

(2009) 11 AHC CK 0264

Allahabad High Court

Case No: Criminal Revision No. 3323 of 2007

Ajay alias Bablu Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Nov. 23, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 173(2), 173(8)
- Penal Code, 1860 (IPC) - Section 120B, 302, 323, 34, 504

Citation: (2010) 1 ACR 552 : (2011) 6 RCR(Criminal) 1546

Hon'ble Judges: Amar Saran, J

Bench: Single Bench

Advocate: V.S. Singh and Vishwajeet Singh, for the Appellant; Vinod Kumar Sahu and A.G.A., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Amar Saran, J.

Heard Shri V.S. Singh, learned Counsel for the applicant, Shri Vinod Kumar Sahu, learned Counsel for the complainant and Shri Shashi Dhar Tripathi, learned Additional Government Advocate.

2. By means of this revision the revisionist has challenged an order dated 3.10.2009, passed by the Sessions Judge, Hamirpur. By the impugned order the learned Sessions Judge accepted the part of the prayer of the revisionist for being given the copy of the G.D., but declined to accept the prayer of the revisionist to get the statement of S.I. Kesari Singh recorded u/s 161, Code of Criminal Procedure and thereafter for giving a copy to the revisionist.

3. It is contended by the learned Counsel for the revisionist that S.I. Kesari Singh is also said to have gone to the site after the incident and there was some dispute about the time of incident. If his statement was material, the same ought to have

been recorded u/s 161, Code of Criminal Procedure Also he was nominated as a witness in the charge-sheet.

4. The trial Judge, however, observed that significantly even no application was moved for getting the statement of Kesari Singh recorded u/s 161, Code of Criminal Procedure prior to the committal of the case of the Court of Session and the application has been moved belatedly after the committal of the case.

5. Learned Counsel for the revisionist has placed reliance upon the decision of the High Court in Dr. Sanjay Singh and Ors. v. State and Anr. 1989 ALJ 1029 : 1990 ACR 270. No doubt, in this case, it is stated that if after enquiry the Magistrate finds that the statement of some witness is material, he may direct recording of the statement of the said witness. However, the trial Judge has distinguished this case.

6. I think that the aforesaid judgment is per incuriam as there is no provision in the Code of Criminal Procedure empowering the Court to issue such directions, and in the teeth of the decision of the Apex Court.

7. Shri Shashi Dhar Tripathi, learned A.G.A. has placed reliance upon the decision of the Supreme Court in Venkat Subramaniam v. M.K. Mohan Krishnamurthi (LXVII)2009 ACC 278 wherein it has been provided that the fields of investigation and trial are completely separate. The Court has no such power to issue directions for getting a particular statement recorded or investigation conducted in a particular manner specially when even the charge-sheet was submitted, cognizance was taken and the case has even been committed to the Court of Session.

8. u/s 173(8), Code of Criminal Procedure no doubt some powers have been conferred on the investigating agency to further investigate the case after submission of the charge-sheet u/s 173(2), Code of Criminal Procedure, but as observed in the case of Rama Chaudhary v. State of Bihar 2009 (1) All J IC 661 : 2009 (2) ACR 1645 that even the police on its own can further investigate the matter though it cannot reinvestigate a matter and there is no power with the Court for directing further investigation and recording the Section 161, Code of Criminal Procedure statement after the submission of the charge-sheet and cognizance and committal of the case as this would certainly amount to directing further investigation, which is not permissible.

9. In another case cited by the learned Counsel for the revisionist Noor Khan Vs. State of Rajasthan, it has even been provided that non-supply of copies of statements is also not mandatory in every case as the accused will have to show that great prejudice would be caused to him from the failure to supply the copies.

10. From the perusal of this case, it is clearly apparent that there is no question of the trial court or superior court directing for recording of statements by the Investigating Officer at the stage of trial, that have earlier not been recorded.

11. It is of course open to the revisionist to produce any witness in defence at the appropriate stage and there can be no bar against the same.

12. For all these reasons, I see no illegality in the impugned order.

13. The revision is accordingly dismissed.

14. However, as this is a case under Sections 323, 504, 302/34 and 302/120B, I.P.C., police station Bewar, district Hamirpur, which has been stayed by this Court by order dated 31.10.2007, the stay order is instantly vacated. The trial court is now directed to conclude the trial very expeditiously, if possible, within four months from the date of production of a certified copy of this order.