seeking permission to register an Fir, which is approved in view of the ruling of the Hon'ble Apex Court in ***U.P. Judicial Officers' Association vs. Union of India & others***, reported in ***(1994) 4 SCC 687***, holding that no permission of the Chief Justice is required. The dates below the signature appear to be in different hand writing and there is over writing in the month. There appears to be an over writing and alterations to the date. Number (1) appears to have been added before number (6) with regard to the date and number (8) with regard to the month, there is over writing as (2) and with regard to the year, the year is recorded as '16'. The handwriting even to the naked eye, by which, number (1) has been added and number (8) over written with number (2) and the last numbers '16' indicating the year do not inspire confidence in this Court.

22. Be that as it may, even if the respondents are given the benefit of doubt with regard to the lapse in the ordering of discreet inquiry, which, under the Rules only the office of the Chief Justice is vested with the said power. What

compounds the allegation and forces this Court to lean in favour of the petitioner with regard to this aspect of the matter is the rejection of the repeated attempts by the petitioner to secure the records. The first application came to be made by the petitioner as early as on 28.05.2018, and was rejected by the High Court on 31.08.2018 and an application to the Inquiry Officer to summon the records also met with the similar fate by the order of the Inquiry Officer dated 30.12.2020. But the fact remains that these proceedings have been relied upon by the Inquiry Officer, which in our considered opinion, is a grave lapse. Documents relied upon by the Inquiry Officer or by the Presenting Officer are required to be furnished to the delinquent officer in compliance with Rules and the Principles of Natural Justice.

23. What really startled us and engaged our curiosity and compelled us to look deeper was the, 660 paragraphs on 356 page gargantuan inquiry report in respect of a simple issue of “employing a minor as a domestic help”. We now proceed to examine as to what was the requirement or the required material facts that were required to be proved or disproved by the employer to prove the charges levelled against the delinquent officer?

24. From the reading of the complaint, some of the basic facts that were required to be proved was that; (i) that

there were proceedings initiated against the father of the child (DW-2) which could result in a jail term,(ii). that the Petitioner had saved the child's father (DW-2) from going to jail, (iii). the child was a minor; (iv) the child was employed as a maid contrary to the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986; (v). that the child was physically assaulted; (vi) that the assault was with the intent to cause injury, (vii) that the injuries alleged to have been found on the body of the victim were caused by the petitioner, and lastly; (viii) the petitioner had violated Rules 3(1) and 3(2) of the Uttarakhand Government Servant's Conduct Rules, 2002, as notified in the charge-memo. Apparently there are no eye-witnesses and even the eye-witnesses cited by PW-1 have not been summoned nor the "best" placed witnesses, that is the peons assigned to the house of the Petitioner, been summoned. Despite the availability of the best evidence they have not been examined. We are flummoxed by this glaring lacunae.

25. Rule 3(1) reads as under:-

"3. General- (1)- *Every government servant shall at all times maintain absolute integrity and devotion to duty."*

26. Rule 3(2) reads as under:-

"3(2) Every government servant shall at all times conduct himself in accordance with the specific or implied orders of Government regulating behaviour and conduct which may be in force."

27. In fact, Rule 3(4) specifically deals with a prohibition, prohibiting government servants from employing the children below the age of fourteen years as domestic help, but the petitioner has not been charged with Rule 3(4), but is charged of having violated the provisions of sub-rules (1) and (2) of Rule 3 of the Uttarakhand Government Servant's Conduct Rules, 2002. Despite specific charge of prohibition of employment of minors being available under the Rules, no charge alleging the violation of sub-rule (4) of Rule 3 has been levelled against the delinquent officer. Though, the imputations refer to the same, but it is pertinent to record that the very same charge-memo records the age of minor victim as 15 years.

28. Be that as it may, what leaves us wondering is why 'a statement of fact' by the petitioner at the earliest point of time, i.e. 06.02.2018 claiming that the child had been educated upto 8th standard in a Government School, and 9th standard in another school was pointedly ignored, befuddles us. The said statement of fact having been made even prior to the issue of charge-memo, it was something that the respondents ought to have verified. At this juncture, it is pertinent to note that the prosecution lodged by the State was subsequently withdrawn by the State, despite the same, the inquiry continued.

29. Another aspect of the matter, which causes disbelief, is the necessity to keep the child in a home and away from the parents for nearly five months when the parents were identified and were willing to have her custody and there was no allegation of any ill-treatment or abuse against the parent. That aside, the order releasing or handing over the custody to the parents causes disbelief.

30. There is not a single reason recorded justifying the prolonged detention of the child and that too, a school going child in a home away from her parents and her family. More importantly, the child did not allege, as noted above, any ill-treatment, abuse or exploitation either by her parents or her family.

31. Even the order of the Child Welfare Committee dated 01.02.2018 passed while considering the application for custody of the minor is more shocking. It speaks of a case being monitored by the High Court. It speaks of as to how a farmer could have developed a direct contact with a high level official and that it is worth looking into and that the question begs consideration; further observation that no Indian law stipulates that if a person has nine daughters, he should handover them to another person due to poverty or any other reason is a cruel joke. The reasons recorded to state the least are laughable. When the contact number of her uncle and her

parents has been given by the child and when the parents have been identified and summoned by the Authorities and spoken to by the Authorities, such reasoning only indicates that all is not above -board.

32. Lastly, what really shakes us, is the manner, in which, "the raid has been conducted". Assuming that there was a direction to the District Judge to inquire into the authenticity of the complaint, there was absolutely no call or mandate by the District Judge to marshal a huge police force including the Senior Superintendent of Police, an officer of the rank of C.O., C.W.C., two videographers for video recording of the raid etc. in all involving more than 20 persons, which is a battalion of policemen. If such diligent efforts had been taken, probably, a few terrorists could have been arrested. The manner and method raises questions and leaves us wondering as to whether it is a case of over-kill or motivated? The questioning of the victim / minor child was done outside the house and in the open which also leaves us wondering whether it was aimed at shaming the petitioner. So much is said about the clothing that the minor child wore, yet the entire exercise has been carried out in the open of the very said winter month, and a mere glance at the transcription is enough to demonstrate that the exercise was a lengthy one. It is not anybody's case that the minor child was shivering,

yet much has been said about the clothing though P.W.1 admits that the child was not shivering.

33. Having examined the facts, we may now proceed to appreciate the inquiry report.

34. The Inquiry Officer has recorded the order dated 11.03.2019 appointing her as an Inquiry Officer. Nextly, the Inquiry Officer has recorded the receipt of the complaint through e-mail on 10.01.2018. In Paragraph No.5, it is recorded that the complaint was brought to the notice of the then Hon'ble Chief Justice and *vide* telephonic/oral direction dated 29.01.2018, the then Hon'ble Chief Justice is said to have directed the District Judge, Haridwar to visit the spot and verify the said complaint, and it is further directed that if the complaint is found to be correct, then necessary action be taken in accordance with law. The said order of the then Hon'ble Chief Justice is not produced in the proceedings. The letter written by the then Registrar General on 29.01.2018 is made available in the inquiry as Paper No.28. The contents of the letter authored by the then Registrar General (In-charge) is quoted.

35. In Paragraph No.7, it is recorded that the District Judge, Haridwar, on receipt of the letter, visited the spot, verified the contents of the complaint and submitted his report on 30.01.2018, and the report is marked as Paper

Nos.41 to 45. It is pertinent to note that the report refers to the medical records being enclosed. The reliance on the unilateral "preliminary enquiry" report is itself a grave error.

36. In Paragraph No.8, it is recorded that the District Judge, after receipt of the letter from the High Court, *vide* letter No.125, dated 29.01.2018, requested the Senior Superintendent of Police, Haridwar to constitute a team of police officers led by a female officer not below the rank of Circle Officer, and the Senior Superintendent of Police was briefed about the matter and was informed to keep the matter confidential. Accordingly, Ms. Rachita Juyal, ASP Sadar, Sri Ashok Sharma, Probation Officer at Child Welfare Committee and other police personnel, two police Constables in civil dress were taken along with the camera for video recording the raid and rescue. In Paragraph No.9, it is recorded that the team on reaching the residence of Ms. Deepali Sharma, rang the door bell and a thin and frail girl came out of the main gate and the petitioner, who was on Child Care Leave, was available at home.

37. In Paragraph No.10, the Inquiry Officer has recounted the contents of the report dated 30.01.2018. In Paragraph No.11, again the contents of the report are recounted to state that the petitioner was giving her explanation on behalf of the girl. In Paragraph No.12, "the

demand of the petitioner to produce the order of the High Court” is recorded. It is further recorded that Ms. Deepali Sharma even tried to hold the ASP in order to prevent her from taking away the minor child. In Paragraph Nos.13 and 14, the contents of the statement of the minor girl- P.W.2 said to have been made in the S.S.P.’s office are recounted. Paragraph No.15 is an extract of the report relating to the act of the petitioner trying to forcibly enter the room where the minor victim was sitting and was being questioned. Paragraph No.16 refers to the medical examination by the hospital authorities and recording of 20 injuries found on the body of the minor victim. Paragraph No.16 erroneously records that the minor girl was produced before the Child Welfare Committee. The evidences clearly point out that the members of the Child Welfare Committee were also present in the hospital and the minor girl was handed over to them. The recording of the statement of P.W.1- 1st Additional District Judge and the girl on 30.01.2018 is recounted. In Paragraph No.17, it is recorded that the report dated 30.01.2018 and the statement of P.W.1- 1st ADJ “*sufficiently show*” that the minor victim was kept as a domestic servant and she was being ill-treated, beaten and starved by Ms. Deepali Sharma and the injuries on the body of the girl child sufficiently and loudly speak about the beating, ill-treatment and torture inflicted by the petitioner on the minor girl child and that the

girl was not being given any money for the work being done by her. Paragraph No.18 records that the report dated 30.01.2018 was brought to the knowledge of the then Chief Justice and the then Hon'ble Chief Justice was pleased to place the petitioner under suspension. A copy of the order is placed as Paper No.48. Charge was framed on 10.08.2018. In Paragraph No.19, the charge is extracted.

38. In Paragraph No.21, the contents of the written statement of the petitioner are extracted. It is contended that the proceedings were carried out by the District Judge contrary to the directions of the then Hon'ble Chief Justice and the proceedings are vitiated by bias and prejudices; that she has admitted the custody of the child given to her by her parents and that she had attempted to educate the poor child and to provide a companion to her daughter who was of the same age or thereabouts. She has denied having subjected the minor child to any beating or physical abuse. She has denied that she was kept as a maid servant or that she had helped her father in any criminal case. She denied the knowledge of any proceeding initiated by one Prem Dhella. She has denied that she had interfered in any case and points out that this aspect of her helping the minor girl's father in a criminal case is also stated in the complaint; that the girl had not complained to anyone in the locality or to any of the visitors to her house. The petitioner further claimed that the

veracity of P.W.1's claim is doubtful in view of the allegations levelled against him by one of his orderlies; that she had not made any allegation against the Hon'ble High Court. She admits that she alleged a conspiracy by one of her fraternity; that it was an attempt to malign her image as a Judicial Officer; that the minor girl did not utter a single word against the petitioner till she was taken away from her house; that the statement has been recorded in the absence of her family members or her parents and allegations have been extracted under fear and influence; that at the time of preparation of recovery memo, no visible injury was seen; that even in the alleged statement of the minor girl, no detail of date, time of the abuse are stated; that the girl could not have recorded lengthy statement before the ADJ on 30.01.2018; that it is alleged that the medical report is manipulated and prepared in the presence of police, and; that the minor girl was kept in home for over four months and all attempts of her parents to meet her and to have her custody were sabotaged and sought opportunity of cross-examination.

39. In Paragraph No.24, the Inquiry Officer records that seven witnesses have been examined on behalf of the "prosecution", i.e. P.W.1- 1st Additional District Judge, P.W.2- the minor girl, P.W.3- the then District Judge, Hardiwar, P.W.4- Sri Ashok Sharma, Probation Officer, P.W.5- Ms. Rachita Juyal, ASP, P.W.6- Mrs. Ruchika Chauhan, staff nurse

of the district hospital, who is said to have been present when the minor was physically examined and P.W.7- Sri Prakash Chand Raturi, pharmacist of the district hospital. P.W.6 and P.W.7 are the ones who are said to have attested the medical (wound) certificate.

40. On behalf of the petitioner/ delinquent officer, the Chief Administrative Officer, Harmilap Mission Districtg Hospital as D.W.1, Sri Hem Chand Dani as D.W.2, the minor girl's father and the petitioner herself as D.W.3 are examined.

41. Initially, six documents were marked and during the inquiry, five documents and one of them is the information obtained from the internet regarding the Hemoglobin levels. Another document is the statement of the minor girl recorded under Section 164 of Cr.P.C. in C.C. No.58/2018; (ii) certified copy of the order passed by the C.W.C. dated 22.05.2018 handing over the custody of the child to the father; (iii) Medico Legal Register produced by P.W.7- Pharmacist on behalf of the hospital; (iv) copy of the information available on the internet with regard to the school fees.

42. On behalf of the petitioner/ delinquent officer, the written statement submitted to the High Court; Aadhar enrolment acknowledgment of the petitioner's son, petitioner's daughter and the minor girl Tiruja produced as

Paper Nos.108, 109 and 110; Paper No.111 is the application for admission to school, in respect of the minor; Paper No.112 is the school leaving certificate of the minor and during inquiry, the petitioner has produced two C.Ds/ D.V.Ds that is, recordings of the raid and the alleged rescue of the child; copy of G.D. case supplied by the S.S.P. Haridwar; transcript of the video footage contained in C.Ds - 79/1 to 79/2; copy of the order dated 01.02.2018 passed by the Child Welfare Committee; copy of the letter written by the CWC to the D.M. and SSP, Nainital dated 07.02.2018; newspaper cutting; copy of attendance register produced by D.W.1; newspaper cuttings marked through D.W.2; copy of phone bill with CDR; counter-affidavit filed by D.W.2 before the Hon'ble High Court; copy of the application seeking information under the Right to Information Act from the Hon'ble High Court; copy of the letter dated 20.01.2018 addressed by the petitioner to the Hon'ble High Court; copy of the information provided to the petitioner by the Administrative Officer, District Court Haridwar; photocopy of the letter written by the In-charge Cyber Crime Cell, District Haridwar; photocopy of the e-mail "nitukumar321LOGS"; photocopy of certain details obtained through true caller application; photocopy of the information sought under the Right to Information Act from the S.P. Haridwar; copy of the information provided by the Station House Officer, P.S. SIDCUL, Haridwar; copy of the

information provided by the Administrative Officer, District Court Haridwar; copy of the reply to the notice issued by the I.O. Manoj Kumar Katyal to Executive Director, Child Line India Foundation; photocopy of the application whereby the petitioner sought information under the Right to Information Act regarding the blood test report, ossification test; reports of other tests of minor girl; copy of the blood investigation report of the minor girl dated 03.02.2018; photocopy of X-ray of right wrist, elbow and knee of the minor girl dated 30.01.2018; photocopy of the letter written by the petitioner to the High Court dated 05.05.2018; copy of the statement recorded under Section 161 of Cr.P.C. of Ms. Ritika Semwal, 2nd Additional Civil Judge (Sr. Div.), Haridwar; information provided by the PIO/ SP City, Haridwar to the petitioner, being a copy of the order passed by the First Appellate Authority/ I.G. Police; photocopy of screen shot of phone; photocopy of the Customer Relationship Form of Sri Manoj Kumar, and; copy of the letter written by In-charge Cyber Crime Cell, Haridwar to the S.S.P., Haridwar.

43. In Paragraph No.31, the arguments of the Department Representative/ Presenting Officer are recorded. The arguments reiterate the contents of the report and the C.D./D.V.D. summoned on the request of the petitioner; that the petitioner attempted to prompt the answers to the questions put to the minor child; that the recording would

show that the child failed to show her bedding, hence, the same demonstrates no proper bedding was provided by the petitioner, though it was the winter month of January; that the same demonstrates that she did not treat the minor child as one of her own kid; that the statement of the child made in the SSP's office and the contents of the medical report marked said to have been proved through P.W.6- staff nurse and P.W.7- pharmacist; that P.W.2, the minor girl, has tried to hide injuries and has explained only one fresh injury and other fresh injuries are not explained by her and thereby trying to protect the petitioner; that the scratch can never be self-inflicted; that multiple abrasions can never be self-inflicted; that there is no place in the bathroom to store the wood, as alleged by the minor girl; that no wood or log is seen in the video; that the said statement is a false statement made by the minor girl; that the girl was kept in Shri Ram Ashram, she refused to go from there with her parents, as she feared that her parents will again send her to the petitioner and that she would again commit atrocities on the minor child; that the petitioner did not allow the minor girl to talk to her parents; that the statement of the father as D.W.2 that he requested others to take care of his daughters because of his poverty; that the petitioner used the daughter as a domestic help; that because of his poverty and undue influence and pressure created by the petitioner, he has

deposed in favour of the petitioner; that the Government School fees in Uttarakhand is Rs.27/- and even a poor person can afford it, hence, there was no reason to send the minor girl to the petitioner, and the real reason was to have the girl work as a domestic servant; that though it is claimed that the girl is studying in a residential school, no documents are produced either by P.W.2 or D.W.2. He would contend that the contention that he could not afford the fees is falsified by the claim of the father and the child that the minor girl is presently being educated in the residential school; that this alone would demonstrate the minor girl was sent as a domestic help and not for the purpose of being educated.

44. It is contended that there is a Government School available in the girl's village itself; that the Government schools provide midday meal that burden also would not have fallen on the father; that there was no emotional attachment between the petitioner and the minor girl; "that the minor girl did not remain with the petitioner after her rescue"; that D.W.2, the father has deposed that he opposed the marriage of his elder daughter Nirmala with Prem Dhela; that it is this Prem Dhela and Nirmala marriage issue led to D.W.2 sending that minor girl P.W.2 to the petitioner as the petitioner assisted them in the criminal case; that the ground of conspiracy and representation regarding objecting the promotions is baseless, as other officers of her batch too

moved representations before the Hon'ble High court and got promoted; that despite being engaged as a domestic servant, no salary was paid to the minor girl; that the matter requires to be seen from the point of view of preponderance of probabilities and is not expected to be proved beyond reasonable doubt. Hence, it was not necessary to summon the ADJ, who recorded the statement; that both statements of the minor girl dated 30.01.2018 and recorded under Section 164 of Cr.P.C. are similar despite the time gap; that the minor girl has reiterated before the ADJ, what she is heard saying in the video recording; "that the statement of the minor girl in the inquiry are on account of the influence of the petitioner"; that the minor child was in so much fear of the petitioner; that she did not share anything about the petitioner with her father and that is why the father is unaware about the maltreatment; "that the information provided by the I.G.-Appellate Authority is beyond his jurisdiction and power and authority"; that when the information about the e-mail was not available to the police, then the police could not have furnished information regarding the mail; "that the information provided under the Right to Information Act is in contravention of the provisions of the Right to Information Act"; that the rediffmail was not within the local jurisdiction of Haridwar police, as the server was maintained outside India; "that no record is produced to

demonstrate the communication between the police and the rediffmail”; that the documents produced is not authenticated by the rediffmail and it is an admitted fact that the police did not have the information, and police have not registered any FIR with regard to the e-mail; “that it is not possible to provide direct evidence of maltreatment or beating of the minor girl, as all have occurred inside the house”; that the injury in the middle of her head can never be caused by the fall from a tree; that despite so many injuries on the body of the minor girl, the petitioner has not provided proof of any medical treatment; that the medical examination report has been duly proved by P.W.6 and P.W.7 as the examining doctor had passed away in the interregnum; that P.W.6 and P.W.7 were summoned as their names were found in the examination report; that reference to Section 27 of the Protection of Children from Sexual Offences is erroneous and is applicable when an offence is committed against the victim under the POCSO Act; that the production of the statement recorded under Section 164 is unsustainable as “the minor child had turned hostile because the fear of the petitioner’s beating, the minor has resiled from her statement”; that the verification of anonymous complaint was not necessary as the contents of the complaint were verified by the District Judge; that the security is mandatory for shelter homes and the police security and installation of CCTV camera is the norm;

“that the presence of the police personnel in Shri Ram Ashram where the minor child was kept for a few months” was for the protection of all the children living there.

