(1999) 1 ACR 286

Allahabad High Court

Case No: Criminal Miscellaneous Application No. 4965 of 1998

Raj Singh		APPELLANT
	Vs	
Sudhir Kumar and Others		RESPONDENT

Date of Decision: Nov. 25, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482

Citation: (1999) 1 ACR 286

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Advocate: N.K. Sharma, for the Appellant; A.G.A., for the Respondent

Final Decision: Dismissed

Judgement

B.K. Sharma, J.

Heard learned Counsel for the applicant and also the learned A.G.A. who has lent support to him. The facts leading to this application are that one Bharat Vir was murdered on 15.09.1998 and F.I.R. was lodged and case was registered and investigation started. During the investigation, Sudhir Kumar and Premed Kumar surrendered before the A.C.J.M., Ghaziabad on 09.10.1998. Learned A.C.J.M. remanded the accused persons to judicial custody. Thereafter the Investigating Officer interrogated the accused persons in judicial custody and recorded their statements in case diary on 12.10.1998. The Investigating Officer moved an application on 14.10.1998. before the learned A.C.J.M. to remand the accused persons in police custody for 3 days to facilitate the recovery of the corpse of the deceased in view of the statements of these accused persons recorded in the case diary on 12.10.1998 in which they are said to have stated that they were willing to lead the police to recover the corpse of the deceased thrown in the jungle of Rishi Kasha. The learned Magistrate rejected the application for police remand by his order dated 21.10.1998. Aggrieved by the same, the State challenged it before the Sessions Judge by preferring a revision. The revision eventually came before the 1st A.S.J.,

Ghaziabad for disposal who found that the learned Magistrate appeared to have taken a wrong view unjust to the Investigating Agency while rejecting the prayer of the Investigating Officer for giving the accused persons in police custody. He mentioned in his judgment that at no point of time, the accused persons had retracted their statements as Recorded in the case diary by the Investigating Officer and took the view that the reasons advanced by the Magistrate in refusing the police remand could not be valid reasons for turning down to the prayer of the Investigating Agency which was fully supported by the entries of the case diary. However, he rejected the revision on the legal ground raised before him on behalf of the accused persons based on the case law of this Court Amar Pal and Ors. v. State 31 1994 ACC 501 ; 1995 Cr U 52 and of the Apex Court in Central Bureau of Investigation v. Anupam K. Kulkami (29) 1992 ACC 512, which was to the effect that after the expiry of the first period of 15 days, further remand during the period of investigation can only be in judicial custody.

2. The complainant who is the revisionist before this Court has challenged the Order dated 09.11.1998 passed by the 1st Additional Sessions Judge dismissing the revision. In fact, he has also challenged the Order dated 21.10.1998 passed by the Volt A.C.J.M., Ghaziabad even though the said order was merged in the provisional order aforesaid. His contention is that the complainant should not suffer for the lapse of the Officer who manned the office of the Itch A.C.J.M. at the relevant time (21.10.1998) and that relief ought to be given to the prosecution which is otherwise going to be hampered. In case the police remand is not granted and the recovery/discovery of the dead body is not made. It is true that the order passed by the learned A.C.J.M. aforesaid cannot'' be supported and it will be only proper that the High Court examines the matter on administrative side as regards to the said A.C.J.M. as to what measure should be taken in regard to the said Officer for having passed that order. However, this Court cannot extend the statutory bar against remand after fifteen days which has also been judicially sustained up to the Apex Court. So no exception can be taken to the judgment and order passed by the 1st Addl. Sessions Judge, Ghaziabad dismissing the revision filed by the prosecution. This application u/s 482, Code of Criminal Procedure is consequently summarily dismissed.