

(2014) 07 AHC CK 0040

In the Allahabad High Court

Case No : Criminal Misc. Application No. 1284 of 2012

Ravindra Srivastav

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 15-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 164, 482
Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2014) 3 ACR 3063 : (2014) 8 ADJ 136 : (2014) 87 ALLCC 419

Hon'ble Judges : Karuna Nand Bajpayee, J

Bench : Single Bench

Advocate : R.N. Yadav and Abhishekh Kumar Yadav, Advocate for the Appellant

Judgement

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Karuna Nand Bajpayee, J.—This application under Section 482 Cr.P.C. seeks the quashing of order dated 28.11.2011 passed by Additional District and Sessions Judge, Court No. 3, Jaunpur in bail application No. 1414 of 2011 in as much as it contains the direction to initiate disciplinary administrative action against the applicant with regard to his conduct displayed during the course of investigation in case crime No. 760 of 2011, under Section 363, 366 and 376 I.P.C., P.S. Kotwali, district Jaunpur. Heard Sri Abhishekh Kumar Yadav, advocate holding brief of Sri R.N. Yadav counsel for the applicant as well as learned A.G.A. and perused the record.

Notices were issued to opposite party Nos. 2 and 3 and the office report reveals that they have been served also. But none has appeared to represent them nor any power on their behalf has been filed. Even the State has not filed any counter-affidavit.

2. It seems that while the Court of Additional District and Sessions Judge, Court No. 3, Jaunpur was hearing the bail application of Raj Dev Lal @ Gabbar under Section 363, 366 and 376 I.P.C., P.S. Kotwali, district Jaunpur, it transpired

before the Court below that though the alleged victim Rukaiya Bano, after her recovery which was effected on 29.7.2011, had given her statement under Section 161 Cr.P.C. to the Investigating Officer in which she had made allegations against accused Raj Dev Lal @ Gabbar for having committed rape on her, but later on when her statement was recorded by the Magistrate under Section 164 Cr.P.C., she denied that allegation and shifted the blame on a different accused-Shahjadey @ Pallu. But despite this fact, charge-sheet was submitted against accused-Raj Dev. The Court below seems to have taken a serious view in the matter and was of the opinion that the statement given by the victim under Section 164 Cr.P.C. ought to have been weighed and accepted by the I.O. and should not have been wholly ignored. The way the I.O. preferred her statement given under Section 161 Cr.P.C. and the manner in which her statement given under Section 164 Cr.P.C. was ignored, was viewed very adversely by the Court and in that back ground of the fact not only the bail to accused-Raj Dev Lal @ Gabbar was granted but the Court also issued directions to proceed against the Investigating Officers who were concerned with the investigation of the case for administrative and disciplinary action and referred the matter to D.G.P.

3. Aggrieved by the aforesaid order the present application has been moved by the applicant-investigating officer.

The contention of the counsel involves several intricate factual details relating to the matter in question which are not quite germane to the controversy involved. The relevant part of argument raised by the counsel is that as the charge-sheet had already been submitted before the Court below and the matter is pending in the Court of competent jurisdiction which is seized with the matter, normally it should be only after hearing of the case at the final stage that such kind of strict action against the Investigating Officers is supposed to be taken by the Court. The submission is that issuing a direction of this kind at the stage of hearing of the bail application is improper as it is at a premature stage. It has further been submitted-that the I.O. had definitely a discretionary scope to accept or reject the worth of evidence collected by him. The argument is that if in view of the I.O. there was material available in the case diary against the accused it was not at all mandatory for him to submit the final report just on the basis of some favourable statement given under Section 164 Cr.P.C. exonerating the accused and not to rely upon the statement given to him under Section 161 Cr.P.C. by the victim itself which was sufficient to implicate the accused in the crime. Ultimate acceptability of the evidence must be left to the Court which at the time of final adjudication, had the right and jurisdiction to decide upon the correctness or falsity of the allegations made at different stages of the matter, which may have an ostensible variance inter-se.

4. Learned A.G.A. has not been able to put forth any serious opposition to the submissions made by the applicant's counsel.

5. This Court has considered the submissions made by the counsel in the light of the facts available on record. The Court does not propose to give any final finding

whether the statement given by the victim under Section 164 Cr.P.C. was correct or whether the statement given by her to the Investigating Officer under Section 161 Cr.P.C. was true. It is for the trial Court to decide and give finding on this aspect of the matter. But this Court, finding substance in the submissions made by the applicant's counsel, is also of the view that any decision for initiating administrative or disciplinary action against the I.O., ought to have been reserved for the final stage when the trial Court after recording the entire evidence should have given its final verdict upon the guilt or innocence of the accused.

6. The reliability, acceptability and veracity of the victim's statement, can be adjudged only after the witnesses were examined and cross-examined in the trial. The prima facie finding upon the acceptability or unreliability of the material collected by the I.O., may entitle the accused for different reliefs at different stages of enquiry or trial but unless the matter was finally adjudicated by the Court, it indeed looks premature to pass strict strictures or to issue direction to initiate disciplinary or administrative action against the I.O. May be in certain exigencies, in peculiar facts and circumstances of a given case, in some extreme situation this course may be adopted by the Court. But so far as the facts of present case are concerned this Court is not satisfied that such a recourse should have been adopted at the stage of deciding the bail application moved by the accused. The Court ought to have realised that the proposed step of initiating disciplinary proceedings against the Investigation Officer in a matter where the final judicial verdict about the evidentiary value and worth of material collected by the I.O. and the finding about the testimonial veracity of the prosecution witnesses was still awaited, was pregnant with serious implications which could be pre-judicial to the fate of the case, not to speak of the adverse repercussions which it might entail upon the carrier of the Police Officer who had no opportunity to defend himself or to proffer any legitimate explanation of his impugned conduct. The I.O. was still to be produced as prosecution witness and the accused or even the Court would have had the right to call for an explanation from him as to why did he act upon the victim's statement recorded under Section 161 Cr.P.C. and not on her contrary statement given later on. Ordinarily a person or official ought not to be condemned at his back without offering him the opportunity to explain his conduct under challenge. The trial Court seized with the jurisdiction of trial must be allowed to have an opportunity of weighing the validity of the explanation if the same is given by the Investigating Officer in the course of recording the evidence. In fact even the interest of the prosecution is likely to be effected prejudicially in the wake of the aforesaid preoccupied judicial notion nurtured against the Investigating Officer and his integrity. In this view of the matter also the post-haste strictures passed against the official cannot be allowed to stand. In the aforesaid circumstances, the impugned order dated 28.11.2011 passed by the Additional District and Sessions Judge, Court No. 3, Jaunpur, in so far as it relates to initiation of the disciplinary action and inquiry against applicant is concerned stands quashed.

The application is allowed.

It is clarified that any observation made in this order must not be construed to have any effect upon merits of the case and the Court shall be at liberty to take whatever adequate view commends itself to be taken at the time of final adjudication of the case.