45. The Department Representative has relied on the following judgments:-

(i) Civil Appeal No.9520 of 2019, Uttarakhand Transport Corporation & others vs. Heera Singh Parihar, dated 18.12.2019.

(ii) Baldev Singh Gandhi vs. State of Punjab & others, Appeal (Civil) No.1188 of 2002, decided on 14.02.2002.

(iii) Commissioner of Police, New Delhi vs. Narendr Singh, Appeal (Civil) No.7488 of 2004, decided on 05.04.2006.

(iv) State of Haryana & others vs. Rattan Singh, AIR 1977 SC 1512.

(v) State of Assam vs. Mahendra Kumar Das & others, AIR 1970 SC 1255.

46. In Paragraph No.22, the Presiding Officer has attempted to belittle and discredit the information provided by the Cyber Crime Cell regarding the source of e-mail ID under which the complaint was sent to the High Court. Rules of Inquiry permitted rebuttal evidence by one party of the evidence produced by another. The same not having been availed and the Presenting Officer having not summoned the authority issuing the information, the contention has no legs to stand on. The attempt to negate a crucial piece of evidence by stating that the information was not available with the issuing authority is presumptive and in contrary to all known canons of evidence. In Paragraph No.23, the Presenting

Officer claims evidence has been collected during preliminary inquiry. In Paragraph No.24, the Presenting Officer claims that direct evidence of beating is not possible, when even according to P.W.-1, he was informed about the same by the two peons assigned and working in the residence of the petitioner. Again the question arises as to why they were not summoned and examined.

47. As noted *supra*, the peons assigned by the Court to the house of the petitioner were the best possible form of witness/ evidence, yet they have been ignored/ screened. In Paragraph No.25, though it is claimed that no evidence of medical treatment arranged by the petitioner is found, despite all the *frenzy + hoopla* about twenty injuries, no material is placed on record by the Presenting Officer to demonstrate hospitalization of the minor child even for a day, nor any admission record, or discharge summary are presented, nor proof of any administration of medicine or treatment has been produced. This singular fact, by itself, would cast a shadow on the fact of presence of bleeding and fresh injuries and cuts, as recorded in Paragraph No.26. The claim that medical records, i.e. medical (wound) certificate have been duly proved, is in a manner unheard of and unknown to law as the persons examined in support of it are a nurse and pharmacist and both of whom are not competent to prove a "wound certificate".

48. Apparently, the author, i.e. the doctor employed with the hospital, is claimed to have passed away, but it is not a case that there was no other doctor who was competent to speak about the wound certificate. This Court has raised queries about the form and format at the earliest instance itself. In Paragraph No.31, the attempt to discredit the evidence of P.W.2, the minor child, by stating that she has resiled from her 164 statement because of petitioner's influence, cannot be appreciated. The fact remains that the State had withdrawn the prosecution initiated against the petitioner, which was never questioned by anybody, much less, the alleged victim or her family members, or the High Court.

49. The efforts of Inquiry Officer to discredit the reliance on Section 27 of the POCSO Act cannot be appreciated. The prosecution itself having been withdrawn, the question arises as to whether the reliance on Section 164 statement was justified and legally sustainable? The contention that verification of the source of e-mail and identity of the complainant were irrelevant, as the contents of the complaint had been verified, is contrary to the admissions elicited during the cross-examination of P.W.1, P.W.3, P.W.4 and P.W.5.

50. The further contention that the shelter home cannot be run without police protection, is wholly unfounded. Apparently, it was a private orphanage, as described in the order of the Child Welfare Committee dated 22.05.2018, as Orphan Shishu Trust of India, Shri Ram Ashram, Shyampur, registered under Section 36(1), no such registration certificate has been placed. The further contention that shelter homes required police security and CCTV cameras, does not appear to be the norm as it has emerged that the CCTV and police personnel/ security vanished after the minor was released from the "Ashram". The law which permits lodging of a rescued juvenile in a "Ashram" is not quoted. Further, why the provisions of the Juvenile Justice Act were not followed is not forthcoming. Per contra, the petitioner/ delinquent officer has contended that there is no eye-witness produced; that there is no evidence that the minor was maltreated or physical abuses or assaulted the child, or used the child as a domestic servant without making a payment; that the medical report is forged and fabricated and has not been proved; that it is a case of vendetta, vengeance and conspiracy against the petitioner; that the FIR was registered without the explicit permission of the High Court, and that too, for a case of human trafficking and at the instance of P.W.1; that the High Court has been misled; that no incriminating material has been placed or any clinching

evidence placed before the Inquiry Authority; the Presenting Officer is not a Prosecuting Officer; that the evidence collected during the preliminary inquiry cannot be read in (emphasis supplied by this Court); that only the evidence of P.W.1 to P.W.7 and the documents marked through them can be gone into; that no document demonstrating the misconduct on the part of the petitioner; that information regarding the source of e-mail was obtained by the petitioner; that Paper No.417 obtained by the petitioner through RTI demonstrates the IP address, computer used for e-mail and customer information were furnished by the Authority; that though, the application was made in September, the information was provided only in February; that the authority is vested in the police to seek and secure information from the service provider by a written acquisition; that the registration of the FIR and criminal case for offence punishable under the IPC is not denied; that the e-mail originated from the mobile number registered in the name of P.W.1's wife; that the contents of the complaint were already known to P.W.1 even before it was conveyed by the High Court to the District Judge (emphasis supplied by this Court); that had the petitioner misbehaved or tortured the victim, the victim would have taken the opportunity to complain to the High Court or the raiding team; that the rescue team headed by the District Judge was accompanied by P.W.1 and his

steno was found accompanying them; that there was neither a warrant nor any circumstance that justified the presence of armed police personnel to be sent to the house of the petitioner; that, though the mandate of the High Court was to verify the contents of the complaint, but the District Judge came with the objective of executing a rescue; that despite the minor child not willing to leave the house of the petitioner, she was forcibly taken against her wishes; that though, several officers are living in the same compound, none except P.W.1 have been examined or called upon to furnish any information; that the minor child was taken away by the ASP (P.W.5); that the petitioner was treating the minor child as the member of the family; that the minor child used to make videos of the family, and had a close bonding with the children; that the minor has denied the existence of six fresh injuries marked as Injury Nos.13 to 20; that the child has explained the lone fresh injury on the head by stating that a piece of wood had fallen on her head while she was bathing in the bathroom; that the medical examination of the minor child by a male doctor, despite the availability of female doctor in the hospital, is illegal; that there were two female doctors working in the hospital, but neither of them have been examined by the department; that the wound/injury report was drawn up at the instance of P.W.1 and P.W.5; that no prescription of providing of medical treatment

or medication by the shelter home or by the rescue team has been placed in the inquiry; that the detention of the child in the home for more than five months has disrupted the education; that even as per the prosecution version, the girl was earlier with the petitioner and after a break was once again brought back till rescued and if the girl was assaulted or unhappy, she would not have come back; that no proof has been adduced by the Department by demonstrating payment of any wages or salary; that the document demonstrating payment of school fees has been ignored; that the child hailing from mountains was well acclimatized to severe cold and the cold weather in Haridwar is incomparable to the same; that all amenities and requirement were provided to the minor child; that the CDs/ DVDs recordings were done during the alleged rescue of the minor child while the recording of statement under Section 164 was pursuant to the crime registered; that the minor child was kept against her wishes in the orphanage and two policemen were deputed in order to prevent the family members and friends from interacting with the minor child; that the report of the District Judge was actually prepared by P.W.1; that the source of e-mail was obtained on the written requisition by the police department; that the hemoglobin level of the minor child was normal (emphasis supplied by this Court), and; that the

petitioner/ delinquent officer has relied on the following rulings:-

"i. Solanki Chimanbhai Ukabhai vs. State of Gujarat, AIR 1983 SC 484.

ii. Yogesh Singh vs. Mahabeer Singh & others, Criminal Appeal No.1482 of 2013, decided on 20.10.2016.

iii. Ramanand Yadav vs. Prabhu Nath Jha & others, Appeal (Crl.) 119-121 of 1997, decided on 31.10.2003.

iv. Balvir Singh vs. The State of Madhya Pradesh, Criminal Appeal No.1115 of 2010, decided on 19.02.2019.

v. Narayan Dattatraya vs. State of Maharashtra & others, decided on 20.11.2019.

vi. Union of India vs. H.C. Goel, AIR 1964 SC 364.

vii. Bank of India & another vs. Degala Suryanarayan, Appeal (Civil) No.3053-54 of 1997, decided on 12.07.1999.

viii. Hardwari Lal vs. State of U.P. & others, decided on 27.10.1999.

ix. Hardev Singh vs. State of U.P. & others, Writ- A No.24086 of 2011, decided on 20.11.2015.

x. M.V. Bijlani vs. Union of India, Appeal (Civil) 8267 of 2004, decided on 05.04.2006.

xi. Moni Shankar vs. Union of India & another, Appeal (Civil) No.1729 of 2008, decided on 04.03.2008.

xii. Narinder Mohan Arya vs. Union India Insurance Co. Ltd., Appeal (Civil) 7645 of 2004, decided on 05.04.2006.

xiii. Rakhi Sharma vs. State of U.P., Allahabad High Court.

xiv. Reserve Bank of India, Bangalore vs. C.S. Satya Kumari, ILR 1993 KAR 1167, decided on 12.03.1993.

xv. Bharti Cellular Ltd. vs. Union of India & others, Civil Appeal No.7026 of 2003, decided on 05.10.2010."

51. From Paragraph No.38 onwards, the Inquiry Officer (IO) has commenced appreciation of the material. In Paragraph No.42, she discusses the e-mail/ complaint and that the complaint was forwarded to the District Judge, Haridwar on 29.01.2018; that the contents of the complaint were verified by the District Judge on 29.01.2018 and report was sent on 30.01.2018. In Paragraph No.44, the Inquiry Officer has discussed the intervening events between 10.01.2018 and 29.01.2018 and discusses the telephonic conversation between P.W.1 and the then Registrar General (I/c). In Paragraph No.45, she discusses the statement of P.W.1, and in fact, specifically records the statement of P.W.1 that he has not personally seen the child being assaulted, but has heard that the petitioner beats up the minor child. The Inquiry Officer has presumed the sanctity of the above documents, when neither the author is examined nor corroborative evidence, in the form of Call Detail Record or E-mails have been produced.

52. After discussing the statement of P.W.1 and P.W.2- the victim and D.W.3, proceeds to conclude in Paragraph No.51 that the act of resiling from the statement made earlier, "appears to be on account of the minor child having been won over by the petitioner" and on account of the same, the minor child has denied the visit, as claimed by P.W.1.

There is absolutely no material placed or relied upon by the I.O. to conclude in Paragraph No.51 that the minor girl has been won over, when the fact remains that the minor child in her cross-examination has categorically denied having met the petitioner. The I.O. has failed to appreciate the answers to Question Nos.7 and 26. In response to Question No.7, she stated that she was taken straight to the Ashram and that she stayed there for more than three and a half months and in reply to Question No.26, she has stated that she was meeting madam/ petitioner only today, i.e. 18.07.2018. The accusation of the witness having been won over without any material contradicting the answers to Question Nos.7 and 26, renders the conclusion perverse. The cross-examination, that is Paragraph Nos.10 to 39 have been completely ignored by Inquiry Officer rendering the report perverse. In the answers at Paragraphs 21, 30 and 31, the minor has categorically stated that all household works were done by the two peons.

53. The acceptance of the explanation of P.W.1 in Paragraph No.53 is contrary to the admission elicited in his cross-examination. The Inquiry Officer has placed reliance on the answer to Question No.41 and the cross-examination, in our opinion, reliance on a portion of the answer appears misleading. A portion of the answer without appreciating the answers given by the victim child, who was flatly denied any visit to P.W.1's house appears to be a partial act. The

observations in Paragraph No.55 do not reflect a complete picture. The Inquiry Officer has failed to appreciate the answers to Paragraph Nos.42, 43, 44, 45, 46, 47, 48 and 49, which clearly indicate that the High Court had already decided and in the words of P.W.1, the incident was unfolding very quickly and he had instructions not to divulge any information, yet the claim is made that on the morning of 29.01.2018 he narrated the incident to the District Judge. Interestingly, in reply to Question No.51, he would answer as below:-

"51. The girl was not shivering in front of me. She was certainly not wearing warm clothes. I was merely following the R.G.'s instructions as I already explained above why the girl was not rescued at night."

54. If this is appreciated in the backdrop of the answer elicited in Paragraph No.41, it is apparent that the witness is not speaking the truth. In Paragraph No.41, as extracted by the I.O., it is stated that "the girl came to his house and rang the doorbell at 7:30 PM and he gave her food", implying thereby the incident occurred in the night and he interacted with the girl. In Paragraph No.51 to a question asking why he did not immediately make efforts to rescue the minor child, he would reply "I was merely following the RG's instructions", implying thereby that P.W.1 was in conversation with the then Registrar General regarding this issue even prior to 7:30 PM, but in his answers to preceding paragraphs, he would

present a picture that he went into a conversation with the Registrar General only after the girl's visit and that apart, the reliance placed on the statement of P.W.3 to lay weight with the version of P.W.1, is unsustainable. P.W.3 has made a categorical statement that the alleged incident was narrated to him on the next day at 10:15 AM, implying thereby that P.W.3 was not an eye-witness, but merely a hearsay witness.

55. The discussion in Paragraph No.56 regarding the head injury is an admitted fact where P.W.2 has also given the manner, in which, she suffered the injury. In Paragraph Nos.57 and 58, the Inquiry Officer has relied on, and referred to the statement recorded under Section 164, to hold in Paragraph Nos.59 and 60 that the incident did occur. This conclusion drawn on the basis that P.W.3 did not inquire about the head injury because he was already informed, appears to be farfetched and in the light of P.W.1's answer to question Nos.36, which clearly shows that he used to see the girl on or off standing near the gate. The distance of the both gates are adjacent to each other and also his source of information through a Class IV employee in the petitioner's house. The presence of the wound and the manner, in which, it has occurred, as deposed by P.W.2 does not get discredited.

56. The elaboration and dissection appears to be to somehow establish the fact that the petitioner was starving and assaulting the minor child. It would not be out of place to refer to the blood test report, which records the hemoglobin count of the child as 11 Mg, which is the normal average for women. This, coupled with the fact that the examining doctor did not even prescribed any supplements, much less, hospitalization, would go a long way to negate the approach and the conclusion drawn by the Inquiry Officer.

57. A reading of Paragraph Nos.65 and 66 would go to show that the Inquiry Officer has simply accepted the statement of P.W.1 as the gospel truth without even blinking an eye. The Inquiry Officer does not find it strange that the then Registrar General/ Registrar General (In-charge) have attempted to activate/ direct the District Judge through an officer subordinate to him. This very fact ought to have enthused the Inquiry Officer (I.O.) to seek for corroboration. We say so because the then Registrar General/ Registrar General (In-charge) have not been examined, neither has any corroborative material in the form of CDRs/ e-mail's produced by P.W.1 to establish or prove the fact of his telephonic conversation with the aforesaid two officers. We say so in view of the answers elicited from P.W.3 to Questions 17, 18, 19, 32, 89, 90 and 91, and the conclusion in Paragraph No.68 that the depositions establish the exchange of phone calls

between P.W.1 and the then Registrar General/ Registrar General (In-charge) is not supported by any material except for the oral deposition. The Inquiry Officer ought to have sought for corroboration in the light of the allegations of malafides alleged against P.W.1 by the petitioner/ delinquent officer.

58. The discussion of the evidence and the arguments with regard to the IP address and identification of the e-mail user, leaves us to infer that the Inquiry Officer is trying to make out a case which even the department has not attempted to rebut. The Inquiry Officer even goes to the extent of calling the information obtained as an intrusion into the privacy of the e-mail ID user and the authoritative findings that information is available with the service provider only for a year without examining the service provider or the information provider, leaves us with no option but to draw an inference that the Inquiry Officer has adopted a protectionist approach. As rightly argued by the Presenting Officer, that the Departmental Inquiry is not one for demonstration of accusation of the charge beyond reasonable doubt but by preponderance of probabilities, yet the burden of rebutting the evidence produce, squarely lies on the Department, in which the Department has miserably failed.

59. It is painful to see the approach adopted by the Inquiry Officer. In fact, if the conclusions drawn are to be appreciated meaningfully, the Inquiry Officer is virtually charging the delinquent officer with fabrication of documents or forgery. If that was the case, then we are left wondering why such a charge or allegation was not made by the department in black and white, for then, the delinquent officer would have had the opportunity to rebut the same. Despite the allegation and despite questions being put to P.W.1, and despite P.W.1 being accused of generating the e-mail ID and the complaint, we see that neither P.W.1, nor the Departmental Representative attempting to place on record any evidence to controvert the material documentary evidence placed by the petitioner. In fact, in Paragraph No.122, the Inquiry Officer concludes that the purported information 366/2 is an unauthenticated, fabricated, false and forged document made illegally by police in absence of any such information provided by rediffmail itself, and by going out of their way and beyond the power and jurisdiction of police. The analysis "all the above given circumstances points towards one conclusion" that the purported information 366/2 and by going out of their way and beyond the power and jurisdiction of police so as to provide undue benefit to Ms. Deepali Sharma under her undue influence" is absolutely a conjecture with no material whatsoever and accepting the

argument as the gospel truth. The Inquiry Officer in Paragraph No.123 pronounces the document as fabricated and forged, without there being any basis and without there being any fact-check with the service provider or the authority that provided the documents. This despite the employer having reserved a right to itself to summon any witnesses during the enquiry.

60. In Paragraph No.124, the Inquiry Officer has held that there is no absence of any cogent and reliable evidence forgetting the admission by P.W.1 that the phone number is registered in the name of his wife and despite there being a clear-cut digital proof. The Inquiry Officer ought to have probed further into the footprint that electronic mode of communication leaves. In fact, the Inquiry Officer ought to have put the burden on the Department to produce details of the identity of the complainant, and should have inferred adversely against the Department for having failed to prove the ID of the sender of e-mail. More so, in the light of the fact that the petitioner was alleging malafides from the very initial stage, i.e. on the date the raid was conducted, i.e. 29.01.2018 where it was admitted by P.W.3 that the petitioner/ delinquent officer had entered into the SSP's room and directly accused P.W.1 of joining hands with the then Registrar General/ Registrar General (In-charge) to conspire and finish her career. She not being the recipient of the e-

mail, certainly onus could not have been cast on her. Be the case of preponderance of probabilities, condemning the evidence placed by the delinquent officer/ petitioner without any controverting material and even without examining the concerned authorities or even without seeking a clarification from the concerned authorities, is unknown to service jurisprudence and that too, when the Inquiry Officer desires to conclude that the delinquent officer or any other person has committed an act which constitutes a punishable offence under the penal code and relevant statutes.

61. That apart, the detailed discussion on the above issue befuddles us. The onus was on the department to prove the charge under the charge-memo and a charge regarding the commission of forgery is not before the Inquiry Officer. This digression and laborious approach and thesis was wholly unwarranted in the background of the charges that had been framed and that alone were required to be proved.

