

HIGH COURT OF UTTARAKHAND**Bench: Justice Ravindra Maithani****Date of Decision: 15th May 2024**

Case No.: Criminal Revision No. 816 of 2023

APPELLANT: Vijay Pal (Vijay Pal Singh) ... Revisionist**VERSUS****RESPONDENTS: State of Uttarakhand and Another ... Respondents****Legislation:**

Sections 376(3), 506 IPC

Sections 3/4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act)

Sections 161, 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.)

Subject: Criminal revision against the order rejecting the final report submitted by the Investigating Officer (IO) in a case involving allegations of rape and threat against a minor girl by Vijay Pal, questioning the adequacy and completeness of the investigation conducted.

Headnotes:

Criminal Law – Investigation Inadequacies – Final report submitted by IO in a rape case involving a minor, rejected by the trial court – Court directs further investigation considering multiple discrepancies and lack of thoroughness in the initial investigation – Emphasizes the need for IO to explore alternative leads and gather comprehensive evidence before concluding the investigation [Paras 1-22].

Prosecution Case – Investigation Failures – Revisionist provided alibi with supporting statements and Call Detail Record (CDR) locations – Trial court found the investigation lacking, particularly in verifying alternate mobile numbers and thorough cross-examination of alibi witnesses – Court criticizes superficial acceptance of alibi without exhaustive verification [Paras 4-10].

Delayed FIR – Impact on Credibility – FIR lodged after seven months from the incident date due to alleged inaction by authorities – Court notes delay does not invalidate FIR but necessitates careful examination of all evidence due to potential bias and enmity between parties [Paras 18-19].

Decision – Revision Allowed – Order rejecting final report set aside – Matter remanded for further investigation with specific directions to explore additional evidentiary leads and ensure comprehensive inquiry – IO instructed to submit detailed follow-up report [Para 21-25].

Referred Cases:

- Shambhu Nath Mehra v. The State of Ajmer, AIR 1956 SC 404
- Trimukh Maroti Kirkan v. State of Maharashtra, (2006) 10 SCC 681
- State of W.B. v. Mir Mohammad Omar and Ors., (2000) 8 SCC 382
- Zahira Habibulla H. Sheikh & Anr. Vs. State of Gujarat & Ors., (2004) 4 SCC 158
- Vishal Singh v. State of Rajasthan, (2009) Cri. LJ 2243
- Kikar Singh v. State of Rajasthan, AIR 1993 SC 2426

Representing Advocates:

Mr. Bhupesh Kandpal and Ms. Soniya Chawla for the revisionist

Mr. M.A. Khan, A.G.A. for the State

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral)

The challenge in this revision is made to the order dated 11.10.2023, passed in Misc. Case No.20 of 2023, State Vs. Vijay Pal, by the court of Special Judge (POCSO)/District and Sessions Judge, Tehri Garhwal (“the case”). By this order, the final report submitted in Case Crime No.02 of 2023, under Sections 376(3), 506 IPC and Section 3/4 of the Protection of Children from Sexual Offences Act, 2012 (“the Act”), Police Station Chamba, District Tehri Garhwal, has been rejected and the revisionist had been directed to appear before the court on 30.10.2023.

2. Heard learned counsel for the parties and perused the record.

3. The FIR No.2 of 2023 was lodged at Police Station Chamba, District

Tehri Garhwal, under Sections 376(3), 506 IPC and Section 4(2)/6 of the Act. According to it, on 23.06.2022, the victim, a young girl, was standing with her brother on the road side, when the revisionist approached them and offered them lift. The revisionist took the victim and her brother near his house and made the brother of the victim sit in a hotel. Thereafter, according to the FIR, the revisionist took the victim in his room, raped her, and threatened her to life. The victim did not reveal it to anyone. When she was questioned about her changed behaviour, she revealed the incident to her mother. Her mother approached certain authorities including the police, but no action was taken. Thereafter, finally, on 23.01.2023, the FIR was lodged. It is this FIR, in which final report was submitted by the Investigating Officer ("IO"). Mainly, the final report has been submitted on the following grounds:-

- (a) The revisionist is the owner of the vehicle bearing Registration No. UK 07 PC 1108. On the date of incident, the bus was on *chardham yatra* and the revisionist was with his bus as the Conductor.
- (b) The *Dhaba* owner, were, according to the FIR, the revisionist made the brother of the victim sit, did not support the prosecution case. He has stated that the house of the revisionist was not opened for a year. This witness, according to the IO, did not support the prosecution case.
- (c) The driver of the bus of the revisionist also stated that the revisionist was with him as the Conductor. Some other drivers have also supported the version of the revisionist that he was in *chardham yatra*.
- (d) The CDR location of the revisionist, at the relevant time, was at Bhatwari, Uttarkashi.
- (e) Parties have enmity. They had a dispute with regard to a shop and the dispute further rose in the month of September, but at that time also, the FIR was not lodged.

