
(2008) 01 AHC CK 0009

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 149 of 2008

Devendra

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 354, 376

Citation : (2008) 26 CriminalCC 74

Hon'ble Judges : V.D. Chaturvedi, J

Bench : Single Bench

Advocate : Shashi Dhar Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

V.D. Chaturvedi, J.—Learned Counsel for the petitioner contends that in Case Crime No. 197 of 2007, u/s 376 IPC the I.O. earlier submitted a charge-sheet u/s 354 IPC but the Circle Officer by his order dated 08.08.2007. directed for re-investigation hence, the I.O. re-investigated the case, re-recorded the statement of the prosecutrix and submitted the subsequent charge-sheet u/s 376 IPC. Learned Counsel for the petitioner relied upon the judgment given by the another Single Bench of this Court in the case of Krishna Kumar Gupta v. State of U.P. 2006(55) ACC 180.

2. The earlier charge-sheet dated 06.06.2007 for offence u/s 354 IPC did not reach the Court when the Circle Officer passed the order dated 08.08.2007. The Court took the cognizance on the charge-sheet dated 15.08.2007 and not on the charge-sheet dated 06.06.2007. Thus, the Magistrate took the cognizance on a police report submitted u/s 173(2) Cr.P.C. The charge-sheet consisted of the statements of the prosecutrix recorded two times u/s 16 Cr.P.C. and also the statement of the prosecutrix recorded u/s 164 Cr.P.C.

3. The provisions contained in sub-section (3) and sub-section (8) of section 173

Cr.P.C. empowers for further investigation. But on its basis it cannot be construed that the I.O. has no power to recorded the statement of any witness.

4. There is no bar for the I.O., in Cr.P.C., to re-record the statement of any witness if the circumstances so require. The re-examination of witnesses even by the Trial Court is permitted under the Evidence Acct. Therefore, there is nothing to hold that the I.O. may no re-record the statement of any witness. The record reveals that an objection was raised against the I.O. hence I.O. was changed and re-investigation was ordered. The circumstances, in which the I.O. was changed and the statements of the witnesses were re-recorded, were appropriate circumstances. There is nothing in the Code of Criminal Procedure which may restrict the Investigating Officer to record the statement of a witness only once.

5. The prosecutrix in her second statement has supported the FIR and has given the explanation for concealing in her first statement the fact of rape upon her. She has supported recorded u/s 164 Cr.P.C. also.

6. A matter came before Hon"ble the Supreme Court in Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others, wherein the Investigating Officer earlier submitted a final report. The Magistrate ordered on 02.08.1995 for "re-investigation of the case."

7. Pursuant to the said order, the police-investigated and filed a report on 15.09.1997. holding that the appellant has committed the offence u/s 420 of the IPC. The Magistrate took cognizance of the offence on the receipt of the said report and issued warrant of arrest. The Hon"ble Supreme Court found no illegality in the order nor in the re-investigation made by the Investigating Officer. The case reported in AIR 199 SC 2332 also fortifies the view that there is nothing wrong if the case is re-investigated u/s 173(8) or u/s 173(3) Cr.P.C.

8. In view of what has been discussed above, I find no illegality in the order directing re-investigation nor I find any illegality in the investigation wherein the statement of a witness was re-recorded by the I.O.

9. The Magistrate committed no error in taking the cognizance on a police report submitted u/s 173(2) Cr.P.C. The petition is devoid of merits. It is therefore dismissed.

10. The petitioner"s Counsel, after the above order is dictated, further argues that the police has no power to re-investigated the case.

11. The both of these points have met their reply in the discussion made above. No case to interfere. The petition is dismissed.