62. At the most, the findings would only negate the charge of malafides raised against the defence. Alternatively, the Inquiry Officer has lost herself in the labyrinth created by the witness on both sides. In Paragraph Nos.126 to 176, the Inquiry Officer has dealt with the claim of conspiracy and enmity raised by the petitioner/ delinquent officer. This exercise is nothing, but a repetition of the issue dealt with by

the Inquiry Officer in Paragraph Nos.70 to 125. Though, we desire to say something about the approach of the Inquiry Officer, we desist from doing so, as the Inquiry Officer is not a party before us and is not heard and with a hope of giving a quietus and restore normalcy in the deeply divided unit.

63. The distinction drawn in Paragraph No.180 that no inquiry of the complainant need be made, or no inquiry regarding the identity of the complainant need be made, is in our opinion, preposterous. It is an admitted fact that the petitioner was living in a secured compound, known as Judges' Colony and where third parties, except permitted persons, had no access. This admitted factual position has neither been gone into nor appreciated while going into the issues as to whether P.W.1 generated the e-mail or while dealing with the conspiracy angle. It was not anybody's case that the mobile number registered in the name of P.W.1's wife and used by his father-in-law at Dehradun was made known to the petitioner by P.W.1. The information about the phone number having been furnished to her by the very same police authorities, the Inquiry Officer has ignored the significant fact.

64. The Inquiry Officer has also not concluded that the complainant is an anonymous person and identity untraceable. As observed by us, electronic modes of

communication leave indelible footprints. The postponement of identifying the sender despite the request of the petitioner has also not been appreciated. The Inquiry Officer has also not appreciated her own order dated 07.02.2020 whereby while rejecting the prayer to summon the SSP Haridwar to submit a report from the Cyber Crime Cell, had reserved liberty to the petitioner to procure it and submit the same herself. The reasoning if viewed in the backdrop of this order, renders the reasoning perverse and wholly unsustainable. As noted by us, it is not even the contention of the Presenting Officer that the documents produced by the petitioner are fabricated or forged. If such a submission was made, it would have given grounds for action against the Presenting Officer.

65. The Inquiry Officer has also failed to appreciate the representation of the petitioner/ delinquent officer seeking an inquiry on the administrative side to establish the identity of the anonymous complainant, and which request came be disposed of by the then Registrar General *vide* order dated 17.07.2020 that the same would be considered on the conclusion of the disciplinary proceedings. The Inquiry Officer also failed to appreciate the further effort of the petitioner dated 15.10.2020 whereby the petitioner once again reminded the High Court of her request dated 17.07.2020, and which was met with the response "*no note was prepared on the letter dated 15.10.2020*" and which response was

secured by her under the RTI. That apart, we are unable to appreciate the attempt of the Inquiry Officer to discredit the document emanating from the office of a high ranking officer of the stature of SSP, who is the head of the police force in the district and whose office played a prominent role in the "raid" and initiation of prosecution of the petitioner.

66. In that view, the findings on the issue discussed in Paragraph Nos.70 to 176 does not inspire confidence in the Court and we are constrained to infer a biased approach.

67. From Paragraph No.177, the Inquiry Officer commences the discussion on the complaint. The observation in Paragraph No.182 that no responsible citizen may report the commission of any offence leaves us flummoxed. The further elaboration that anonymity of the complainant does not affect the gravity of the offence reflects a bias in the mind of the Inquiry Officer. We perceive a sense of pre-determination and same has resulted in a "moral conviction".

68. The reliance on Section 125 of the Indian Evidence Act leaves us amazed. Neither the High Court, nor the Inquiry Officer are either a Magistrate or a Police Officer or a Revenue Officer and the inquiry is a statutorily sanctioned administrative act. The precursor to this reliance can be seen at the very commencement of the report where the Inquiry Officer has persistently referred to the department as

prosecution, in our considered opinion, the presumption is ill-founded.

69. The Inquiry Officer cannot approbate or reprobate. In one breath, the Inquiry Officer proceeds and relies on preponderance of probabilities and while on the other hand, the Inquiry Officer does call for proof beyond reasonable doubt on the part of the petitioner, and holds otherwise when the burden shifts on to the department, on the short ground of Section 125. The efforts of the petitioner on the administrative side and the reluctance on the part of the department to investigate the identity of the complainant have been brushed aside and the issue is concluded summarily. It is also interesting to note that the conclusion is only with regard to the identity of the complainant. The great length to which the department concerned have gone to protect or not to secure the identity of the sender leaves us wondering if there is more to it than meets the eye and demonstrate a biased approach.

70. In Paragraph No.187, the Inquiry Officer commences discussion about the minor victim. In Paragraph No.190 onwards, the charge against the petitioner/delinquent officer and frames five points for discussion which are as under:-

"1. Was the girl Tanuja @Tiruja Dani a minor at the time of her rescue and at the time when she was first kept by Mrs. Deepali Sharma?

2. Whether the girl Tanuja @Tiruja Dani was taken by Mrs. Deepali Sharma with her as a domestic servant?

3. Whether the girl visited the house of Mr. Kanwar Amninder Singh on 28.1.18 and asked him for food, and whether any food was provided to her by Mr. Kanwar Amninder Singh?

(This point has already been dealt with in the preceding pages of this report. The finding has been affirmative.)

4. What were the Injuries found on the body of the girl Tanuja @Tiruja Dani at the time of her medical examination on 29.1.2018 and the nature thereof?

5. Whether the girl Tanuja @Tiruja Dani was beaten up, ill treated and tortured by Mrs. Deepali Sharma during the time she used to live with Mrs. Deepali Sharma?"

71. With regard to Point No.3, the Inquiry Officer concludes that it has already been held in the affirmative that the girl had visited the house of P.W.1 and asked for food. The reasoning of the Inquiry Officer in Paragraph No.197 to discard the statement recorded during the inquiry leaves us self-shocked and wonder in disbelief. The reasoning assigned is that the statements made by P.W.1 and the statement recorded on 29.01.2018 in the SSP's office and the statement recorded under Section 164 are to be believed because the petitioner/ delinquent officer was not around, but the statement recorded in the inquiry and the answers elicited in the cross-examination during the inquiry are to disbelieved

because the petitioner/ delinquent officer was present. This reasoning, in our considered opinion, is convoluted one, as the fact remains that both P.W.3 and P.W.5 have clearly admitted that the statement alleged to have been made by the "victim" in the SSP's office has not been recorded. The presence of the petitioner is not by design, but on account of the mandate of the Inquiry Officer. It is the Inquiry Officer who has fixed the time and place and the requirement of the petitioner to be present. It is not the case of the Inquiry Officer that the petitioner was asked to remove herself during the examination of the witnesses P.W.2 and despite such prohibition, she refused and planted herself before the victim. There is not even a whisper in the report recording any intimidatory action or gestures on the part of the petitioner. There is not even a whisper about the victim having come to the inquiry after a prolonged detention in an orphanage, i.e. between 29.01.2018 to 15.05.2018. As claimed by the victim she was under the constant guard and scrutiny of two police constables and CCTV cameras. Apart from stating that the victim changed the stance, there is no reasoning as to why the victim should change the stance. It, in fact, defies logic. If the victim had been so terrorized or so utterly frightened or scared by the petitioner, at least, the parents would have, on coming to know the real facts of torture inflicted on their child

made a complaint and the child would have spoken about the alleged torture.

72. That apart, if an innocent child is inflicted such grievous wounds, in the words of the Presiding Officer "attacked with the knife", then any child if given an opportunity, would have certainly complained of the same, on the contrary, the material on record in the form of admission and in the form of transcript and in the form of video recordings, categorically disproves this conclusion rendering it perverse and unsustainable. The conclusion is against the weight of evidence that stares at us. In one line, crucial admissions elicited from the mouth of P.W.1, P.W.3, P.W.4 and P.W.5 and other witnesses examined during the Inquiry, have been wished away by the Inquiry Officer, which is impermissible in law. Every attempt has been made to demonize the petitioner.

73. It is pertinent to extract the record of evidence in support of our observations.

Deposition alleging ill-treatment of the child

P.W.1:- 2. *I informed Mr. Anuj Kumar Sangal that I had no personal knowledge of this matter and had only seen a young girl from a distance at Mrs. Deepali Sharma's residence. I had not personally seen her up close, nor had any personal knowledge of her; I had only heard that she was being beaten. Following this, Mr. Anuj Kumar Sangal did not ask me any further questions about this matter, and our conversation ended. (underline by this Court)*

3. *On January 28, 2018, around 7:30 p.m., the doorbell rang at my residence. I went outside and saw the same girl who lived at Mrs. Deepali Sharma's house standing outside the door. She said, "Uncle, please give me something to eat. I haven't eaten anything since morning. I'm very hungry, and I had a head injury." I noticed that the*

girl had a thin scarf wrapped around her head and was not wearing very warm clothes. I gave her some food, and she took it away, and she said, "Uncle, please don't tell Madam." By "Madam," the girl meant Mrs. Deepali Sharma.

4 - Since Mr. Anuj Kumar Sangal had inquired about this matter that same day, I thought it appropriate to call Mr. Anuj Kumar Sangal and inform him that the girl you were inquiring me about had just arrived at my residence a short while ago. I informed Mr. Anuj Kumar Sangal about the events described in paragraph 3 above. Mr. Anuj Kumar Sangal instructed me to call Mr. Narendra Dutt, the then Registrar General of the Hon'ble Uttarakhand High Court, and inform him of this matter. Accordingly, I called Mr. Narendra Dutt, the then Registrar General of the Hon'ble Uttarakhand High Court, and informed him of the facts described in paragraph 3 and my conversation with Mr. Anuj Kumar Sangal. Mr. Narendra Dutt, the Registrar General, instructed me to keep the matter confidential and would issue a further order the following morning. (emphasis by this Court).

74. From the reading of the above, it is apparent that despite having observed the minor girl from close, the witness does not speak of having observed any injury.

P.W.1 (7). Subsequently, around 2:45-3:00, the Hon'ble District Judge, Haridwar, myself, C.O. Sadar/A.S.P. Ms. Rachita Juyal, and a police team led by Rachita Juyal, including several Lady Sub-Inspectors and Lady Constables, an Inspector, two Constables for videography, and Probation Officer Ashok Kumar, arrived at Mrs. Deepali Sharma's official residence, G-10, Judges Colony, Roshnabad, Haridwar. Prior to this, the Hon'ble District Judge had asked to find out whether Mrs. Deepali Sharma was present. When we arrived at Mrs. Deepali Sharma's residence, we found the girl mentioned above standing near the gate. The District Judge told the girl to call Madam (Mrs. Deepali Sharma). Mrs. Deepali Sharma emerged from the residence about 5-7 minutes later. By that time, we had all been standing inside the compound of the residence, waiting for Mrs. Deepali Sharma. When the District Judge asked the girl in question her name, she gave her name as Tanuja alias Tiruja, her age as 14, and stated that she had been working with Mrs. Deepali Sharma for about three years. A physical examination of the girl revealed numerous new and old injuries on her body. She appeared very weak. When we arrived at Mrs. Deepali Sharma's residence, she was standing near the gate, wearing a black sleeveless frock and a pair of pajamas that reached her ankles. She was wearing neither slippers nor socks, nor a cap on her head. Both of her feet were swollen, and there appeared to be an infection between her toes. The female team members briefly examined the girl's injuries on the spot, noting some of the injuries were new on her head and a small amount of blood had clotted in her hair. (emphasis by this Court).

75. From a reading of the above, it can be safely deduced that P.W.1 became aware of the injuries only after the inspection at about 03:00 PM.

(P.W.3) 1. On January 29, 2018, I was serving as District Judge, Haridwar. That day, at approximately 10:15 a.m., Shri Kanwar Amninder Singh, then First Additional District Judge, Haridwar, came to

*my rest room. At that time, I was attending to my administrative work when he said, "Sir, please finish this quickly, there's something urgent." After I finished my administrative work, I asked Mr. Kanwar Amninder Singh what the matter was. He explained that the Registrar General and Registrar of Infrastructure from the Hon'ble High Court of Uttarakhand, Nainital, had informed me that a minor girl was working as a maid at the home of Mrs. Deepali Sharma, a Civil Judge in the District Judge Colony, and that she was being severely abused by Mrs. Deepali Sharma. Kanwar Amninder Singh also informed me that yesterday evening, at around 7:30 p.m., the girl who worked at Mrs. Deepali Sharma's home came to Kanwar Amninder Singh's residence and told him, "Uncle, I'm hungry, please feed me." He offered her food, and the girl told him not to tell her madam about this, or she would beat her.
(emphasis supplied by this Court).*

76. From a reading of the above, it is apparent that P.W.1 had informed PW3 that the girl was being severely abused, but P.W.1, in his deposition, states that he had only seen the girl from a distance, though and he does not speak about any injuries, even when the girl had come to his doorstep. He further does not depose about the threat of beating but P.W.3 deposes that P.W.1 informed him so.

77. In Para 9, P.W.1 deposes as under:-

*(9). Using his discretion, the Hon'ble District Judge directed that the girl be rescued and kept in a safe place. After this, a memo was also prepared on the spot in this regard. The girl was first rescued and brought to the rest room attached to the chamber of SSP Haridwar where sofas etc. were present and **there the girl Tanuja alias Tiruja was verbally questioned by the Hon'ble District Judge** and the girl told that she has been working at the house of Madam Mrs. Deepali Sharma for the last 3 years and she (Tanuja) is beaten and abused by Madam Mrs. Deepali Sharma, is not given adequate food and sometimes, food is not given for several days.*

78. From a reading of the above, it can be inferred that PW1 has deposed that the girl was verbally questioned by the District Judge, i.e. P.W.3, affirming that there is no written record of the statements made by P.W.2 and which is

admitted by P.W.3 and P.W.5. P.W.3 has deposed as under:-

8. Meanwhile, Rachita Juyal, ASP, began questioning the minor girl. Meanwhile, Mrs. Deepali Sharma arrived and objected, stating that no one should question the minor girl in her absence. We countered, stating that we would call her when she was needed. Upon arrival at the Senior Superintendent of Police's office, Mrs. Deepali Sharma explained that Kanwar Amninder Singh had been sent to Haridwar to sabotage her career, and that Kanwar Amninder Singh and Mr. Narendra Dutt, the Registrar General, were behind this. At the SSP's office, the girl complained that she was not given food, upon which she was first fed biscuits and tea. Subsequently, the minor, Kumari Tanuja, was sent to the Harmilap District Hospital, Haridwar, for a medical examination. The doctor conducted a medical examination, and she was placed in the custody of members of the Child Welfare Committee, Haridwar.

79. P.W.3 in Para 8 of his deposition has stated ".....I do not recall what Rachita Juyal told me when she inquired about the wounds on Ms. Tanuja's head and arms, as she had taken Ms. Tanuja to be questioned separately for counseling purposes. I did not question Ms. Tanuja at the Senior Superintendent of Police's office....."

80. Thus, P.W.3 controverts P.W.1 about having questioned the girl and these contradictions are in the examination-in-chief itself.

81. Now, with regard to availability of primary witnesses, who ought to have been examined and who have been ignored deliberately or otherwise, it is necessary to examine the evidence of P.W.1. In the cross-examination, in Para 14 and 15, he has categorically deposed that the 3-4 large trees and bamboo fencing prevented anyone from viewing the petitioner's house from his house, implying and

admitting thereby that he could not have seen the petitioner physically abusing the girl, but interestingly, he has nowhere stated that he has ever heard the girl cry out or scream in pain, which would have been a natural consequence and reaction of any child who "is being stabbed with the knife, inflicted burn injuries, hit on the head with the bronze statue etc.". This aspect assumes importance as P.W.1 admits in Para 36 and 37 of his cross-examination as under:-

"36. I told Anuj Kumar Sangal that I had seen the girl a few times, but I did not have any personal knowledge of whether she was being beaten or not. I had seen the girl a few times when I was driving in my car and I saw her standing near the gate of G-10. I didn't pay much heed to whether the girl was working or just standing around. I told her that I had heard about the girl being beaten. I had heard this from Class IV employees. The Class IV employees from whom I heard this were Mrs. Deepali Sharma's Peons; their names were Prahlad Singh and another, whose name I don't remember at this time.

(emphasis supplied)

Question: Did these two come to tell you?

Answer: In June 2017, Mrs. Deepali Sharma had a fight with the two Peons regarding her leave. Mrs. Deepali Sharma may have told me, and these two Peons also came to me, saying, "We don't want to work for Madam." I persuaded them to return to their duties, telling them to adjust and share duties among themselves. During that time, they also mentioned the girl being beaten, but I didn't take any action.

(emphasis supplied)

37. I did not find it necessary to inform the District Judge that the girl working at Deepali Sharma's house was being beaten up. I myself said that because the two Peons were very angry with Mrs. Deepali Sharma and I thought about my judicial officer that perhaps the Peons were deliberately speaking."

82. From the reading of the above, it is apparent that he was informed about the girl being beaten by the two Class IV employees attached to the residence of the petitioner and in fact, named one of them as Prahlad Singh and that this information is alleged to have been given to him in June, 2017 itself, despite that, he had never heard the girl screaming in pain. It is also interesting to note that he has

not deposed that he had seen the girl appearing sad or crying. Thus, the crucial fact that can be deduced from the above is that there was not one but two eye-witnesses to the alleged act of the petitioner beating the child, but for reasons best known, these eye-witnesses have neither been produced, nor examined by the Presenting Officer, nor did the Inquiry Officer deem it necessary to summon these 'eye-witnesses', despite they being named by P.W.1. In fact, P.W.3 in Para 14 of his cross-examination also recalls the minor girl naming Prahlad Singh as one of the employees in the house of the petitioner.

83. In Para 40, he furnishes the details of the other judicial officers, who were residing in the compound and one of them is ADJ Mr. Varun Kumar, who is said to have recorded the statement of the minor girl on 30.01.2018, i.e. after she was forcibly take away from the house of the petitioner.

84. If the said ADJ Varun Kumar was a resident of the compound, it can be safely presumed that he would be a potential witness.

85. In Para 41 of the cross-examination, he yet again reiterates the instance of the girl having come to his house and having spent 4-5 minutes with her, he does not speak of observed any injuries.

86. P.W.1 has deposed in Para 53 of his cross-examination as under:-

"53. On January 29, 2018, I went to the District Judge, Haridwar's chamber at around 10:30-10:45 AM. I received a call from the Registrar General at about 10.00 - 10:15 AM, and he instructed me to inform the District Judge. I do not know whether the District Judge received the call from the Registrar General. I received the letter from the Hon'ble High Court at around 1- 1:30 PM on January 29, 2018. Between 10:30-10:45 AM and 1- 1:30 PM, I visited my chamber once to sign some documents. The rest of the time, I remained in the District Judge's chamber. I do not remember for how long or at what time I was in my chamber. I was in my chamber for perhaps 10-15 minutes. I did not work in court that day. The District Judge had given me verbal instructions to stay with him. On January 29, 2018, I was to stay with the District Judge and go to rescue the girl. This is mentioned in the District Judge's Administrative Order No. 15 dated January 30, 2018. The written order was not issued on January 29, 2018; it was issued on January 30, 2018. On January 29, 2018, while I was in the District Judge's chamber, no other judicial officer came to the chamber. As far as I remember, the District Judge did not call any other judicial officer to his chamber during that time. The CJM at that time was Mr. Ashutosh Mishra."