4. After receipt of the final report, a protest petition was filed by the informant. After hearing the parties, by the impugned order, while rejecting the final report, the revisionist has been directed to appear before the court.

5. Learned counsel for the revisionist would submit that the order is bad in the eyes of law for the following reasons:-

- (a) The order is not based on facts. It is

established that the revisionist was on *chardham yatra* in his bus.

- (b) The IO has not collected relevant materials with regard to the fact as to where the revisionist did stay during that period, particularly on the date of incident. It could have been collected.
- (c) In the impugned order, observation has been made that, perhaps, the revisionist has another mobile number. It is argued that it could have been traced and its location could have been established.
- (d) The revisionist was, in fact, in *chardham yatra*. He stayed in various places, of which evidence could be conveniently collected.

6. Learned counsel for the revisionist would submit that at the most, the court could have directed for further investigation in the case, but there was no material to straightway summon the revisionist.

7. Learned State Counsel would submit that there is no illegality in the impugned order.

8. In Para 8 of the impugned order, the court has made observation with regard to the mobile number and the court has concluded that effective investigation on that aspect has not been done.

9. In Para 9 of the impugned order, the court made an observation that merely based on the statement of some drivers that the revisionist was on *chardham yatra*, final report has been submitted.

10. In Para 10 of the impugned order, the court has dealt with the aspect of delay in lodging the FIR.

11. Finally, the Court concluded that merely based on the statement of some other persons, final report should not be submitted.

12. Once a final report is submitted, the court may either accept the view of expressed by the IO or court may differ with the view expressed by the IO.

13. Once even a protest petition is filed, the material becomes relevant for considering the final report is the material that is collected during investigation. Any extraneous material, at this stage, is not considered, which may be a part of protest petition, which is generally separately dealt with in such cases.

14. In the instant case, as stated, the impugned order, on the one hand, records that the investigation was not complete and, on the other hand, makes observation that merely based on the statement of some witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973 (“the Code”), final report may not be submitted.

15. During investigation, the IO can record the statement only under Section 161 of the Code. Although, the statements of the witnesses may also be recorded under Section 164 of the Code, but then, these are the steps that are taken during investigation. In case the investigation reveals disclosure of *prima facie* offence, in such cases, generally the final report is rejected. Has it been done in the instant case?

16. The IO has recorded the statement of the witnesses, including the driver of the bus of the revisionist that he was with him as the Conductor, at the relevant time. The owner of the *Dhaba* has not supported the prosecution case.

17. Delay, *per se*, may not be a ground to file final report. In Para 10 of the impugned order, the court has made an observation that merely based on some statement of the Driver, etc., the final report has been submitted. It is not so. The final report has been submitted based on multiple factors. In Para 8 of the impugned order, observations with regard to another SIM of the revisionist has been made.

18. The FIR, in the instant case, is undoubtedly delayed. In between, the parties had a dispute also. Of an alleged incident of 23.06.2022, the FIR was lodged on 23.01.2023.

19. This Court is of the view that instead of taking a decision, the court below could have directed the IO to investigate on certain points and submit a further report. Those points may include:-

- (i) Whether the revisionist has any other mobile number? During the course of arguments before this Court, a statement is given by learned counsel for the revisionist that the revisionist had another mobile number at the relevant time. The IO could have very conveniently taken this mobile number and tracked it, and caught its location, at the relevant time.
- (ii) The revisionist claims that he was in *chardham yatra*. Where did he stay? Was he required to sign any document during the *chardham yatra*? If he was working as a Conductor in his own bus, did he purchase

any fuel? Were there any CCTV footages?

20. These and other kind of materials could have been placed for the perusal of the court along with the final report. But it is not done.

21. Therefore, this Court is of the view that the court below has committed an error in straightway rejecting the final report. As stated, the court could have required the IO to further investigate the case on the points, as stated hereinabove, along with some other points, as the court deems necessary. Therefore, the impugned order deserves to be set aside.

22. The impugned order dated 11.10.2023, passed in the case, is set aside. Accordingly, the revision deserves to be allowed.

24. The revision is allowed.

25. The matter is remanded back to the court below to decide the final report, afresh, after affording an opportunity of hearing to the parties.

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