

(2011) 07 AHC CK 0035
In the Allahabad High Court
Case No : Criminal Revision No. 2711 of 2011

Kedar Nath Verma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 91
Penal Code, 1860 (IPC) — Section 302

Citation : (2011) 3 ACR 3241 : (2011) 7 ADJ 312

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agarwal, J.—This revision is directed against the order dated 11.5.2011 passed by Addl. Sessions Judge, Ghaziabad in Sessions Trial No. 967 of 2009 State v. Rajendra Verma u/s 302 Indian Penal Code, P.S. Kotwali, District-Ghaziabad, whereby the application u/s 91/173 (8) Code of Criminal Procedure filed on behalf of the revisionist-complainant was rejected.

2. The application was moved by the complainant praying for the following reliefs:

Therefore, in light of the aforesaid premises it is most humbly prayed that this learned Court may be pleased to pass the following orders:

(a) I.O. should be directed to track the entire calls received/ made, SMS Received/ made at least 15 days prior to the murder till the 6.5.2009 (The day of murder) of the deceased mobile No. 9250717417.

(b) 09837072400, 09219507332 and 09219064385 Nos. which belong to the Accuser's 1 and other Nos. from which calls had been frequently made to the deceased's mobile phone. The aforesaid Nos. call record and their locations on the unfortunate day should be produced by the I.O.

(c) To pass any other order/orders which this Ld. Court may deem fit and proper

in the circumstances of the case.

3. The application was rejected by Addl. Sessions Judge on the ground that the reliefs prayed for direction for further investigation, which is not permissible during the hearing of the sessions trial and the Sessions Judge has no right to exercise powers u/s 173(8) Code of Criminal Procedure and the complainant may, if so advised, get the relevant records summoned from the telephone company.

4. Heard Sri Gyanendra Kumar Singh, Learned Counsel for the revisionist and learned AGA for the State.

Learned Counsel for the revisionist submitted that the revisionist was not praying for further investigation of the case but Investigating Officer deliberately mis-directed the investigation and did not collect the relevant records of the mobile phones of the deceased and the accused and various others mobile numbers, which have been mentioned in the application, Therefore, I.O. should have been directed to collect them and file in the Court

5. Learned AGA supported the impugned order and stated that any direction to the Investigating Officer during the course of hearing of session trial directing collection and tracking of mobile phone records amount to further investigation, which is not permissible. Sessions Judge can not exercise powers u/s 173(8) Code of Criminal Procedure Such power can only be exercised by a Magistrate.

6. In this view of the matter, the impugned order does not suffer from any illegality. Learned Sessions Judge has given a option to the complainant to get the records of the mobile phones company summoned, if so advised. Therefore, no good ground for interference is made out The orders passed by learned Addl. Sessions Judge is perfectly justified.

The revision lacks merit and is accordingly dismissed.

The revisionist shall be at liberty to move a fresh application u/s 91 Code of Criminal Procedure for summoning the records of the mobile company from their offices and on such application being presented, learned trial Court shall pass appropriate orders in accordance with law.