87. If this statement is juxtaposed with Para16, 17, 18 of P.W.3's cross-examination, it is apparent that the District Judge is contradicting his subordinate, i.e. ADJ (P.W.1). In fact, in Para 20 of the cross-examination, P.W.3 nails and contradicts P.W.1, who in his deposition has denied any personal knowledge of the minor girl being used as a maid servant or being physically harmed. In fact, in Para20, he deposes that he was informed by P.W.1 at 10:15 AM itself that a minor girl is being kept by the petitioner as a maid servant and she was being abused and needed to be rescued and in the preceding sentence he admits that he received the fax and copy of the complaint at 2:36 PM afternoon only. In Para 21, it is apparent that the SSP was called by P.W.3 on the strength of the information given by P.W.1 at 10:15 AM.

This fact of having invited the police relying on the information given by P.W.1 is confirmed by P.W.3 in the answer recorded at Para 22. The conduct of P.W.1 and his deposition does not inspire confidence. On the one hand, in his deposition, he does not speak of having witnessed any injury or ill-treatment of the minor girl, but, in his statement to P.W.3 (the District Judge) made at 10:15 AM, P.W.1 has made a categorical statement that the girl was forced to work as a maid and was being physically abused by the petitioner.

88. Now, the pertinent question arises and the same begs an answer.

“Was the child on the date of rescue, a minor?”

89. Evidence in the form of school records, ossification test categorically demonstrate in no uncertain terms that the girl was not a minor in the sense she was not aged less than 14 years and in fact, the ossification test describes her as being aged about 17 years (Paper No.370/1). If that is so, was the alleged rescue justified in law? Probably this is the reason why no charge under Rule 3(4) was framed against the petitioner.

90. Another interesting fact is that a detailed perusal of the examination-in-chief of P.W.1, P.W.3, P.W.4, P.W.5, P.W.6 and P.W.7 does not reveal any deposition by any of the witnesses asserting the age of the girl as being less than 14

years. That apart, none of the witnesses speak of having seen the girl working as a maid servant prior to her having completed the age of 14 years. In the absence of such evidence, was the inquiry justified at all? It now becomes apparent why violation of Rules 3(1) and 3(2) have been invoked and it also becomes apparent as to why efforts have been made to have the wound certificate proved. Whether the physical assaults on the girl (assuming them to be true for the sake of argument) would amount to contravention of Rules 3(1) and 3 (2) of the Uttarakhand Government Servants Conduct Rules, 2002 which speak of a requirement to maintain integrity, devotion, behavior and conduct? In our considered opinion, when no charge under Rule 3(4) having been framed and as stated supra, no evidence having been let in demonstrating her employment as a maid servant before she completed the age of 14 years, the conclusions drawn are wholly perverse and unsustainable. Not a single witness has even whispered that they have witnessed the girl being employed as a maid servant before she completed the age of 14 years. Even the anonymous complainant does not allege such a fact, yet the Inquiry Officer has concluded in sub-para (13) of Paragraph 607 as under:-

"Mrs. Deepali Sharma was a Government Servant and a Judicial Officer and still she employed a girl Tanuja @Tiruja Dani as a domestic help, who was below 14 years of age at the time when in November, 2015, she was first kept for domestic work by Mrs. Deepali Sharma." The conclusion, in our considered opinion, is arbitrary, as none of the

witnesses have even whispered about the girl being kept as a domestic servant in 2015.

91. In Paragraph 608, it is concluded as under:-

"The Delinquent Officer Mrs. Deepali Sharma was at the relevant time employed as a Government Servant/ Judicial Officer and she was duty bound to maintain at all times absolute integrity and devotion to duty and at all times to conduct herself in accordance with the specific or implied orders of Government regulating behaviour and conduct. She was also duty bound to follow Rule 3(4) of the Uttarakhand Government Servants Conduct Rules, 2002 which provides "No Government servant will employ the children below the age of 14 years as domestic help". The Delinquent officer Mrs. Deepali Sharma violated Rule 3(1) and 3(2) Uttarakhand Government Servants Conduct Rules, 2002 by not maintaining the required integrity, devotion, behaviour and conduct, as was required from her being a Government Servant/ Judicial Officer."

92. The conclusion in Para 608 holding that the misconduct under Rules 3(1) and (2) of the Rules, 2002 stand proved because the delinquent officer has failed to follow Rule 3(4) is to state the least, perverse. As noted in the preceding paragraphs, no charge under Rule 3(4) has been levelled. In the absence of even a charge holding that such a misconduct is proved, is not only alien to service jurisprudence but also absolutely vitiates the finding that the charge under Rules 3(1) and 3(2) stand proved.

93. The conclusion is vitiated, as no shred of evidence is placed either before the Inquiry Officer, nor deposed by any of the witnesses in the course of the inquiry. The conclusion is vitiated by perversity as the Inquiry Officer is neither the employer/ disciplinary authority, nor the *inquiry officer* has framed the charge alleging misconduct in terms of Rule 3(4). It is settled law that conjectures and surmises do not take the place of evidence and are not proof of a fact.

94. That apart, the reasons assigned to cast aside the numerous rulings relied upon by the petitioner reveals a predetermination and a bent of mind to somehow reject the rulings on flimsy and presumptuous grounds.

95. At this stage, it is necessary to examine the admissions and depositions by various witnesses which clearly make out a case in favour of the petitioner and while so doing, we are in fact not even relying upon the evidence of D.W.3- the petitioner, whose 48 paragraphs examination-in-chief has been met with the 222 questions in cross-examination resulting in not even a single admission adverse to the case canvassed by the petitioner.

96. We rely on the admissions by the 'prosecution witnesses'.

P.W.1 (Para 40) *It is correct to say that other judicial officers, Mr. Varun Kumar, Mr. Yogesh Kumar Gupta, Mrs. Payal Singh, and Ms. Rithika Semwal, also lived opposite my and Deepali Sharma's residences.*

Para 51. Question: The girl was unwell, was wearing minimal clothing during the winter, was shivering and hungry. Why it was not considered appropriate to rescue her at night?

Answer: The girl was not shivering in front of me; she was certainly not wearing warm clothes. I was merely following the Registrar General's instructions. As I have already explained above, why the girl was not rescued at night.

Question: Were you prohibited by the Registrar General from rescuing the girl at night, or was this your own decision?

Answer: I was unable to make the decision myself. The Registrar General, after considering all aspects, requested that I keep this matter confidential for the time being, and that further orders would be issued by him on January 29, 2018.

Para 59. I did not tell the District Judge that I should not be included in the team because I had prior knowledge of the case. I stated that I followed the instructions from the District Judge. It is correct to say that there was no female Judicial Officer in this team. I stated that the police team was led by a female officer, Ms. Rachita Juyal. At that time, apart from Deepali Sharma, there were between three to five female Judicial Officers posted at the District Court, Haridwar. Before

going to the scene, I read the order from the Hon'ble High Court, which the District Judge had read to me. It is correct to say that the order did not specifically directed that the police shall be taken along. Our visit to the scene and recovery of the girl was an administrative task.

Para 60. There was no specific order from the Hon'ble High Court that the girl be recovered and handed over. He himself stated that the Hon'ble High Court, in the letter in question, directed the police to verify the statements in the complaint/e-mail on the spot and take legal/legal action, and the decision to take legal action on the spot was left to the discretion of the Hon'ble District Judge.

Para 62. After the girl's recovery, the police produced her before the Child Welfare Committee, and the Child Welfare Committee sent her to Shri Ram Ashram. The Chairperson of the Child Welfare Committee and a female member were present at the hospital during the girl's medical examination, as the Child Welfare Committee's Probation Officer was part of the recovery team. The police likely produced the girl before the Child Welfare Committee at the hospital. I recall that the girl was produced before the Child Welfare Committee at the hospital.

Question: Under what provision was the girl sent to the Shri Ram Ashram by the Child Welfare Committee?

Answer: The Shri Ram Ashram is a registered home, and she was sent to the Shri Ram Ashram for the girl's safety and well-being. I do not recall under which specific provision of the Juvenile Justice Act, 2015, the Child Welfare Committee sent the girl to the Shri Ram Ashram.

Para 63. Question: Did you, as the District Judge in-charge, write a letter on February 19, 2018, requesting the filing a case against Deepali Sharma?

Answer: As the District Judge in-charge, I wrote a letter to the SSP, Haridwar, but I do not recall whether I requested the filing of a criminal case against Deepali Sharma.

64. Question: Did you state in that letter that necessary action shall be taken and I should be informed immediately, and the letter number was 180/XV-2018?

Answer: I do not recall all the statements in the letter in question at this stage.

65. My statements under Section 161 of the CrPC were recorded in the criminal case filed against Deepali Sharma. I do not recall whether I stated in those statements that I should be informed immediately and that action should be taken immediately. The witness was shown his statement under Section 161 CrPC, which is as follows:

"Thereafter, on 19.2.2018, as the District Judge in charge, I wrote a letter No. 180/XV-2018 to the Senior Superintendent of Police, Haridwar, requesting him to take necessary action in light of the letter sent by the Hon'ble High Court and inform him immediately of the action taken. Subsequently, a case was filed in this matter." The witness replied that this letter was written in accordance with the language of the above letter, in light of the letter sent by the Hon'ble High Court.

66. Question: Did the Hon'ble High Court direct you to write such a letter to the SSP, Haridwar?

Answer: The Hon'ble Uttarakhand High Court sent a letter stating that, in light of certain decisions of the Hon'ble Supreme Court, the police are competent to take legal action in the case in question. It was in light of the Hon'ble High Court's letter that I wrote the letter to the SSP. A copy of the letter in question from the Hon'ble High Court was also forwarded to the District Judge, Haridwar.

Question: Is it true that you wrote the above letter to the SSP outside your jurisdiction, and that you had no instructions to write such a letter?

Answer: This statement is incorrect.

67. I do not remember whether the promotion proceedings for some of Deepali Sharma's staff were underway at that time. I do not recall whether Deepali Sharma wrote any letters to the Hon'ble High

Court regarding her promotion and whether I, as the District Judge in-charge, forwarded them to the Hon'ble High Court. I do not recall whether Deepali Sharma wrote any letter to the Hon'ble High Court on 20.1.2018 through the District Judge, Haridwar, regarding her promotion and whether I, as the District Judge in-charge, forwarded them to the Hon'ble High Court, as this is an old matter. It has been a long time, and I do not remember whether I was serving as the District Judge in-charge on 20.1.2018. It has been a long time, so I do not remember whether I read the letter sent by Deepali Sharma as the acting District Judge.

Question: We are asking whether you, as the acting District Judge, read the letter sent by Deepali Sharma to the Hon'ble High Court on January 20, 2018, in which Deepali Sharma detailed the discrepancies in her promotion.

Answer: It is surprising that specific statements are being made regarding a matter of my personal knowledge. I have already stated that due to the passage of time, I do not remember whether I read the above letter on January 20, 2018.

68. Question: Whose mobile number is 9897787999?

Answer: This is my wife's mobile number.

69. I don't know if my mother or my wife knew that the girl lived in Deepali Sharma's house.

Question: Does the anonymous email/complaint sent to the Hon'ble High Court on January 10, 2018, at 9:36 p.m., relate to you, your wife, or any member of your family?

Answer: These allegations are completely false, baseless, and deliberately made. The email in question had no connection to me or any member of my family.

71. On the day of the incident, I was accompanied by Peons named Mr. Ramkaran and Mr. Sheeshpal in my court.

75. Question: Did you sit in your court chamber till late night and call the CWC member and the Juvenile Court's APO and repeatedly give instructions regarding that girl child that she should be kept in the shelter home for as long as possible?

Answer: It is wrong to say that I used to sit in my court chamber till late night and call the CWC member and the Juvenile Court's APO and repeatedly give instructions regarding that girl child that she should be kept in the shelter home for as long as possible.

97. If the above answers are to be summarized, one can safely infer that neither P.W.1 nor any of his family members have witnessed the alleged abuse, beating of the minor girl. Secondly, it can further be inferred that the petitioner and P.W.1 did not share a cordial relationship. Thirdly, apart from petitioner and P.W.1, four other judicial officers were residing in the same compound and in fact, one Ms. Ritika Semwal, Judicial Magistrate/ Chairperson Juvenile Justice Board, was residing right opposite the petitioner's house. Fourthly, it can be inferred that there is no

corroboration of P.W.1's claim that the minor child visited his house on 28.01.2018 at 7:30 PM, despite P.W.2 the very girl refuting the claim. In Para 41, he claims that the peon Ramkaran was at home along with him, but he is not examined to prove such critical claim. Fifthly, it can be safely inferred that the girl child was used to the Haridwar cold. This we say so in view of the admission in Para 51 where P.W.1 has admitted that despite the time of the visit being 7:30 PM in the evening, and despite the girl not wearing warm clothes, she was not shivering. Sixthly, it can be inferred that the decision to forcibly remove the girl was taken in the morning itself, even before the directions from the High Court could be received. Seventhly, it can be safely concluded that there was no direction by the High Court to engage the police and that too, officers of the rank of SSP and ASP and armed battalion for the purpose of alleged 'rescue'. Nextly, it has come out that no female judicial officer was accompanying the District Judge during his visit to the house of another lady judicial officer, despite five other lady judicial officers being posted in the said Court. Nextly, it is admitted by P.W.1 that there was no order to recover and handover the child. A reading of Para 62 would demonstrate that CWC proceedings were conducted in the hospital itself and the child was sent to an Ashram and not to a registered home. Despite Question 62, no material has been placed to demonstrate that the Ashram is registered

under the Act of 2015 as mandated under Section 41, nor does the order appear to be in compliance with Section 37. The answers in Questions 63, 64, 65 and 66 would give a picture that P.W.1's actions reveal something more than discharge of official duties. It has been elicited that the mobile number used to generate the mail ID belongs to P.W.1's wife. The denial of P.W.1 to Question 75 is contradicted by P.W.4 by his admissions recorded in Para 19, 20 and 22.

98. Reading of the above paragraphs would clearly show that P.W.1 was more than interested in the case which appears to be beyond the call of the duty.

99. We now proceed to appreciate the evidence of P.W.2.

Para 3. On January 28, 2018, I did not go anywhere in the neighborhood from Mrs. Deepali Sharma's house. On January 29, 2018, our neighbors, A.D.J. Uncle and Rachita Madam, and several other people I did not know, came to Mrs. Deepali Sharma's house. When they arrived, they asked me what had happened. I told them that nothing had happened to me. I was living very well there. They were there with cameras. Rachita Madam was holding my hand, so I did not know what had happened.

5. That day, I was taken from Madam's house to the police office. The ASP, Rachita Madam, the ADJ uncle, and several others were present. They had my father speak to me. I told him that Madam hadn't done anything to me, but they had brought me here, wondering what I should do. Mrs. Deepali Madam had come there, but as soon as she arrived, Rachita Madam had me moved to another room. She gave me biscuits to eat. After eating the biscuits, I was taken to the hospital. There, I was asked how I got these injuries. I explained that I was playing with Ananya Didi and falling from a guava tree. I don't know how to ride a bicycle. I was learning to ride it and that's when I got injured. The doctor there examined my injuries and prepared the papers. At that time, I had a scratch on my head because something had fallen on it before. After that, I was taken to the Ashram.

6. Rachita Madam recorded my statement in the court. I didn't say anything there; whatever I had to say, I had said it at Madam's house. Mr. Varun recorded my statement. Rachita Madam was also present when Varun Sir was recording it, and she told me everything. I

even signed the statement. I myself stated that I had asked Rachita Madam to read it for me. Rachita Madam refused and asked me to sign.

7. After giving my statement, I went straight to the Ashram, where I stayed for three and a half months.

8. During my stay with Mrs. Deepali Sharma in Haridwar, Mrs. Deepali Sharma's behavior toward me was fair. I was not assaulted.

9. At this stage, the prosecution's application was accepted and the prosecution was allowed to cross-examine the witness.

10. I studied in two schools in Haridwar. In one school, the teacher enrolled me in Class 8 at the Government Primary School, Roshanabad, where I secured first place. The school was open until Class 7, after which the teacher enrolled me in another school. I told the teacher that I would go to school occasionally, and she said, "Beta (child), you'll go to school every day." I said this because the school was far away, and I told her that I would study at home. I was taught by Ananya Didi (Mrs. Deepali Sharma's daughter), her mother also taught, and on holidays, the teacher also taught. Since this happened two months before the exam, I was unable to appear for the exam.

11. I do not know Ritika Semwal Madam. I never went to Ritika Semwal Madam's place to ask for food. It is incorrect to say that I went to Ritika Semwal Madam's place to ask for food or that I ate there, and today I am denying this. I used to get a full meal at Madam Mrs. Deepali Sharma's place. I could have taken food from her kitchen.

12. I never went to Mr. Kanwar Amninder Singh's place to ask for food. It is incorrect to say that I went to Kanwar Amninder Singh's place on January 28, 2018 to ask for food or that I even ate there.

13. On the day of the incident, I had scratches on my hand and was riding a bicycle. I fell while riding, injuring the left side of my forehead. The scratches on my hand were caused by falling from a guava tree. The burn mark on my knee is from my childhood. My uncle's son and I were very mischievous as children. It was my brother who shook the wood from the fireplace, causing the water canister that was heating on the fireplace to fall on me, burning my knee. This incident occurred at my home. The fresh injury on my head was from the day of the incident, when a piece of wood fell on me while I was taking a bath in the bathroom. The wood had fallen from a hole in the bathroom.

14. At this stage, the witness was shown the CD from the day of the incident on the Investigating Officer's official laptop, and the second folder, titled MAH00184.in.MP4, was shown from 2:02:12 to 3:25:00. He was asked how the injury on the back of his neck was caused. The witness stated that the scratches on the back of his neck were caused by scratching. She stated that she had never been beaten.

15. My feet were uninjured. There was nothing wrong with them, nor was there any pain. My feet were swollen at that time because I walked without slippers. Madam used to scold me for this, telling me to wear slippers. It is wrong to say that Madam, Mrs. Deepali Sharma, took away my slippers. It is also wrong to say that my feet were swollen due to the cold.

16. I used to sleep in Madam Mrs. Deepali Sharma's room, which had a divan bed. I myself said that I used to sleep on the floor because I would fall down when I turned on the divan, so I slept on the floor. Madam would give me a heater when I felt cold. I was used to sleeping on the floor even in my own home. I had a mat, mattress, and sheet to cover myself with, a quilt in winter, and a blanket in summer. It is wrong to say that I was not given a mattress to sleep on and that I used to sleep on the floor covered with a sheet. I myself said that I was given a mattress.

17. I was given all kinds of clothes to wear, like 3-4 shawls, T-shirts, lowers, etc. I also had jeans and warm clothes, which included inners, sweaters, socks, etc. I was given many clothes, I don't remember all of them.

18: The witness was shown the folder named MAH00184.in.MP4 from 9:45 to 10:03 and was asked if these were the

clothes he had? The witness said that there were other clothes as well, these were the clothes he had washed.

19. On the day of the incident, January 29, 2018, I was wearing a frock and red jeans. I didn't feel cold in these clothes. It's correct to say that everyone in this video is wearing warm clothes. I myself stated that I'm from the mountains and I'm not used to wearing sweaters, etc., which is why Madam scolded me. It's incorrect to say that I didn't have warm clothes.

20. While I was staying with Mrs. Deepali Sharma in Haridwar, I visited my home two or three times. My mother visited twice, and my father kept visiting. Whenever I spoke to Madam, she would have me talk to her at my home. It's incorrect to say that Mrs. Deepali Sharma wouldn't let me go to her home or wouldn't let me talk to my parents.

21. I didn't do any work at Madam's house. I only did my own work, never did any household chores; the Peon did all the housework. Madam never paid me any money. Madam never paid my father either. It is wrong to say that I did all the housework for Madam. It is wrong to say that I never went to school because I was tired doing housework. The girl herself said that she did not tell anything, that Rachita Madam had told her not to tell these things or her parents would go to jail.

