
(2013) 03 AHC CK 0050
In the Allahabad High Court
Case No : Criminal Rev. No. 1952 of 2010

Ajay Tiwari

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 182
Penal Code, 1860 (IPC) — Section 323, 376, 452, 504, 506

Citation : (2013) 2 ACR 1896 : (2013) 81 ALLCC 602

Hon'ble Judges : Aditya Nath Mittal, J

Bench : Single Bench

Advocate : Parvez Iqbal Ansari, Parvez Islam Ansari and Amit Daga, for the Appellant; Prem Chand Pandey and A.G.A, for the Respondent

Judgement

Aditya Nath Mittal, J.—Heard learned counsel for the revisionist, learned A.G.A. and learned counsel appearing for the opposite party No. 2. This criminal revision has been filed against the order dated 16.3.2010 passed by C.J.M., Ballia in Criminal Case 1982 of 2009, State of U.P. v. Ajay Tiwari, whereby the learned Magistrate has taken further cognizance for the offence punishable under Sections 452, 376 and 511. I.P.C.

2. Learned counsel for the revisionist has submitted that the prosecutrix is a lady of bad character and she has also lodged first information report against other persons including her husband and the father-in-law. It has further been submitted that the Investigating Officer has made further investigation without the permission of the court and has filed the supplementary charge-sheet. It has also been submitted that the prosecutrix had subsequently lodged a case at Crime No. 342 of 2011 under Sections 376, 511, 452, 504 and 506, I.P.C. in which not only final report was submitted, but report u/s 182, Cr.P.C. has also been submitted and the incident was found to be false.

3. Learned counsel for the opposite party No. 2 has submitted that no permission from the Magistrate concerned is required for further investigation and no

illegality has been caused by filing the supplementary charge-sheet.

4. Learned counsel for the opposite party No. 2 has relied upon Rama Chaudhary Vs. State of Bihar, in which Hon''ble the Apex Court has held that irrespective of report under sub-section (2) of Section 173, Cr.P.C. forwarded to the Magistrate, if the officer-in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. Hon''ble the Apex Court has further held that further investigation is permissible, however, re-investigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police.

Hon''ble the Apex Court has further held as under:

10. From a plain reading of sub-section (2) and sub-section (8) of Section 173. It is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "re-investigation". The meaning of "Further" is additional: more: or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started ab initio wiping out the earlier investigation altogether. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

5. In the present matter the charge-sheet for the offence punishable under Sections 323, 504 and 506, I.P.C. was submitted upon which charges were framed against the accused. Subsequently, on 21.12.2009 the Investigating Officer has submitted the supplementary charge-sheet for the offence punishable under Sections 452, 376 and 511, I.P.C. upon which the accused has been directed to get bail in the said matter.

6. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, : State of Haryana and others Vs. Ch. Bhajan Lal and another Shri S.A. Khan, . State of Bihar and Another Vs. P.P. Sharma, IAS and Another, and Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, and lastly (2012) 11 SCC 465. Detailed reasoned order at the stage of issuance of process is not required under the provisions of Code of Criminal Procedure.

7. In (2012) 11 SCC 465, it has been further held that defences may be taken Into consideration only if defence(s) raised by accused are factually unassailable and incontrovertible and demolish foundation of prosecution case. Defences raised by the petitioner in present case are based on factual inferences wherein certainly ought not to be taken into consideration at stage of issuing process. The disputed defence of the accused cannot be considered at this stage.

Moreover, the revisionist has got a right of" discharge at appropriate stage.

8. The allegations of house trespass and attempt to commit rape were made in the written report submitted by the prosecutrix in which now supplementary charge-sheet has been submitted. At this stage the conduct of the prosecutrix cannot be seen and in view of the above only (his much has to be seen that as to whether a prima facie case is made out or not. From the perusal of the F.I.R. in the present case, it cannot be said that prima facie case for the offence punishable under Sections 452, 376 and 511, I.P.C. is not made out.

9. Certainly, the revisionist has right to move an application for discharge and at the time of disposal of the application for discharge all these facts may be considered.

10. For the facts and circumstances of the case, mentioned above. I do not find any error of law or perversity in the impugned order. The revision is dismissed.

11. It is made clear that the observations made herein shall not prejudice the rights of the parties. However, if the revisionist appears before the court below and move application for bail, his bail application shall be disposed of expeditiously and if possible the same day.