(2009) 09 AHC CK 0183

Allahabad High Court

Case No: None

Vakeel Ahmad		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Sept. 3, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 167, 482
- Penal Code, 1860 (IPC) - Section 323, 354, 376, 506

Citation: (2010) CriLJ 2256 : (2010) 6 RCR(Criminal) 2051

Hon'ble Judges: Vijay Kumar Verma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Vijay Kumar Verma, J.

Whether the Magistrate is bound to grant remand for judicial custody in those sections only for which prayer has been made by the investigating officer in remand application" is the main legal question that falls for consideration in this proceeding u/s 482 of the Code of Criminal Procedure (in short "the Cr.P.C."), by means of which the order dated 25.05.2009, passed by judicial Magistrate-11, court No. 16, Jaunpur, in case crime No. 356 of 2009, u/s 354, 506 IPC, has been challenged by the accused Vakeel Ahmad.

2. By the impugned order, the learned magistrate has granted remand of the applicant in judicial custody under Sections 376, 323, 506 IPC in aforesaid case after allowing the application moved on behalf of the prosecution.

3. Heard Sri J.S. Audichya, learned Counsel for the applicant and AGA for the State

4. From the record, it transpires that an FIR was lodged by Kasim Khan on 22.05.2009 at P.S. Kerakat, District Jaunpur impleading Vakeel Ahmad (applicant

herein) as accused. A case at crime No. 356 of 2009 under Sections 376, 323, 506 IPC was registered against the accused. The allegations made1 in the FIR, in brief, are that the accused Vakil Ahamad committed rape with the daughter of the complainant on 17.05.2009. The name of the prosecutirx is not being disclosed in this order in view of the observations made by the Hon"ble Apex Court in certain decisions. During the course of investigation, remand u/s 354, 506 IPC was sought by the investigating officer on 25.05.2009 and he did not seek remand u/s 376 IPC. When the applicant-accused was brought to court for seeking remand, an application was moved on behalf of the prosecution to grant remand u/s 376 IPC also. The learned magistrate after hearing parties counsel, allowed the application of prosecution and granted remand sending the applicant in judicial custody under Sections 376, 323, 506 IPC vide impugned order dated 25.05.2009, which has been challenged in this proceeding u/s 482 CrPC.

5. It is contended by learned Counsel for the applicant that the investigating officer had sought remand u/s 354 and 506 IPC only and hence the learned magistrate was not empowered to grant remand u/s 376 IPC. The contention of the learned Counsel for the applicant is that the magistrate has no jurisdiction to interfere in the investigation and remand u/s 167 Cr.P.C. can be granted by the magistrate in those sections only for which prayer has been made by the investigating officer in remand application and hence the impugned order being without jurisdiction and wholly illegal deserves to be quashed.

6. In response, the learned AGA submitted that the magistrate is not to be guided by the opinion of the investigating officer and he can grant remand in proper sections after perusing the case diary, ignoring the request made by investigating officer in remand application.

7. I have given my thoughtful consideration to the aforesaid submissions made by learned Counsel for the parties. Annexure (1) is the copy of FIR, in which allegation of committing rape with the prosecutrix by the applicant Vakiee Ahmad has been made. In her statement recorded u/s 161 Cr.P.C, the prosecutrix has supported the allegation about committing rape with her by Vakeel Ahamad. Copy of the statement of prosecutrix recorded u/s 161 Cr.P.C. has been filed with Annexurer-3. It is well settled law that if found reliable, the conviction for the offence punishable u/s 376 IPC can be recorded on the basis of sole testimony of the prosecutrix. Therefore, keeping in view the statement of prosecutrix, the learned magistrate did not commit any illegality in granting remand u/s 376 IPC.

8. If in any case, the investigating officer deliberately commits mischief and with a view to help the accused, he does not seek remand in proper sections, then the magistrate can not sit as silent spectator. While granting remand u/s 167 Cr.PC the magistrate is required to go through the case diary and in exercising the power u/s 167 Cr.P.C., he is not bound to accept the prayer made by the investigating officer in remand application. What offence is made out on the basis of the material in the

case diary, is to be decided by the magistrate after applying its judicial mind and he is not bound to accept the opinion expressed by the investigating officer in remand application. Investigating officer is not the sole authority to decide as to what offence is made out on the basis of material in case diary. Granting remand u/s 167 Cr.P.C. either injudicial or police custody is not mere formality. Judicial mind has to be applied by the Magistrate in exercising the power u/s 167 Cr.P.C. If the material available in the case diary is not sufficient to send the accused in judicial or police custody, then the magistrate can refuse to grant remand, even if prayer is made by the investigating officer. The magistrate is fully empowered to grant remand under proper sections after perusal of the case dairy and applying its judicial mind, ignoring the prayer made by investigating officer in remand application. In my considered opinion, granting remand u/s 167 Cr.P.C in proper sections on the basis of the material available in the case diary would not tantamount to interference in investigation.

9. In view of the aforesaid discussion, the impugned order does not require any interference by this Court, as it does not suffer from any illegality or jurisdictional error.

10. Consequently, the application u/s 482 Cr.P.C. is hereby rejected.