22. It is correct to say that I have bruises on my left hand. These bruises were caused by playing. It is incorrect to say that these bruises were caused by Madam hitting me with a stick and a spade. It is incorrect to say that the bruises on my head were caused by Madam hitting me with a brass statue.

26. It is wrong to say that I am not telling the truth because of Madam's instructions. She herself stated that I met Madam only today after that.

29. I don't know Home Guard, Bisht. I didn't know Madam (Mrs. Deepali Sharma) before she moved to her Haldwani residence. My father didn't know Madam (Mrs. Deepali Sharma) before. During Mrs. Deepali Sharma's posting in Haldwani, she never visited our house. She herself stated that if she didn't know me, why would she come? Mrs. Deepali Sharma was not bearing the education expenses of anyone other than me in Haridwar who was not from her family.

30. Nirmala is my sister; she is married. It is incorrect to say that Home Guard Bisht took me and Nirmala to Mrs. Deepali Sharma's house for household chores. It is incorrect to say that at Mrs. Deepali Sharma's house, I did all the household work, including sweeping, mopping, and washing utensils, alone. She herself said, "Why would I do that when there were Peons in the house?"

31. Mrs. Deepali Sharma had flower pots in her house. There must have been 100-150. The Peon used to clean and water those pots. It is incorrect to say that she used to wash those pots and water the plants. Mrs. Deepali Sharma's house in Haridwar had four bathrooms, three inside and one outside. She cleaned her own bathroom, and the Peon did the rest. There were some flower beds in the back of Mrs. Deepali Sharma's residence, but they were untouched. It is wrong to say that vegetables were grown in those flower beds and that I was busy working. It is completely wrong to say that when Mrs. Deepali Sharma got angry with me, she made me work in the flower beds all night.

32. CCTV cameras were installed in Mrs. Deepali Sharma's house. I myself stated that they were not installed for me. CCTV cameras were also installed in the kitchen of Mrs. Deepali Sharma's residence. It is wrong to say that because of the CCTV cameras installed in the kitchen, I could not take out my food myself. It is also wrong to say that for this reason I went to Ms. Rithika Semwal and Mr. Kanwar Amarinder Singh's houses to ask for food. It is also wrong to say that I did not get enough food at Mrs. Deepali Sharma's house and that Mrs. Deepali Sharma beat me up if I tried to take food on my own. She herself said, "How would I have survived if I hadn't had food? It is completely false to say that Mrs. Deepali Sharma threatened me that she would strangle me to death, bury me in a pit behind the field, and

that if my parents asked about me, she would tell them that she (Tiruja Dani alias Tanuja) had run away."

33. It was sunny on 29.01.2018. When I was taken from Mrs. Deepali Sharma's house, I did not feel cold. Despite the sunshine, it was not cold.

At this stage, the prosecution filed a request to submit a form obtained from the Meteorological Department showing the temperature in Haridwar from 26.01.2018 to 31.01.2018, which was rejected by passing a detailed order on the order sheet. Furthermore, the prosecution filed another request to include a copy of the order dated 22.06.2018 regarding the delivery of witness Tiruja Dani alias Tanuja on the records, which was accepted by passing a detailed order sheet.

34- It is false to say that it was extremely cold on 29.01.2018, but I did not wear warm clothes because I was not allowed to wear them.

35- After being taken from Mrs. Deepali Sharma's home, I was living in an orphanage. I stayed there for approximately five and a half to seven months. I was not living there of my own free will. I did not put any conditions before the CWC Haridwar when leaving the ashram for my home. It is false to say that I told the CWC Haridwar that I would return home only if my parents did not pressure me. I myself stated that I went there at night, my parents were not there, and no member of the CWC Haridwar was present. I went from the Ashram to the police station with the police constable who was accompanying me, then from the station to the station, and then from the station to Haldwani by train at 2:00 am. It is absolutely wrong to say that my father had pressurized me to stay at Mrs. Deepali Sharma's house and hence I had put this condition before CWC Haridwar.

36- Mrs. Deepali Sharma used to treat my injuries. Once, when I fell from a bicycle, I suffered a serious injury to my left hand. Mrs. Deepali Sharma took me to a doctor. It is incorrect to suggest that this injury was caused by a knife attack, not a fall from a bicycle. She herself stated that if she had stabbed me with a knife, my hand would have been cut. It is incorrect to suggest that Mrs. Deepali Sharma stabbed me in the hand and neck, causing the injuries. She herself stated that if she had stabbed me in the neck, I would have died. It is incorrect to suggest that the injury mark on my back behind my neck was not caused by itching, but rather by Mrs. Deepali Sharma's beating. She herself stated that her nails were long at the time, and there were rashes on my back. You can see for yourself that those are nail marks. I suffered a single injury from a wooden stick falling on my head. On January 29, 2018, there were no other fresh injuries on my head or anywhere else. It is incorrect to say that on January 29, 2018, I had six fresh injuries on my head. It is incorrect to say that the injury on my head was caused by a blow, not a falling log. There were no fresh injuries anywhere else except my head. It is incorrect to say that I had fresh injuries above my left eye and ear.

37. While staying at Mrs. Deepali Sharma's residence in Haridwar, I spoke with my father twice a month, and so on, monthly. I do not currently remember my father's number; it has been disconnected for some time. It is incorrect to say that I spoke with my parents only three or four times during this period. I used to communicate on Mrs. Deepali Sharma's phone, landline, or whatever Mrs. Deepali Sharma arranged for me to communicate with. I visited my home two or three times during this period. I myself stated that my parents frequently visited. It is wrong to say that I only went home once during this period. Mrs. Deepali Sharma gave me 100-150 rupees for food on my way home, telling me to take some for my parents. My father used to pick me up. I used to go home with him.

40. On January 29, 2018, I did not want to leave Mrs. Deepali Sharma's house. The police forcibly took me away. I even refused to tell them where they were taking me. They still took me away, telling me that my parents were coming to pick me up tomorrow.

41. When the police and the District Judge came to pick me up, I did not complain about Mrs. Deepali Sharma. I showed them all my warm clothes and mattresses. I played with Mrs. Deepali Sharma's children, Annaya Sharma and Samrat, and took photos while playing with them. Once, I even made a video of Mrs. Deepali Sharma feeding her son, Samrat. I ate the same food that Mrs. Deepali Sharma ate with her family. Mrs. Deepali Sharma gave me all the reading and writing books and other supplies. Mrs. Deepali Sharma never restricted my movement. I could go wherever I wanted. Whenever Mrs. Deepali Sharma went to a restaurant with her family for dinner, she would take me along and feed me. I had no complaints against Mrs. Deepali Sharma. Whenever Mrs. Deepali Sharma went to Dehradun or anywhere else, she would take me along.

42. The police took me from Mrs. Deepali Sharma's house to the SSP office and made me talk to my parents there and told me that my parents would be coming, but after that, my parents never came, nor did they let me talk to them.

43. When they took me to the SSP office, Rachita Madam, Sardar Uncle, District Judge Sir, several police officers, SSP Sir, and CO Uncle were present. They then took me to the hospital. All these people had come to the hospital. I did not show or tell about any of my injuries in the hospital, Rachita madam showed them and even then I had said that these injuries were caused by playing but Rachita madam had said that these injuries were caused by Mrs. Deepali Sharma hitting me. Apart from Rachita madam, Sardar uncle was also present in the hospital, he was also showing injuries and asking the doctor to write down these injuries also. I had seen the doctor. I do not know his age but he was old. Very old, he was wearing glasses and the light was also dim.

44. After the hospital, I went straight to the ashram. Rachita madam had taken me to the Ashram and there were policemen and some people with me, I do not remember who they were.

45. Rachita Madam visited me at the ashram every month, and Sardar Uncle also visited once. I asked Rachita Madam and Sardar Uncle to let me talk to my parents, but they refused. Two police constables stayed with me at the Ashram, and they kept a constant watch on me. When Sardar Ji came to visit me, he told me that I couldn't go home until Mrs. Deepali Sharma was sent to jail. He himself said that ASP Madam Rachita had told me not to go outside the gate, as she was very cunning and would pick me up from anywhere. These people wouldn't even let me go outside the gate.

46. I also had an X-ray done to verify my age. The X-ray was done by the CO Sir. I also gave a statement before the Magistrate. The CO Sir gave me a paper and said, "Kid, you have to memorize and tell me this." If you don't tell me, your parents could go to jail, and you'll never be able to leave the Ashram. It was out of this fear that I told the Magistrate what was written on that paper. I myself stated that Sardar Uncle was outside the curtains when my statement was being recorded, and he kept coming into the room.

47. Before my statement was recorded before the Magistrate, I was taken to Sardar Uncle's chamber. Even there, I was told that I had to say only what was written on the paper. When these things were said in Sardar's chamber, Rachita Madam, CO Sir, Sardar Sir, Ranjana Sharma Madam from Bal Vikas, and the two female constables who lived with me were also present. Rachita Madam, Sardar Sir, and CO Sir were present when my statement was being recorded before the Magistrate. I myself stated that they were outside the room at the time. Of these, Sardar Uncle kept coming into the room, while the other two, Rachita Madam and the Chief Executive Officer, were outside. When I went to Sardar Ji's chamber, the District Judge hadn't arrived.

48. I didn't want to stay in the Ashram; I wanted to go home, and I repeatedly stated this from the beginning.

49. Two months were left for my exam when I was taken from Mrs. Deepali Sharma's house, kept in the ashram, and wasn't even

allowed to take the exam. After leaving the Ashram, I couldn't study because my admission certificate hadn't arrived, and the Chief Executive Officer had told me not to give the certificate. I herself stated that the denial of the certificate was told to me by the Headmistress of Adarsh Shishu Niketan, Dhirwali Jwalapur, Haridwar. The Chief Executive I mentioned above was Manoj Katyal. A month or two after coming out of the Ashram, I came to Adarsh Shishu Niketan, Haridwar with my uncle where the headmistress told me the above thing.

50. My parents came to pick me up at the ashram. While leaving, they were involved in an accident. My mother broke her arm and required 16 stitches on her head. My father suffered internal injuries and a broken knee. While I was at the ashram, I knew my parents had come to pick me up, but the ashram staff wouldn't let me go. My parents visited me several times, but they weren't allowed to see me and were turned away at the gate. My father told me this when I returned home.

51. The headmistress of Adarsh Shishu Niketan, Haridwar, told me to write to the High Court if I needed a TC. My father then wrote to the High Court and the District Judge, Haridwar, and I was granted my TC, which is why I was able to attend school this year.

53. At this stage, the witness was shown a copy of the case CD/DVD of FIR No. 58/2018, played on the investigating officer's official laptop, and was asked, "In this, you are seen wearing a cloth on your head. Why did you wear a cloth on your head?" The witness replied, "I had just washed my head at that time, and that's why I had the cloth on."

55. The witness was shown footage of the above video, MAH00184.MP4, at 2:18 PM, in which Rachita is pointing to the witness's head. The witness was asked why she was showing her hair with it open. The witness replied that a piece of wood had fallen on her head. When she went to take a bath, her head was itching and she scratched it. They thought that Mrs. Deepali Sharma had hit her. When Rachita Madam was taking her away, she was telling her that Mrs. Deepali Sharma had hit her.

57. When I was being examined at the hospital, Rachita Madam was present; there was no female doctor. When my clothes were lifted, only Rachita Madam was present. She marked the same injury that I had described earlier.

58. The witness was shown his medical examination report dated 05:55 PM, 29.01.2018, which is paper number 53 and 52 in the file sent by the Hon'ble High Court, injury number 19, which states "Old burn mark 12 cm X 9 cm left side back of chest." He was asked if there was a 12 cm X 9 cm burn mark on his back. The witness replied that there was none. He himself said that he had asked his mother about this injury and she had examined it and said that there were none. It is correct to say that even though there were no injuries on his body, the doctor may have shown 20 injuries on Rachita Madam's insistence.

59. When Sardar Uncle came to meet me at the ashram, his wife and child were also with him. His car had come in through the gate. He himself said that I was in the room when he came in. When he was leaving, I was outside in the courtyard with the children and two female constables who always accompanied me. I saw his car then.

60. I was not allowed to meet my parents. Sardar Uncle, CO Sir, and Rachita Madam would write down instructions on paper regarding my statement to be recorded before the magistrate. I protested against this at the time. I myself said that these people did not even inform me about my parents' arrival, even though they had tried to meet me several times.

61. It is true that I was used as a pawn in the conspiracy against Mrs. Deepali Sharma, and my education was ruined/affected. I even asked CO Sir to allow me to take the exam. If they had wanted, they could have allowed me to take the exam.

62. It is correct to say that Mrs. Deepali Sharma told me that she would keep me in her home, educate me, and make me successful.

She would make me capable of getting a job and standing on my own feet. It is correct to say that everything in Mrs. Deepali Sharma's house, whether jewelry, money, or other belongings, was always kept open in front of me without locks. It is also correct to say that Mrs. Deepali Sharma trusted me as much as she trusted her daughter.

100. From the above, it is apparent that a six paragraph examination-in-chief by the Presenting Officer has resulted in a 55 question bombardment by way of cross-examination. Despite the young child being subjected to such detailed searching and exhaustive examination, not a single admission has been elicited which would cast a cloud or create a doubt in the mind of any prudent person regarding the veracity and sanctity of her deposition. The presence of armed policemen stands confirmed, the visits by P.W.1 and P.W.5 to the place where she was forcibly kept stands proved, as neither P.W.1 nor P.W.5 produced any material to controvert the claims, which could have been easily done by producing the CCTV footages installed in the Ashram, yet the Inquiry Officer has simply brushed aside the evidence of P.W.2 *in toto* with her single line conclusion that she has been bought over. It is pertinent to note that the child has been examined as a witness by the Presenting Officer on behalf of the disciplinary authority/prosecution and has been treated as a hostile witness by the Inquiry Officer and the Presenting Officer has been permitted to cross-examine the witness. The respondents have not placed any material whatsoever to controvert even any one of the assertions made by the girl in the course of her cross-examination. In fact, on two dates of

cross-examination, i.e. 18.07.2018 and 25.07.2018, the Question Nos.26 and 39 by the Presenting Officer suggesting that she is deposing false statements under the influence of the petitioner have been categorically denied. In fact, in Para 39, she has volunteered to state that she had never met the petitioner, after she had been forcibly removed on 29.01.2018, i.e. a gap of almost a year and a half. Even this categorical assertion has not been controverted, but the I.O. would go to conclude that this witness has been won over. The issue of the witness being won over is a question of fact and the onus was on the Presenting Officer and the Department to demonstrate as to how the witness has been won over. There is not even a suggestion suggesting any manner of influence or even an act which could be construed as sufficient enough for the petitioner to hold sway over the witness. Mere suggestions without there being an appropriate material to demonstrate the 'fact' would not enable the I.O. to draw a conclusion that a fact has been proved. The I.O. has completely eschewed P.W.2 the girl, D.W.2- the father of the girl and D.W.3-the petitioner from consideration rendering the conclusions drawn as arbitrary and whimsical.

101. The girl has categorically denied having visited P.W.1's house. The girl evidence would show that her answers given in the SSP's office to P.W.5 were not recorded. It would go to show that when the statement attributed to

her and said to have been recorded by Sri Varun, ADJ by way of handwriting were in the presence of P.W.5 and the statement was not read over to her and she was directed to affix her signature. That she was not assaulted by the petitioner and she had undergone education in Class 8 in Govt. Primary School, Roshanabad, where she secure Ist place and her admission to another school in Class 9th; that the scratches and the injury on the left forehead were on account of falling from the bicycle while attempting to learn to ride a bicycle. The other scratches on hand were on account of falling from the guava tree. The presence of guava tree is admitted by P.W.1. The other injury on the knee is stated to be from her childhood and the manner in which it happened is also explained. The injury on the back has also been explained as having occurred on account of scratching and it is again reiterated by the child that she was never beaten. It has been categorically asserted by the child that as she was hailing from the mountains, she was not affected by the cold of Haridwar, which is in the plains; that she has affirmed that a mattress, quilt and a blanket in summer and all kinds of clothes were given to her.

102. In fact, in Para 21 she has asserted that she never did any household work and all the household work has been done by the peons and has also asserted of herself going to the school. She also recalls the threat given by P.W.5, a

Senior Police Officer, who threatened that her parents would go to the jail if she reveals the truth. That her father did not face any case of any nature which would require him to go jail and she has also volunteered in Question 26 that she was meeting the petitioner today only, i.e. on 18.07.2019, i.e. after she was taken away on 29.01.2018. This is critical as no material to controvert the same has been placed by the respondent to even suggest that there was an occasion for the petitioner to exert any influence over the child. Despite such categorical assertion remaining on record, the conclusion of the I.O. that witness has been won over to state the least is absolutely perverse and the conclusion is also in the teeth of the principles of natural justice. In fact, her assertion that the peons were doing all the household work has been reiterated by her again in her answer to Question Nos.30 and 31. In fact, the child in her answer to Question No.32, as recorded in Para 32, makes a mockery of the allegation that she was not given food and she was starved with. ".....How would I survive if I hadn't had food....." In Para 33, she has asserted that weather conditions were sunny on 29.01.2018 and she did not feel cold on 29.01.2018. Even this assertion has not been controverted by any of the witnesses. The suggestion to the contrary is denied in Para 34. The answers recorded in Para 35 and 36 would clearly demonstrate unhappiness of child while at the Ashram

and in Para 36, the witness literally mocks the prosecution and makes a mockery of the allegation by the prosecution that the injury was caused by “knife attack” and not from the fall of the bicycle. She answers it “.....If she had stabbed me with a knife, my hand would have been cut.....” “....If she stabbed in the neck, I would have died.....”. In Para 37, 38 and 39, she has denied that she was deposing false at the behest of her father. In Para 40, she details that she was forcibly taken away. In Para 41, she details as to how she was treated by the petitioner and that she was treated as a family member. In Para 43, she states that she did not state about the injuries to the doctor, implying that no questions was posed by the doctor and that the doctor was acting under the instruction of P.W.5. That doctor was a very old person wearing glasses and he was examining her in the dim light. In Para 45, she indicts P.W.1 and P.W.5 by stating that P.W.5 used to visit her every month and that two police constables were deputed in the Ashram to keep a constant watch on her. That P.W.1 stated that he she would not be able to go home till the petitioner was sent to the jail.

103. Though, such serious allegations are levelled by the child, yet all this has been conveniently ignored. In fact, the child being a minor was required to be dealt with by the District Child Protection Unit in terms of Section 37 and 107 of the JJ Act. In Para 46, she recalls the threat given to her

by the police officer stating her parent would go to jail and she will never be able to leave the Ashram, if she does not make the statement as jotted down by the C.O. That the statements made by her to the Magistrate were out of fear generated by the threat. She further state that P.W.1 was standing beside the curtains and coming to the courtroom. The further deposition in Para 47 is even more demeaning. In Para 48, she has categorically expressed unhappiness with the fact that she was made to remain in the Ashram.

104. It is pertinent to appreciate the conclusion of the I.O. that she was staying happily in the Ashram. Such a conclusion, despite such a statement made by the witness that too, in the face of the I.O., leaves us wondering. In fact, the allegations in Para 49 demonstrate a complete violation of the scope and ambit of the JJ Act. The demeaning allegation in Para 50 and 51, all are indicative of the fact that there is more to it than meets the eye. In Para 58, she admits the suggestion that despite there not being many injuries, the doctor has recorded 20 injuries and the said injuries have been recorded on the insistence of P.W.5, the ASP. In Para 59, she has deposed that P.W.1 visited the Ashram in his official car along with his wife and child. Even this assertion has not been controverted by producing the CCTV footage of the cameras installed in the Ashram after the girl was admitted there. Reading of Para 60 would show that the

statements attributed to her were actually those written down by P.W.1 and P.W.5. Even this categorical assertion remains on record but for reasons best known have been completely ignored by the I.O.

