
(2011) 08 AHC CK 0310
In the Allahabad High Court
Case No : Criminal Revision No. 3240 of 2011

Akram and another

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 12-08-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 190(1), 227, 397
Penal Code, 1860 (IPC) — Section 245(1), 245(2), 294, 342, 376

Citation : (2011) 3 ACR 3357

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Advocate : Samiullah Khan, V.M. Zaidi and S.M.G. Asghar for the Revisionists,
for the Appellant;

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—Heard Sri V. M. Zaidi, Senior Advocate assisted by Sri Sami Ullah Khan, learned counsel for the revisionists and learned A.G.A. for the State.

2. This revision u/s 397/401, Cr.P.C. is directed against the order dated 23.6.2011, passed by Addl. Chief Judicial Magistrate-I, Bijnor in Case No. 3879 of 2010, State v. Akram and another, u/s 376, I.P.C., P. S. Haldaur. district-Bijnor, whereby the application for discharge preferred by the revisionists has been dismissed and the revisionists and co-accused were directed to surrender within 15 days.

3. Learned counsel for the revisionists submitted that earlier F.I.R. was lodged by Bhupendra Kumar, brother of the victim on 30.6.2009 in respect of the same incident for the offences punishable under Sections 342, 506 and 294, I.P.C., P. S. Haldaur. A cross case was lodged by accused Abdul Sami against Bhupendra and others. Subsequently, the prosecutrix herself lodged F.I.R. on 24.7.2009 in respect of the offences u/s 376(2)(g), 342 and 506, I.P.C claiming that the incident took place on 28.6-2009 whereas in the earlier F.I.R. also, the incident was alleged to have taken place on 28.6.2009. The F.I.R. lodged by Bhupendra

as well as the subsequent F.I.R. lodged by the victim were investigated together and final report was submitted by the police in favour of the accused person, but the learned Magistrate, on a protest petition being filed, rejected the final report and took cognizance u/s 190(1)(b), Cr. P.C and summoned the revisionist Akram, Javed @ Jawld and co-accused Abid to face trial under Sections 376(2)(g), 342 and 506, I.P.C.

4. The summoning order was challenged by the revisionist by means of an application u/s 482 No. 1254 of 2010, which was decided on 19.1.2010. passed by another Bench of this Court. The prayer for quashing the summoning order dated 1.12.2009 was refused but certain directions were given for expeditious disposal of the bail application. The revisionists did not surrender and moved another application u/s 482 No. 3079 of 2011 praying for quashing of the order dated 7.1.2011 issuing non-bailable warrant of arrest against the accused persons. The said application was disposed of on 25.2.2011 declining the prayer for quashing the order dated 7.1.2011 and it was left open for the applicants to move an application for discharge before the trial court. An application for discharge was accordingly moved on behalf of the applicants and has now been rejected by the Magistrate.

5. Learned counsel for the revisionists submitted that two F.I.Rs. cannot be lodged in respect of the same incident and the old process of investigation and subsequent taking of cognizance etc. are vitiated. It is further submitted that the victim has given a totally false statements to the Investigating Officer. In the earlier F.I.R. lodged by the brother of the victim, no allegation of rape was made but in the second F.I.R. lodged by the victim and in her statement u/s 161, Cr. P.C., the prosecution version was changed and new story of gang rape was developed whereas and the applicants were not named in the earlier F.I.R. and these facts have not been considered by the Magistrate at the time of rejecting application for discharge.

6. Per contra, learned A.G.A. submits that the second F.I.R. may not be admissible and may be hit by Section 162. Cr. P.C. but on that account, the investigation and subsequent proceedings are not vitiated. The police submitted final report and the Magistrate took cognizance u/s 190(1)(b), Cr. P.C. on the basis of material available in the case diary as well as the statements of the victim recorded u/s 161. Cr. P.C. The order taking cognizance was challenged before this Court without success and. therefore, the order taking cognizance cannot be challenged subsequently in the same proceedings.

7. I have considered rival submissions advanced by learned counsel for the parties and I do not find any substance in any of the submissions" advanced by learned counsel for the revisionists.

8. The order taking cognizance has become final. Offence u/s 376(2)(g), I.P.C. is triable by the Court of Sessions and learned Magistrate has no jurisdiction to entertain any application for discharge u/s 245(1) or 245(2). Cr. P.C. The

application for discharge can only be moved before the Court of Sessions u/s 227, Cr. P.C. at appropriate stage. Learned Magistrate has rejected the application for discharge on the basis of statement of the victim recorded u/s 161. Cr. P.C. The Impugned order does not suffer from any illegality.

9. The revision lacks merit and is accordingly dismissed.

10. If the revisionists surrender before the Magistrate concerned within two weeks from today and apply for bail, their prayer for bail be considered and disposed of by the courts below expeditiously.