105. From the above, one can safely conclude that appreciation of P.W.2's evidence is vitiated by perversity and the conclusion that this witness is won over is not supported by even a shred of evidence. In fact, there is not even a suggestion put to the minor girl that she has been engaged as a maid servant from 2015. If that be so, we are left wondering as to what material evidence or material fact was placed before the I.O. to demonstrate or even allege that the child has been engaged as a maid servant since 2015. Probably the statement of the child that she has been staying with the petitioner for the past 2½ years has been twisted around by the I.O. and, this alone would suffice to render the finding perverse and arbitrary.

106. We now proceed to appreciate the evidence tendered by P.W.4, who was working as Probation Officer and who was called by the SSP Haridwar. In Para 2, he has deposed as under:-

2. Afterward, at around 2:45-3:00, the entire team arrived at Mrs. Deepali Sharma's residence with the SSP. We were accompanied by the District Judge of Haridwar, Mr. Amninder Singh, Magistrate, Rachita Juyal, ASP, and the SSP. The team was fully staffed, including constables and other personnel.

107. In Para 3, he says a body bore signs of old and new injuries. In the same breath, he deposes that the girl was wearing a frock and legging. If that was so, the statement that body bore injuries appears to be unbelievable. If the body was covered by frock and leggings, then the question is how did he observe the injuries? Be that as it may, in Para 5, he deposes that the child informed him that she was enrolled in a school and she attended school. In Para 6, she identifies the video recordings. In Para 7, he states that the victim was made to speak to the father. That the victim was also questioned and that the victim, in her statement, denied that she was being beaten and deprived of food. He further claims that the girl herself stated that it is the police job to inquire about the injuries. That the girl informed him that her father was involved in some legal case and that she was sent to the petitioner's place for education due to their financial difficulties. In Para 8, he says that medical examination was conducted by doctors and thereafter, the victim was sent to the Ashram.

108. Even assuming for argument sake that the statement is true, then it was a case that would require to be tried by the Designated Court under Section 86 of Chapter IX of the Act of 2015. But we find that no such proceedings have been initiated. But on the other hand, it is submitted that a

case of trafficking was registered and subsequently withdrawn by the State.

109. The admission elicited in the course of cross-examination to Question No.11, which is as under:-

"11. Question: At what time and place were you informed that the girl had to be rescued?"

Answer: I was informed by the SSP only after about 2:30 p.m. that the girl had to be rescued. Mr. Agnihotri did not order me to carry out the rescue."

110. Thus, the admitted fact is that all the witnesses have deposed that they reached the house of the petitioner at about 03:00 PM and it has also come out in the evidence of all the witnesses that none of them had seen the child, nor did any of them claim to be eye-witnesses to the beatings inflicted on the child, yet even before they started the journey to conduct a preliminary inquiry, as directed by the High Court, it was determined to conduct a 'rescue', implying thereby it was a pre-determined action.

111. The next answer is even more alarming and the answer to Question No. 12 reads as under:-

12. We did not have a search warrant for Mrs. Deepali Sharma's house. I saw armed police officers surrounding Mrs. Deepali Sharma's house; I did not give any such orders.

112. It is reiteration of his deposition in Paragraph No.2. This answer begs a question by itself. Was surrounding of the house by armed personnel, necessary? More so, when the target was only a lady judicial officer? The apparent reason appears to be to shame the petitioner rather than rendering

any justice. The fact remains that the video recordings were widely shared in the print and electronic media across the country and in one stroke the petitioner stood publicly condemned.

113. We are constrained to infer as above in view of the answers elicited to the next two questions. More particularly, Question No.14 and the answer reads as under:-

"Answer: The District Judge, who was with us, asked the girl to call Madam outside. He himself stated that there wasn't enough time then and the questioning could have been carried out at a leisurely pace. The District Judge was supposed to conduct the questioning; we were just standing there. I can't explain why the girl was sent inside and asked to call Mrs. Deepali Sharma." (emphasis supplied)

114. The answer would suggest that the District Judge had already conceived a predetermined course of action. The answers to Question Nos.15 and 16 throw even more light and the same read as under:-

15. It's true that my designation is not just Probation Officer, it's Legal cum Probation Officer. I have been appointed as Legal cum Probation Officer under the provisions of the J.J. Act; I am not aware of the specific provision by which I have been appointed.

Question: Is it true that the Probation Officer under the District Child Protection Unit is solely responsible for protecting the rights of minors?

Answer: It is correct.

16. Question: In this case too, as per the rules, only the District Child Protection Unit had this authority, and in this regard, the District Probation Officer acted against the provisions of the J.J. Act without seeking permission from the State Government. Is this correct?

Answer: I am not aware in this regard.

115. Our inference that the District Judge was predetermined is further buttressed by the answer recorded in Para 18.

18. I have not conducted any investigation in this matter. The District Judge of Haridwar also never called me to record my statement after the incident.

116. The answers elicited in Para 19, 20, 21 and 22 is even more alarming and read as under:-

19. It is correct to say that I received calls from Mr. Amninder Singh. He was in constant contact with us regarding the incident and handled everything: whether to release the girl, dressing her, medical examination, and he kept us informed about all these matters. Mr. Amninder also gave us guidance on whether to hand over the girl to her parents. After this, he remained in contact with Vinod Kumar Sharma of the Child Welfare Committee, as this was his work, not mine. Mr. Amninder Singh also summoned me to Court once or twice after the incident. I was called during lunch, and Vinod Kumar Sharma, the Chairman of the Child Welfare Committee, accompanied me. Vinod Kumar Sharma, the Chairman of the Child Welfare Committee, frequently met with Amninder Singh; I do not know the total number of times they met.

20. Whenever Mr. Amninder Singh met with me, he would say that the victim was being severely beaten and should be allowed to stay at Shri Ram Ashram. The only pressure was to keep the girl at Shri Ram Ashram for as long as possible.

21. The Chairman of the Child Welfare Committee, the District Judge, Amninder Singh, and Rachita Juyal had decided at the time of the medical examination that the girl would be sent to Shri Ram Ashram. I do not remember on which specific dates we were called by Amninder Singh or at what interval of days he called us, he himself said that I met him twice.

22. I am aware that the Child Welfare Committee refused to hand over the girl to her parents. I am not aware that before the Child Welfare Committee refused to hand over the girl to her parents, Mr. Amninder Singh called Vinod Kumar Sharma and instructed him not to hand over the girl to her parents. Mr. Amninder Singh had been in regular phone conversations with Vinod Sharma.

117. The answers elicited are so explicit and require no imagination and are damning about P.W.1 and P.W.5 and it suggests a predetermined and concerted action and is suggestive of a role played by P.W.1 and P.W.5 beyond the call of duty and which cannot by any stretch of imagination classified as bonafide.

118. In Para 23, he admits the statement of the child in the video recording "it was hot, that's why I wore these

clothes. I like wearing such clothes.” “Madam treats me very well”. “I have no problems here.” “I fell and got injured at my house”. “I quite like madam. I received a call from her, so I returned here.” These are statements made at the earliest point of time, i.e. when the raiding party arrived at the door step of the petitioner and the petitioner had no role to play. These are the statements that have been reiterated during her cross-examination by the Presenting Officer. In reply to Question No.24, as recorded in Para 24, he admits that P.W.1 is heard saying that verification has been made and rescue has to be carried out. In Para 25, he admits that the girl was heard saying that two days before the incident, petitioner had asked the girl to go to her house and that she had refused. He also admits that the recording would show the petitioner asking the girl if she wanted to go to her house with the rescuing team and the girl refused to go with them. He also admits that the recording shows that the girl cried and said “I don’t want to go.”

119. The admission extracted and recorded in Para 26 is even more critical and is demonstrative of the perverse approach adopted. It reads as under:-

26. It is true that all the above-mentioned statements made by the girl were not mentioned in the memo. It is correct to say that these matters should have been mentioned in the memo. The contents of the memo should have been from the spot, but all these facts were not mentioned in the memo. This is true. The SSP himself said that the memo was being prepared in his office in front of him.

120. The answer elicited and recorded in Para 27 is even more shocking and the last sentence is a telling one. Para 27 reads as under:-

27. I did not pass the order to send the girl to Shri Ram Ashram. No CWC member was present at the scene. The CWC alone has the authority to send a minor to a children's home. It is correct to say that the girl had already been rescued by the time the CWC members arrived. Only the CWC can determine whether they had a search warrant. It cannot be said that the police were the sole authority. Who can be named when everyone was involved?

121. In Para 30, he admits that CWC had neither ordered the DM or the SSP to investigate the matter on 07.02.2018 and he further alleges that P.W.1 used to contact the CWC. In Para 33, he admits that the CWC did not seek any report from him with regard to the release of the girl. He has further volunteered to state that if a report had been called from him, he was unaware of the same. Thereafter, he has been confronted with the proceedings of CWC wherein it is recorded that a report has been obtained from him and that he has expressed an apprehension that if the girl is released to her parents, she would fall into wrong hands and when questioned as to whether he had given such a report, the witness categorically stated that no such report was given by him and has further stated that he does not know on what grounds the CWC has recorded as above.

122. The answer elicited in Paragraphs 38 and 39 is even more enlightening, wherein he states that he was informed about D.W.2's involvement in a case by CWC

Chairman Vinod Sharma and he is personally not aware of any such case.

123. In Para 42, he affirms the allegation of P.W.2 the girl about the presence of P.W.5 ASP, at the time of recording of girl's statement by ADJ Varun Kumar. He further affirms that P.W.5 was inside when the statement was being recorded. The admission in Para 47 is with regard to the position in law which mandates that a child who is not an accused shall be dealt with by the policemen in plain clothes and he further reiterates the presence of police in uniform and armed. In Para 48, he admits that no opportunity was given to him to converse with the girl and ascertain any facts. Para 51 affirms the categorical allegations levelled by P.W.2 the girl against P.W.1 and P.W.5 and it further buttresses our inference that P.W.1 appears to be acting beyond the call of duty and in a manner that cannot be described as bonafide. In Para 53, he admits that he did not inform the parents of the child after she was sent to the Ashram.

124. As noted above, damning admissions about the role of P.W.1 and P.W.5 have been elicited but the witness has not been treated hostile nor has even a suggestion by the Presenting Officer been put to the witness. Despite this fact the I.O. has concluded that the witness has been won over and yet again without there being an iota of evidence to

demonstrate the same. This approach of the I.O. is reflective of a biased mind.

125. The evidence of P.W.3- the District Judge is riddled by inherent contradictions and incriminating statements pointing a finger towards P.W.1. In Para 1 he says he was informed by P.W.1 about the complaint received by the High Court and that he was also informed that he was instructed to take action by P.W.1. Though, the fax was received at 02:33 PM, he has deliberately advanced the time of receipt between 02:00- 02:15 PM. It is common knowledge that time is recorded by the fax machine. Probably, to support the following statement that he contacted the SSP only after receipt of the communication. It has come out in the evidence of P.W.4 to Question No.9 that he was informed by the District Probation Officer around 1:30 to 2:00 PM to proceed to the SSP's office and in reply to Question No.11 he has answered he received the call from the SSP after about 2:30 PM. Thus, the fax report produced as Annexure-7 reflects the time as 29th January, 02:33 PM. If the fax was received at 02:33 PM only, then, how did the District Probation Officer instruct P.W.4 to present himself in the SSP's office at 1:30 PM. This goes to strengthen the contention on behalf of the petitioner that the course of action was predetermined.

126. We have heard every witness impressing about the seriousness of the complaint and that they galvanized into action because of the seriousness of the complaint. We are constrained to take this statement with a pinch of salt. There is no explanation as to why a complaint that is alleged to be of "serious proportions" not merit attention for almost 19 days and all of sudden, in the midst of the winter vacations, an army is galvanized, residence of a lady judicial officer is raided and which raid is videographed and which videography has been shared with the media. The officers concerned in their attempt to demonstrate their holier than thou attitude failed to recognize the harm that it had caused to the standing of the Institution in public. Though, we have serious reservations about the manner and method adopted by the District Judge, we have refrained from initiating any action at this distant point of time and certainly summoning a lady officer to the doorstep even for a purported inquiry, in our considered opinion, was belittling the post she held. By the said exercise, they have not merely belittled the person involved but also the post that she was holding and cause incalculable damage to the standing of the Institutions resulting in the petitioner being condemned and pronounced guilty even before completion of the preliminary inquiry.

127. As noted supra, the preliminary inquiry could have been completed by merely examining the peons who were

assigned to the house of the petitioner. But a show of strength was organized and to achieve what objective, is not forthcoming. None of the witnesses state that the petitioner was armed with deadly weapons or guns. None of the witnesses have stated that petitioner is inclined towards violence. None of the witnesses have stated that the petitioner has a history of acting or reacting violently. None of the witnesses have stated that they apprehended any physical harm to themselves if they visited the house of the petitioner. If this is the evidence or absence of such evidence, then the question that stares at us is "Was such a mobilization of armed policemen including the presence of senior officer, like Senior Superintendent of Police, Additional Superintendent of Police, Circle Officer etc. required?" In the absence of any warrant for coercive action, the marshalling of such a large squad and surrounding the house with armed policemen, in our opinion, was an act of overreach and an act in excess of the mandate conferred on the District Judge, i.e. P.W.3.

128. In fact, every witness has described the dress worn by the minor girl differently. The deposition, as recorded in Para 5, is self-contradictory. In Para 3, he states that the girl was wearing a half sleeve jacket and pyjama. In Para 5, he asked P.W.5 to check for visible injuries. He proceeds further to elaborate and state that bruises were visible on the girl's

head, body and arms and there was visible numbness on her feet.

129. If torso was covered by a jacket and the lower limbs covered by a pyjama, then it begs a question as to how this witness, P.W.3 was able to observe the 'bruises on the body'? Even without addressing a query to the girl regarding her age, he deposes in Para 6 that the complaint was verified. The basis of the complaint is that a minor girl has been engaged as a maid servant. He does not even whisper as to whether he made any queries about being employed as a maid or domestic help, nor does he state that he enquired about the age of the minor girl. This deposition only buttresses our inference that P.W.3- District Judge had adopted a predetermined course of action. In fact, as observed by us *supra*, none of the witnesses had even whispered that they have made an attempt to ascertain the age of the girl, which as per the ossification test report has attained the age of 17 years as on the date of incident.

130. In Para 7, he deposes that the girl furnished the mobile number of her father and her uncle. In Para 8, he stated that P.W.5 began questioning the minor girl but there is no record of any such questioning except the oral assertion, which is controverted by other witnesses.

131. When the High Court had assigned a task of carrying out the preliminary inquiry, he has abdicated the duty cast upon him by deposing that he did not question the girl. It is not that he had assigned or deputed the ASP to do it or that he was not at the scene. He has, in his own words, led the pack and yet failed to perform the duty assigned by the High Court.

132. To a question in the cross-examination, an answer of convenience is made. In fact, P.W.3 and P.W.5 have indulged in selective amnesia. To inconvenient questions, they have come up with convenient answer "I do not recall today", as if the incident was eons ago. He is the authority who sends the peons and in Para 14, he would submit that he does not remember or he cannot recall, when a mere reference to the records would have sufficed. In Para 16, he would say that does not know whether P.W.1 performed any judicial work or not. The answer by P.W.1 is that he was sitting in the P.W.3's chamber all day long. It is further elucidated that P.W.1 came to his rest room at 01:30 PM. Either this witness is lying or P.W.1 is lying because it is the claim of P.W.1, in his cross-examination in Para 53, that he was sitting in the chamber of P.W.3 all day long. He further answer in Para 17 that he does not know whether the letter from the High Court was forwarded to him by fax or mail. Explaining further, he would state that it was P.W.1 who

brought them to him. He would further admit he can't explain why CAO didn't bring the fax or mail to him directly but took it to P.W.1 despite it being addressed to P.W.3. The further denial that he does not know with whom P.W.1 was conversing on telephone at the High Court, directly in contradiction to the deposition in Para 1 of his examination, wherein he has stated that P.W.1 explained to him that RG/ RG (I/c) had informed P.W.1 and he was conveying to P.W.3. If he had any doubts, a prudent judicial officer would have reconfirmed with the RG/ RG (I/c) or the High Court in general. He admits he did not call the High Court. He admits that he was not informed either by the RG or the RG (I/c) (Registrar Infrastructure) regarding the complaint and yet he would mobilize an army of policemen and other officers to "raid" the house of a lady judicial officer who was living in the quarters and whose husband was away on work. He is unable to clarify why the fax or mail was placed before the P.W.1 subordinate and was not placed before him by the CAO, as is the practice and protocol. In fact, his answer to Question No.18 or as recorded in Para 18, reads as under:-

Question: I am saying that the normal procedure for receiving faxes has been changed in this case. Is this correct?

Answer: Perhaps, given the seriousness of the matter, Mr. Kanwar Amninder Singh personally received the fax received from the Hon'ble High Court. I had no such instructions.

133. If this answer is appreciated in plain terms, it would give the impression that P.W.1 held the power to step in if the matter was serious enough and he could handle the

communications addressed to P.W.3, who, admittedly, is the Head of the Institution. It would further buttress the vehement contention of the petitioner that the role played by P.W.1 was more than necessitated. The last sentence speaks eloquently about the state of affairs. Probably, we would not be wrong if we are to opine that P.W.3 the Presiding District Judge was in awe of an officer junior to him.

134. The conclusion drawn by this Court that P.W.3 was adopting a predetermined course of action and that course of action was being influenced by P.W.1 stands supported by the answers elicited and recorded in Para 20, 21 and 22.

135. The answers elicited in the course of cross-examination of P.W.3, the District Judge in paragraphs 23, 26, 27, 30, 31, 32, 33, 34, 35, 37, 40, 43, 44, 46, 47, 48, 50, 51, 53, 55, 57, 58, 59, 60, 61, 62, 63, 64, **65**, 66, 67, 68, 73, 75, 78, 79, 80, 81, **82**, 84, 85, 86, **88**, **90**, 91, **93**, **95**, **96**, **97**, **99**, **100**, **101**, **102**, **103**, 104, **105**, 106, 108, **109**, 111, **112**, 113, 115, 117, 118, 119, **122**, 123, 128, 129, 130, 131, 132, 133, **135**, **136**, **137**, **138**, **139**, **141**, **145**, **146**, **147**, **148**, **154**, **155**, **156** and **157** are detrimental and completely damaging to the case built up against the petitioner. All these grave inconsistencies, contradictions and unbelievable versions have been ignored and the Inquiry Officer has attached weight to such evidence

while discarding truthful evidence of P.W.2, P.W.3, P.W.4 and D.W.2.

136. We now bestow our attention upon the evidence, deposition tendered by P.W.5. In fact, her deposition in Para 4 cuts at the very root of the Inquiry Officer's presumption that time gap of 5-7 minutes taken for the petitioner to come out of the house was time enough for the petitioner to intimidate the minor girl. The witness has deposed that the petitioner emerged from the house as the raiding team was asking the girl to go and summon the petitioner. Contrary to her deposition in Para 8, the minor girl has virtually alleged undue influence by P.W.5 and the deposition as recorded in para 9 is contradicted by P.W.3, who has stated that P.W.5 accompanied the minor girl to the Ashram. It is also pertinent to note that D.W.3 has alleged close association between P.W.1 and P.W.5 and this is a witness who has given a convenient stock answer to every inconvenient question. In Para 14, she denies knowledge of letter dated 19.02.2018 written by the District Court to lodge an FIR. In Para 15, she admits that the orders were given by the District Judge Haridwar and claims that she does not have copies of those orders. In Para 16, she would depose that she has not brought the documents related to the case. It is unheard of that an official witness would attend an inquiry without the records. She has been confronted with the deposition of

P.W.3 the District Judge Haridwar, who has stated about having not given any oral or written direction to lodge an FIR, to which she states that all types of communication were made in writing by the District Judge to the SSP Haridwar. In reply to Question 17, she states that the raid was conducted by her in compliance with the order directions received from the SSP. The paragraphs in which the contradictory answers and convenient stock answers "I cannot recall and I do not have knowledge of this" given by P.W.5 are detailed hereunder:-

"19. Q. – Under which act was the aforesaid procedure implemented?

A. – I only complied with the orders of the Hon'ble High Court; the procedure briefed by the S.S.P., Haridwar, was followed.

20. Q. – Does this answer mean that while carrying out such a substantial action, you are not aware under which Act it was done, nor whether the procedure adopted was even legal or not? Is this correct?

A. – Every action was undertaken by me in compliance with orders.

21. Q. – Is it correct to say that the above action was undertaken by contravening the provisions of the Code of Criminal Procedure?

A. – Every action undertaken by me was in accordance with the orders of the Hon'ble High Court.

22. Q. – Paper No. 28, letter dated 29.01.2018, which is part of the record sent by the Hon'ble High Court, kindly state, referring to your answer to question no. 21, where in the said order the Hon'ble High Court had directed you, and mention those lines.

A. – The directions referred to in the above question were issued to the S.S.P. by the learned District Judge, Haridwar, in compliance with the said letter. The letter was not addressed to me.

24. Q. – It is my contention that neither the Hon'ble High Court had authorized the then District Judge nor you to constitute a police team to raid the residence of Smt. Deepali Sharma. Is my contention correct?

A. – Your contention is correct that I did not have any direct order from the Hon'ble High Court in my name to come to your house or to conduct a raid. I am not aware of what orders the Hon'ble High Court had issued for the learned District Judge.

25. I was directed by the Inquiry Officer through summons to bring a copy of the letter by which the then S.S.P., Haridwar, had ordered lodging of an FIR against Smt. Deepali Sharma. Upon searching, I could not find the copy of that letter; hence, I have not brought the copy with me today. It is incorrect to state that no such order was given by the S.S.P., Haridwar, and therefore I have not brought the said letter today. It is incorrect to state that I knowingly did not comply with the Inquiry Officer's above-mentioned order. (despite being to summon the document she states that she has not brought it, as she could not find the copy.

This is reflective of the attitude of the witness and despite there being the two weeks' gap between the previous date of examination and current date of examination, ie. 07.11.2019 and 21.11.2019).

29. Q. – You said in answer to question no. 26 that "I was not ordered to obtain any document from the Investigation Officer." Please clarify this statement?

Ans. – The copy of the order of the S.S.P. that I had, I could not find upon searching. Besides that, I did not contact the Investigation Officer again to obtain the order.

30. I had written the report of this incident. In that report, I mentioned the orders of the Hon'ble High Court. I have not produced the copy of that order of the Hon'ble High Court before the Inquiry Officer. I also did not give the copy of that order to the Investigation Officer. I myself stated that I had given the Investigation Officer the copy of the orders which I received at that time from the S.S.P., Haridwar. The aforesaid order of the Hon'ble High Court did not come into my possession.

31. Q. – Did you mention the order of the Hon'ble High Court dated 19.02.2018 in the FIR without seeing the order?

A. – The order given to me by the S.S.P., Haridwar, referred to the order received by him.

32. Q. – You have not mentioned the instructions given to you by the S.S.P., Haridwar, in the FIR. What do you say about that?

A. – Yes, it has not been mentioned.(in all these answers she refers to the orders of the High Court, orders of the SSP, orders of the District Court, but omitted to produce a single order and that too despite being summoned to produce the same).

33. Q. – When the order to lodge the FIR was given by the S.S.P., Haridwar, was there any specific reason for not mentioning his order in the FIR?

A. – There was no special reason.

34. Q. – Do you know the dates of the order of the Hon'ble High Court and the order of the S.S.P., Haridwar?

A. – I received the order of the S.S.P., Haridwar on 19.02.2018. I do not presently remember the date of the order of the Hon'ble High Court.

36. Q. – Is it correct that you lodged the FIR based on the letter of Kanwar Amaninder Singh, the then Additional District Judge, Haridwar, and that the date of the letter of Kanwar Amaninder Singh was shown in the FIR?

A. – That statement is incorrect. I had neither received any order from the Hon'ble High Court nor from Kanwar Amaninder Singh. The FIR was lodged by me upon the orders of the then S.S.P., Haridwar.

37. To my knowledge, the entire proceedings of this matter were not initiated on the basis of any email received from the Hon'ble High Court. I have never even seen such an email.

38. The witness was shown paper no. 28, letter dated 29.01.2018, and paper no. 27, anonymous email, received from the Hon'ble High Court, and was asked to state from which email address the said anonymous email, paper no. 27, was sent?

A. – On paper no. 27, on the top right side below the date, it is written "from Nitu <nitukumar321@rediffmail.com>".

39. Q. – Before becoming the informant in this case, did you make any inquiry or had any information about the sender of the above anonymous email, i.e., the real informant?

A. – Paper no. 27 was never given to me at any time by anyone.

40. Q. – In paragraph no. 15 of your statement, you have mentioned, "I only complied to the extent of the orders given to me by the Hon'ble High Court." The anonymous email was also annexed with the aforesaid order of the Hon'ble High Court, on which you gave the said testimony. Hence, despite having

knowledge, you did not make any effort in this regard. Please explain the reason?

A. – I would like to clarify that I did not receive any direct order from the Hon'ble High Court. All orders were given to me by the S.S.P., Haridwar. The aforesaid email mentioned above was also not received by me. I had no knowledge regarding the said email of the Hon'ble High Court.

43. Q. – It is also our contention that upon checking TrueCaller this mobile number belongs to Smt. Gagandeep Mann alias Gaganjot Mann, who is the wife of Kanwar Amaninder Singh. What is your response?

A. – I do not have any information about this.

44. The girl Tiruja was recovered from the residence of Smt. Deepali Sharma. A recovery memo was prepared in this regard at the residence of Smt. Deepali Sharma. It is correct to state that all proceedings at the residence of Smt. Deepali Sharma were videographed.

At this stage, the witness was shown Folder MAH00184.MP4 video recording and JUD file of the videography taken at the residence of Smt. Deepali Sharma on 29.01.2018, on the official laptop of the Presenting Officer, and was asked to state where in the video the recovery memo is being prepared. The witness, on viewing the video, stated that in this video, some members of the police team are seen writing at 14:44 hours as per the JUD file, but she cannot say what they were writing.

49. I do not recall the names of the police personnel shown writing in the video at present. However, by watching the video and from my memory, I can say that those writing are Inspectors, Sub-Inspector rank male and female officers. I do not recall whether signatures were obtained on the recovery memo at the residence of Smt. Deepali Sharma. I do not recall whether Smt. Deepali Sharma signed the recovery memo or not.

Q. – Can you say by looking at recovery memo paper no. 34 whether there are signatures of Smt. Deepali Sharma on the recovery memo?

A. – I cannot say by looking at the recovery memo whether it contains signatures of Smt. Deepali Sharma or not.

51. Q. – After the case under Section 370 IPC was registered, did the Investigation Officer record your statement under Section 161 CrPC?

A. – The Investigation Officer recorded my statement.

52. Q. – Did you tell the Investigation Officer that "During this period the girl cried quite a lot before me and repeatedly said 'I had faith in God that one day my Didi will come and everything will become alright.' This line she repeated several times"?

A. – I do not remember.

53. Q. – It is our contention that you did not give the above statement described in paragraph no. 52 to the Investigation Officer. What is your response?

A. – I do not remember.

54. Q. – Did you write the above-mentioned statement in the FIR?

A. – No, I did not write.

55. Q. – In the video, the girl is heard saying, "I do not want to go, I want to stay with madam." What is your response regarding this?

A. – The witness, after watching the video, responded that yes, the girl is saying this.

56. Q. – After Tiruja was recovered by the police, were her father or mother contacted by anyone?

A. – I did not contact the parents of the girl. If anyone else did, I am not aware of it.

57. Q. – Why was Tiruja not handed over to her father or mother?

A. – Tiruja was handed over to the CWC (Child Welfare Committee), and afterwards, it was as per the decision of the CWC regarding her custody.

58. Q. – Was any effort made by the police to contact Tiruja's parents?

A. – I do not have knowledge about this.

59. Q. – Was any effort made to send Tiruja in police custody to her parents?

A. – I do not have knowledge about this.

61. Q. – After Tiruja's medical examination following her recovery, was any further medical care provided during her stay under CWC custody?

A. – I do not have knowledge about this.

64. Q. – It is our contention that children whose biological parents are alive and ready and willing to take them into

their protection cannot be given into CWC custody; what is your response?

A. – I will not answer a general knowledge question.

67. Q. – Is it correct to say that on 30.1.2018, you yourself, with police force, took Tiruja from Shriram Ashram to the court for recording her statement?

A. – That statement is incorrect.

68. Q. – Probation Officer PW 4, Shri Ashok Sharma, has stated in his deposition that you went with him to the court with Tiruja for giving her statement on 30.1.18. What do you say about this?

A. – I cannot say about someone else's statement.

Q. – Do you know about yourself? Can you say whether the statement of Probation Officer PW 4 Ashok Sharma is correct or incorrect?

A. – PW 4 Ashok Sharma's statement is incorrect.

69. Q. – The statement of Kumari Tiruja dated 30.1.18 mentions that the police force was present in court, which you were leading. What do you say about this?

A. – Without seeing the statement, I cannot say.

70. Q. – Why was everything that the girl said in the video not written in the memo?

A. – Many people were present on the spot and everyone was saying something. What the girl said on the spot, I only realized after seeing the video. I did not realize at that time what the girl or others said. Only now after watching the video do I know what the girl said on the spot.

71. Q. – It is my contention that everything the girl said on the spot should have been written in the memo. What do you say?

A. – Whatever came to our knowledge was written by us in the memo.

72. Q. – Did you, ignorantly, leave out the statements made by the girl in support of Smt. Deepali Sharma from the memo?

A. – All statements of the girl that did not register with me at the spot were not written in the memo.

74. Q. – I contend that when the memo was prepared the rescue operation had already ended. What do you say?

A. – That statement is incorrect.

76. Q. – The memo appears in two different handwritings. What is the reason?

A. – I do not have knowledge about this.

87. Q. – I contend that paper no. 35 is the letter sent by Rachita Juyal to the SSP, Haridwar, on 29.1.18, and in this letter there is no mention of sending any CD; is this correct?

A. – The witness, after looking at paper no. 35, stated that there is no mention of sending a CD.

88. Q. – It is my contention that in the CD, Kumari Tiruja made all statements in favor of Smt. Deepali Sharma, and that is why you intentionally did not send that CD to the SSP; is this correct?

A. – That statement is incorrect.

89. Q. – I contend that by intentionally concealing evidence, you also misled the Hon'ble High Court; is this correct?

A. – That statement is incorrect.

90. Q. – The letter you mentioned from the Hon'ble District Judge in your FIR was never issued from the District Judge's office; is this correct?

A. – I have no information about this.

91. Q. – You are requested to examine the investigation file to answer in relation to question no. 90.

A. – The witness after seeing the file stated that there is no letter from the District Judge to the SSP available in this records, but there is a letter from the Registrar General to the SSP.

92. Q. – After reading the letter of the Registrar General, please state whether this letter is related to questions no. 90 and 91, i.e., is this the same letter you referred to in your FIR?

A. – Yes, it is in relation to questions no. 90 and 91. This letter, which was written by the Registrar General to the SSP, is not the same letter as mentioned by me in the FIR. I myself said that the order of the SSP, Haridwar, refers to the order of the Hon'ble High Court.

110. Q. – You did not mention the name of the ADJ ranked officer in your chief examination; please state his name.

A. – Kanwar Amaninder.

112. Q. – In paragraph 4 of your statement, you said, "The girl pointed out a spot under the stairs, which was right near the entrance where the police entered. There was no bed, mattress, or sheet present, so when asked where she slept, the girl nervously replied that the bed was wet and set out to dry." After

watching the video, please state what Kumari Tiruja said about her sleeping place and bed.

A. – After watching the video, the witness replied that the girl pointed to a spot near the dining table on the floor as her sleeping place, and Tiruja said, "I feel afraid at night, so Madam said that you sleep upstairs, and in my village I also sleep on the ground." The word "mattress" was used at some place in the video but the mattress was not shown. In the video, when asked "Do you sleep here?" Tiruja replied yes, and about the sheet she said she had asked Madam.

115. Q. – You said in your statements that when you asked Tiruja about her clothes, she repeatedly cried and said, "Didi, why have you come and why are you asking?" After watching the video, at which time and place in the video did Kumari Tiruja say this? Please clarify.

A. – After watching the video, the witness replied that she could not exactly understand where or what she said.

116. Q. – It is my contention that Kumari Tiruja made no such statement and all these things were created by you like a film drama; is this correct?

A. – That statement is incorrect.

117. Q. – The witness was shown MAH00184.MP4 from 5:34 to 5:36, wherein ADJ Kanwar Amaninder Singh is directing Inspector Jawahar Singh Rathore to "make the memo." What do you say about this?

A. – Before the rescue operation the SSP, Haridwar closed the team and issued instructions to everyone about their responsibilities and division of work. In the video, ADJ Kanwar Amaninder Singh asked Jawahar Singh Rathore whether he would make the memo, and he agreed.

118. Q. – The witness was shown JUD folder from 5:43 to 5:46 in which ADJ Kanwar Amaninder Singh says "The memo will be made; you will also make your memo—make your own memo." Do you say these are the words spoken by Kanwar Amaninder Singh or not?

A. – The witness viewed the folder and stated that Kanwar Amaninder Singh did say these words, but whether the word is "also" or "only" is unclear.

119. Q. – The witness was shown JUD folder from 18:13 to 18:17 and asked if in this you can be heard saying to Kumari Tiruja, "Don't worry, you have parents, don't worry." Is this correct?

A. – Yes, it is correct.

120. Q. – When you were accompanying Kumari Tiruja, were her parents in Haridwar to your knowledge?

A. – This sentence was not said by me with any intention, and I do not know where her parents were at that time.

121. Q. – The witness was shown JUD folder at 18:17 and asked whether Tiruja can be heard saying "I want to stay with Madam," to which you reply, "Will leave you soon"?

A. – Correct.

122. Q. – The witness was shown JUD folder from 19:15 to 19:18 and asked whether, as you were putting Kumari Tiruja in the vehicle, she pleaded with you to let her go, and you replied "Will leave you soon"?

A. – In the video clip from 19:15 to 19:18, you called Tanuja to come out, she said "Let me go." I said, "We will leave you soon," to which you replied, "We will not leave you, we will make trouble for you."

123. Q. – During 19:48 to 19:50 of the above folder, did you say to the crying Tiruja, "Don't worry, son, after treatment you will be released"?

A. – Yes, that was said.

Q. – Are you aware that on 19.2.18 Kanwar Amaninder Singh wrote, as in-charge District Judge Haridwar, a letter to the SSP Haridwar to register an FIR against Smt. Deepali Sharma, and that the SSP endorsed this letter directing you to become the complainant in the FIR?

A. – No.

124. Q. – There are two folders in the CD, one of 20 minutes and the other about 13 minutes, but you said the rescue operation took place from 2:45 to 3:45; I contend the rest of the recording was deliberately cut by police. What do you say?

A. – The CD was not cut by the police."

137. We were constrained to extract the deposition in extenso in view of the vague reasoning, conjectures and surmises drawn. For instance, in Para 205, the I.O. would conclude that 5-7 minutes times taken by the petitioner to emerge from the house and greet the raiding party at the main door was sufficient to terrorize the victim child. This 5-7

minutes is on the basis of the statement made by P.W.1 and not on the basis of video evidence that was available. This presumption is drawn without taking into account the fact that the petitioner who was on Child Care Leave was nursing a baby about a year old. The I.O. ought to have taken into consideration the minimal time a lady would take to make herself present and to an announced raiding party. In Para 206 and 207, she concludes that the child appeared frightened. A child who is 16-17 years old would normally know what a gun is and if a group of armed policemen surround the house and child is battered by questions by judges and police officers in uniform, any child would look frightened. Again she lays weight with the deposition of P.W.4 in Paragraphs 1, 2, 12, 14, 19, 47 and 51. The conclusion is a mere conjecture. As noted supra, any teen aged girl child should be scared and frightened if the child senses that she is going to be taken away by strangers. In fact, this theory of terrorizing the child by the petitioner is controverted by the evidence of P.W., who in Para 4 of her examination-in-chief, states that as they were asking the girl child to call the madam, implying the petitioner, at the very moment madam emerged. This contradictory piece of evidence is conveniently ignored. In fact the deposition of P.W. is self-contradictory. In one breath, she says that the child was continuously conversing with them, that too, casually, but in the same

breath, she would depose that fear was apparent on the face and the child was chewing her lips in anguish and anxiously and that the petitioner and her daughter were casting venomous looks. If she was scared and frightened to the extent of chewing her lips, then the statement that the child was also conversing casually with the raiding party is difficult for any prudent person to accept.

138. The Inquiry Officer as attempted to make a "mountain out of a molehill", the so called unsolicited statement by the child at the door step that the madam is taking good care of her and that too, in the absence of the petitioner, is ground enough to infer adversely against the petitioner. The alleged victim is not a small girl, but the girl whose medical tests have revealed to be about 17 years old and is of an age where one can safely infer that the child of this age can think rationally and act a little maturely.

139. In Para 213 the I.O. records that the petitioner has nowhere explained the delay of 5-7 minutes in emerging from the house. As explained supra, she was the lactating mother and nursing a child more a year old, and as noted above, the I.O. has completely omitted to appreciate the deposition of P.W.5 that the petitioner emerged on her own.

140. Be that as it may, the cornerstone for conjectures and surmises drawn by the I.O. is the so called report said to

have been submitted by P.W.3. That apart, the reliance on the statement said to have been recorded by one Varun Kumar, ADJ, is sought to be relied upon. The very crucial question is posed to P.W.3, asking him to explain the difference in the form of the report, i.e. the statement of P.W.1 said to have been recorded by the said Varun Kumar, ADJ on 30.01.2018, which is in a typed format and the statement of the child said to have been recorded on the said date and by the said person, which is in manuscript or handwritten, to which P.W.3 would answer that only P.W.1 or the said Varun Kumar, ADJ can answer the query. Unfortunately, the attempts to have the said Varun Kumar, ADJ examined, have been rejected by the very same I.O. In fact, the said statement has been trashed by P.W.2- the alleged victim, who has said that when she was asked to read the statement recorded by Varun Kumar, ADJ, she was threatened by P.W.5 ASP to sign the statement and she has further stated that P.W.5 made the statement before Varun Kumar, ADJ.

141. As noticed by us and as observed by us hereinabove, the manner, in which, the wound certificate has been sought to be proved, is one of the primary reasons which shocked us. Nowhere has been the I.O. stated as to how the pharmacist or the nurse are qualified or trained or competent enough to assess the injury, or to gauge the age of

the injury or speak about the wound certificate. This approach, by itself, would suffice for this Court to reject the report, as the I.O. would like one and all to believe that the injuries recorded in the wound certificate were caused by the petitioner and hence, this conduct of assaulting, torturing, tormenting etc. are conduct which would fall foul of Rule 3(1) and 3(2) of the Rules of 2002. If that was so, then the Department ought to have got the documents marked and spoken about by a qualified doctor and not through the nurse or pharmacist.

142. It is not the case of either the Department or the Inquiry Officer (I.O.) that there was no qualified doctor working in the hospital. In fact, the approach of the I.O. is to give weightage to the statements made outside the inquiry and discard the statements made in the course of inquiry. Such an approach is, by itself, vitiates the appreciation of the evidence on record rendering the appreciation perverse.

143. The statements which are openly said to have been recorded and obtained under coercion from P.W.2, a report attributing the statements to various persons (30.01.2018) which statements are not recorded or part of any record, have been given undue weightage and importance by the I.O, which the statements made on oath in the inquiry proceedings or in the presence of the I.O. are brushed aside

with a single reasoning that the witness is influence or the witness is bought over without there being even a shred of evidence to demonstrate that the witness has been influence or bought over. In fact, two crucial counter-questions by the victim to the Presenting Officer and the I.O. should have been enough for the I.O. to wrap-up the inquiry if the inquiry was fair and square. The suggestion by the Presenting Officer that the victim girl was starved and not given food for several days, the alleged victim would counter the Presenting Officer with a query, "how would I survive if I was not given food?" To another suggestion that the injuries had been caused because the petitioner attacked her with a knife, the child would reply "if I had been attacked with a knife, then would I have not died?" These answers, by themselves, are indicative of the maturity of the alleged victim. The statements made by the child, which clearly incriminate P.W.1 and P.W.5 are not even considered, much less, appreciated. The I.O. has failed to observe that the statement made outside the judicial or quasi-judicial proceedings would be of evidentiary value only if rebutted on oath in the judicial or quasi-judicial proceedings and if not rebutted by the other side. In the inquiry, the approach is to add weightage to the statements made outside the inquiry proceedings and to reject all the un-rebutted evidences deposed and recorded in the inquiry proceedings,

which evidences, depositions remained un-rebutted or disproved.

144. Now coming to the evidence of DW2 and DW3, the Inquiry Officer has simply wished it away. In fact, the I.O. has cast the burden of disproving the charges on the petitioner. We say so in view of the line of cross-examination and the line of reasoning adopted by the I.O. The I.O. has drawn the conclusion by shifting the burden of proof of the negative circumstances on the petitioner, which in our considered opinion, is contrary to all known canons of evidence and service jurisprudence. The fact remains that the charge is framed by the Disciplinary Authority after collection of evidence and the alleged delinquent is called upon to explain the charge in the background of the evidence placed in support of the charge. The implication being that the material collected demonstrates the charge. If that be the norm, then the approach of the I.O. cannot be described as anything else but perverse. The I.O. has discarded all the evidences that demolish the charge. If this is the approach on the one side, the I.O. has not set out any material evidence which could even be assessed or appreciated as material which even superficially demonstrates the charge of a conduct unbecoming of a Government Servant/ Judicial Officer. This, in our considered opinion, constitutes a grave irregularity that vitiates the conclusions drawn. The approach

of the I.O. and the Disciplinary Authority causes intrigue. On the one hand, both the Disciplinary Authority and the I.O. shun the best evidence available in the form of the peons who were assigned by the District Court to work in the house of the delinquent officer named Prahlad and another. It is not that either the Disciplinary Authority or the I.O. or the District Judge who "verified the complaint", were unaware of. In fact, the deployment of these two peons has been revealed on the day of the 'raid' itself. The answer elicited in the course of cross-examination of P.W.1, P.W.3 and P.W.5 would reveal that the P.W.2 the victim girl had informed during the search that the red colour sweater was given to her by the peon Shri Prahlad. Secondly, P.W.1 in the course of his cross-examination has stated that the two peons working in the house of the petitioner had informed him in June, 2017 that the petitioner was beating the victim girl. This is forthcoming in Para 36 of the P.W.1's deposition. It is pertinent to note that the information alleged to have been shared by the two peons was that the girl was being beaten but PW1 does not even say that the two peons even alleged that the victim girl was employed as domestic help or maid servant by the petitioner. He would further elaborate by assigning a reason for this disclosure by the peons by stating that in June, 2017 the petitioner had a fight with two peons regarding her leave. If that be so, any prudent person would safely infer that the

relationship between the petitioner and the two peons may not be normal, much less cordial. Despite this revelation, neither the Disciplinary Authority nor the I.O. deemed it fit to summon the peons and examine them in the inquiry. Why these two peons have not been examined is the million dollar question.

145. We have consciously extracted the huge volume of deposition in order to better understand the stand and approach of the Inquiry Officer. The volume of evidence reproduced hereinabove certainly does not aid the case of the Department or in proving the charge and this is the volume of evidence that has been ignored by the Inquiry Officer. Our detailed perusal of the 660 paragraph report and the one distinguishing feature that we discerned was that the I.O. has predominantly used the report of the District Judge (30.01.2018) as a shield to justify the non-consideration of the huge volume of evidence which clearly disprove the charge. It is settled law that a preliminary inquiry report cannot be put against the delinquent as it is something which is prepared without an opportunity to the delinquent officer. In the instant case too, it is clearly admitted by P.W. 3 and 5 that though the victim girl was questioned both nearly the house and the office of the SSP, the same was not recorded or rather the answers said to have been given by the girl are not a matter of record and this fact is squarely admitted by

both P.W.3 and P.W.5. As regards the statement recorded by the 4th ADJ Varun Kumar pointed questions to P.W.3 during his cross-examination regarding the statement of P.W.1 being in a typed format and the statement of P.W.2 (victim) being in manuscript did not elicit any response rather P.W.3 would resort to an answer of convenience saying that he is not aware about the same. The answer sounds hollow for the reason that the said document, i.e. the statement of P.W.1 and P.W.2 were forwarded to the High Court by the District Judge, i.e. P.W.3. The extensive reliance on the preliminary report by the I.O., in our considered opinion, completely vitiates the inquiry. It is a document that has not only been prepared behind the back of the petitioner, but is also not authenticated by the persons to whom certain statements/facts are attributed. In this regard, we place reliance on the observation and finding of the Hon'ble Apex Court rendered in ***Niramala J. Jhala's*** case in Paras 40 to 48 as under:-

"40. The appellant had not married at that point of time, as per her statement. Even this fact has been admitted by Shri C.B. Gajjar, Advocate. Given the above set of facts, the complainant is seen talking about the appellant's husband for collecting money on her behalf. The High Court had failed to notice the above fact and had been making attempts to keep aside all such relevant factors in a case, where there was no direct evidence.

41. In the aforesaid backdrop, we have to consider the most relevant issue involved in this case. Admittedly, the enquiry officer, the High Court on administrative side as well on judicial side, had placed a very heavy reliance on the statement made by Shri C.B. Gajjar, Advocate, Mr G.G. Jani, complainant and that of Shri P.K. Pancholi, Advocate, in the preliminary inquiry before the Vigilance Officer. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.

42. A Constitution Bench of this Court in *Amalendu Ghosh v. North Eastern Railway* [AIR 1960 SC 992] , held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.

43. Similarly in *Champaklal Chimanlal Shah v. Union of India* [AIR 1964 SC 1854] a Constitution Bench of this Court while taking a similar view held that preliminary inquiry should not be confused with regular inquiry. The preliminary inquiry is not governed by the provisions of Article 311(2) of the Constitution of India. Preliminary inquiry may be held ex parte, for it is merely for the satisfaction of the Government though usually for the sake of fairness, an explanation may be sought from the government servant even at such an inquiry. But at that stage, he has no right to be heard as the inquiry is merely for the satisfaction of the Government as to whether a regular inquiry must be held. The Court further held as under : (AIR p. 1862, para 12)

"12. ... There must therefore be no confusion between the two enquiries and it is only when the government proceeds to hold a departmental enquiry for the purpose of inflicting on the government servant one of the three major punishments indicated in Article 311 that the government servant is entitled to the protection of that article [, nor prior to that]." (emphasis added)

(See also *Govt. of India v. Tarak Nath Ghosh* [(1971) 1 SCC 734 : AIR 1971 SC 823. Ed. : See paras 10 to 14 thereof in SCC where the distinction between a preliminary and regular enquiry has been discussed. *Tarak Nath Ghosh* has however been overruled on other points in *P.R. Nayak v. Union of India*, (1972) 1 SCC 332 and *T.V. Nataraj v. State of Karnataka*, (1994) 2 SCC 32.] .)

44. In *Narayan Dattatraya Ramteerthakhar v. State of Maharashtra* [(1997) 1 SCC 299 : 1997 SCC (L&S) 152 : AIR 1997 SC 2148] this Court dealt with the issue and held as under:

"... a preliminary inquiry has nothing to do with the enquiry conducted after issue of charge-sheet. The preliminary enquiry is only to find out whether disciplinary enquiry should be initiated against the delinquent. Once regular enquiry is held under the Rules, the preliminary enquiry loses its importance and, whether preliminary enquiry was held strictly in accordance with law or by observing principles of natural justice of (sic) nor, remains of no consequence." (emphasis added)

45. In view of the above, it is evident that the evidence recorded in preliminary inquiry cannot be used in regular inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice.

46. In *Ayaubkhan Noorkhan Pathan v. State of Maharashtra* [(2013) 4 SCC 465 : AIR 2013 SC 58] this Court while placing reliance upon a large number of earlier judgments held that cross-examination is an integral part of the principles of natural justice, and a statement recorded behind back of a person wherein the delinquent had no opportunity to cross-examine such persons, the same cannot be relied upon.

47. The preliminary enquiry may be useful only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry.

48. "A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case were [to be] believed. While determining whether a prima facie case had been made out or not the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence." (Vide Martin Burn Ltd. v. R.N. Banerjee [AIR 1958 SC 79] , AIR p. 85, para 27) [See also Bangalore Woollen Cotton and Silk Mills Co. Ltd. v. B. Dasappa [AIR 1960 SC 1352] , V.C. Shukla v. State (Delhi Admn.) [1980 Supp SCC 249 : 1980 SCC (Cri) 849 : AIR 1980 SC 1382] , Dalpat Kumar v. Prahlad Singh [(1992) 1 SCC 719 : AIR 1993 SC 276] and Cholan Roadways Ltd. v. G. Thirugnanasambandam [(2005) 3 SCC 241 : 2005 SCC (L&S) 395 : AIR 2005 SC 570] ."

146. The allegations or the basis for demonstrating the charge of conduct unbecoming of Judicial officer and failing to maintain integrity and devotion to the duty under Rule 3(1) and 3 (2) is that a minor girl has been employed as a domestic help or maid servant by the petitioner/ delinquent officer, contrary to provisions of Rule 3(4). This is also the sum and substance of the complaint. The charge unfortunately is vague. Whether defiance or violation of the prohibition under Rule 3(4) being a separate misconduct could also be construed as a misconduct under rule 3(1) and 3(2)? When a particular act has been categorized as an exclusive charge prima facie holding it as constituting a misconduct under the other general provision, in our considered opinion, is farfetched and in our humble opinion, unsustainable. In fact, the charge does not say as to whether the Disciplinary Authority considers the child as defined under the Child and Adolescent Labour (Prohibition and Regulation)

Act, 1986 or as a child under the Juvenile Justice Act. This distinction assumes significance as the age of the alleged victim as on the date of the alleged rescue was determined to be 17 years and this is probably why the I.O. has contrived a finding that the minor has been employed as a maid/ domestic help for the last three years. This conclusion is shocking as the fact remains that none of the witnesses examined on behalf of the 'prosecution' (this is how the Disciplinary Authority is favourably addressed by the I.O.) have even whispered about this, much less, deposed with regard to such a fact. It is not even the case of the 'anonymous complainant' that the victim girl has been working as a maid/ domestic help for the last three years. Despite the absence of any evidence to this effect, yet the I.O. has drawn a conclusion that the alleged victim has been employed as a maid/ domestic help even before she completed the age of 14 years. Such a prejudicial conclusion without being based on any evidence whatsoever is merely a conjecture and is indicative of a biased approach. In fact, the prosecution that was launched by the State was one of trafficking as defined under Section 370 of the Indian Penal Code. Section 370 makes the offence of exploitation of a person or persons including a minor as a punishable offence. The expression 'exploitation' by Explanation 1 and the same reads as under:-

"Explanation 1. The expression 'exploitation' shall include any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs."

147. Unfortunately, for the prosecution the State withdrew the charge and we think rightly so, as from the inception or commencement of 'raid' i.e. 29.01.2018, the child has been consistently speaking well and positively about the petitioner. The admissions elicited during the course of cross-examinations of various witnesses examined on behalf of the prosecution, running into reams of pages, more particularly, about the statements made by the alleged victim and recorded in the camera probably incentivized the withdrawal of the criminal prosecution by the State.

148. Now addressing the intrigue of non-examination of the best available witnesses or "eye-witnesses" by the prosecution, we are constrained to conclude that the same is not an unintended act. Despite the knowledge that the two peons were working in the house, the District Judge P.W.3 did not even deem it necessary to even have a cursory interaction with them before mobilizing the mammoth raiding party and the raid itself. Probably the omission could have been due to an apprehension that the peons may record statements contrary to the contents of the complaint. None of the other witnesses have even stated that they have witnessed the beatings or that they have heard the girl crying

out in pain, nor is there any medical evidence to demonstrate the beatings. P.W.3 has waxed eloquently about the information shared with him by P.W.1 and as noted P.W.1 himself claims that he was informed about the beatings by the two peons rendering him a hearsay witness. It is not even the case of P.W.1 that he ever heard the alleged victim even crying out in pain. Despite this serious lacunae the conclusion to the contrary by the I.O. is baffling and that too, in the face of the categorical assertion by P.W.2 the alleged victim who has not only negated the allegation of assault, but also the allegations of being engaged as a domestic help/ maid servant. She has categorically stated that she would have been killed or dead had she been assaulted with the knife as suggested by the P.O. To the further suggestion that she was starved and not given food for days together, she has countered the P.O. with a similar answer. Lastly, with regard to the suggestion of she being made to work and do all the domestic chores throughout the day, she has countered the Presenting Officer by stating that there was no necessity for her to do any work when all the work were being done by the two peons. At least, after the department was mocked in such a straight forward fashion, any prudent thinking person would have made an endeavour to have the said peons examined as witnesses. Prudence would have required at least the I.O. to summon them as witnesses, but the same was not done,

despite the Department reserving such a right in them, i.e. to examine other witnesses during the course of the inquiry itself. This omission on the part of the I.O. and the Department, in our considered opinion, kicks at the very root of the charges levelled against the petitioner and rendering the inquiry arbitrary and farcical.

149. Apart from the above, the reliance on the “verification process and report of P.W.3, the then District Judge”, by the I.O. to hold the misconduct as proved is, in our considered opinion, contrary to the settled law. It is settled law that preliminary inquiry cannot be put against the delinquent, as the officer is not part of the process and is not given an opportunity. The inquiry report, though gigantic, in our considered opinion, is completely bereft of any substantive material or incriminating evidence.

150. We place reliance on the ruling rendered by the Hon’ble Apex Court in case of the ***Nirmala J. Jhala vs. State of Gujarat***, reported in ***2013 (4) SCC 301***, which in our opinion is a compendium and guide for inquiries relating to judicial officers. The Hon’ble Apex Court has, in fact, conducted a detailed research by placing reliance on several landmark judgments rendered by the Hon’ble Apex Court itself while pronouncing the judgment in the said case.

151. In fact, the Apex Court by a catena of judgments has held that more weight should be attached to the evidence tendered before the I.O. Despite the settled position and despite the screening of the best evidence and witnesses, the I.O. has inferred in favour of the department/ prosecution when it should have been the other way round. P.W.1 relies on the information provided by the peons to vindicate his statement. P.W.2 relies on the said two peons to vindicate her stand that she never did any household chores. P.W.3 admits the deployment of the two peons, but yet for reasons best known 'prosecution and the I.O.', they have been kept away from the inquiry. If the two peons had been examined, it would have been decisive either way. Being potential eye-witnesses, they could be deposed in aid of the charge, or deposed negating the charge.

152. As regards the points for consideration 4 and 5 framed by the I.O. does not require in detail consideration. We have perused reasoning and as noted supra, no corroborative evidence or independent witness has been relied upon and the I.O. has yet again resorted to reliance on the report dated 30.01.2018 and the examination-in-chief of the witnesses, P.W.1, P.W.3 and P.W.5, though the report is marked, contents have not been proved.

153. In view of the above, we find that the petitioner has been wrongly held guilty of misconduct of a non-existent charge. We say so for the following reasons:

- 1. The charge of committing misconduct under Rule 3(1) and 3(2) is vague and ambiguous.*
- 2. The failure to frame a charge under Rule 3(4) when the imputations appear to be ingredients of Rule 3(4), in our opinion, is a convoluted exercise.*
- 3. The Department and the I.O. erred in attempting to shift the burden of proof upon the petitioner, particularly in the matter of proof placed by the petitioner to demonstrate the instrument used to send the anonymous complaint to the High Court. The reasoning that the petitioner failed to prove because she did not examine the service provider amounts to demanding proof of proof, i.e. rejecting the information furnished by the office of SSP.*
- 4. The conclusions arrived at by the I.O. is not an objective assessment of facts or evidence, but on subjective satisfaction.*
- 5. The Department and the I.O. erred in keeping out relevant material for consideration despite none of the witnesses claiming to be direct witnesses or eye-witnesses.*
- 6. The Inquiry Officer erred in holding P.W.2 as a hostile witness and being influenced by the petitioner, which in our considered opinion, perverse as no material has been placed to demonstrate as to how or when the petitioner has been able to bring influence on the prosecution witness.*
- 7. The I.O. erred in discarding the evidence of P.W.4 on the ground that the witness is brought over without even*

a suggestion to that extent being put to the witness, is perverse and vitiates the inquiry report in entirety.

8. The failure of the I.O. to appreciate the admissions elicited in the course of cross-examination of P.W.1, P.W.3 and P.W.5 renders the report a biased one.

9. The failure of the I.O. to appreciate the evidence of D.W.3, the petitioner and completely eschewing from consideration despite serious allegations, is indicative of a bias.

10. The failure to appreciate any of the circumstance favouring the petitioner by itself vitiates the inquiry report.

11. The approach of the I.O. to differently read the circumstances against the Department and appreciating the evidence contrary to the simple language of the deposition renders the report perverse, arbitrary and unsustainable.

154. In view of the above, the petition is allowed. The impugned resolution/ orders dated 07.10.2020, 14.10.2020, 16.10.2020, passed by the Competent Authority imposing the penalty of removing the petitioner from service, and the impugned order dated 20.10.2020, passed by the Government of Uttarakhand are set-aside. The inquiry report dated 09.06.2020 is also set-aside. The petitioner shall be deemed to have continued in service from the date of dismissal/ removal from service. The petitioner shall be entitled all service benefits, including seniority and shall be assigned consequential seniority and placed above the persons who were below her in order of seniority and with all

consequential benefits. In respect of salary and all other monetary benefits, in view of long period and passage of time, we are of the opinion that it would be inequitable to burden the State Exchequer to pay 100% of the arrears for work not rendered. Hence, the petitioner would be entitled to 50% of the all monetary benefit, including pay etc. The pay shall be revised and re-fixed. The monetary benefits shall be settled within a period of six weeks, failing which the petitioner would be entitled to the monetary benefits with interest @10%.

155. The writ petition stands ordered accordingly. In view of the extraordinary circumstances and keeping in view, the prayers involved, we desist from imposing cost.

156. Pending application, if any, also stands disposed of.

(G. NARENDAR, C.J.)

(SUBHASH UPADHYAY, J.)

Dated: 06th January, 2026

NISHANT