

Raja Ram Chopra vs The State on 11 September, 1950

Equivalent citations: AIR1951ALL460, AIR 1951 ALLAHABAD 460

ORDER

Kidwai, J.

1. The applicant is charged under Sections 381, 411, 415 and 109, Penal Code. He was placed before Shri Kanhaiya Lal, Judicial Magistrate, who on 7-7-1950, granted a remand to the police for 14 days and sent the applicant to jail. On 11-7-1950, an application made by the applicant for bail was rejected and on the next day the police presented an application to the Judicial Magistrate concerned praying that the applicant be remanded to police custody for seven days for the purpose of pointing out stolen property and for interrogation. The learned Magistrate concerned sent for the two accused and heard them. They stated that they had nothing to point out. As a result the learned Magistrate rejected the application since their presence outside the jail did not appear to be necessary and he was of opinion that such interrogation as the police desired to make could be made in jail.

2. On the same day, the police moved the Additional District Magistrate of Lucknow on the same grounds for remanding the accused to police custody. The learned Additional District Magistrate accepted the prayer without calling upon the accused to appear and directed the Judicial Magistrate concerned to pass necessary orders in compliance with his directions.

3. It does not appear either from the application of the police to the Additional District Magistrate or from the order of the said Magistrate under what section of the Code of Criminal Procedure this action was taken.

4. The only section under which action could have been taken was Section 435, Criminal P. C., and it is clear from a perusal of Sections 435 to 438, Criminal P. C., that the Magistrate has no power in a case such as this to pass any orders. He could only report the matter to the High Court for its orders. It is highly undesirable that a superior Magistrate should by his orders hamper the conduct of proceedings by the Magistrate seised of the case in accordance with the discretion of that Magistrate.

5. In the present case the trial Magistrate had given reason for his action and the only reason given by the Additional Judicial Magistrate is that the police investigation may be hampered. The learned Magistrate has failed altogether to consider that the accused may by reason of his order, be harassed and it is as much the duty of a Magistrate to protect the accused from harassment as to further the detection and prevention of crime.

6. The learned Judicial Magistrate made it clear that the accused had stated that they did not know anything and so could not point out anything. If the police knew where the stolen property was, as they stated in the application which they made to the Additional Judicial Magistrate, there was nothing for the accused to point out and the identity of the property should have been ascertained from the complainant whose property had been stolen. Further if it was merely for the purpose of interrogation there was nothing to prevent the accused being interrogated in jail. On the facts of the present case it would appear, therefore, that it was not with a view to derive any further knowledge as to the offence but merely to get hold of the accused for some ulterior object that the police made the application and it would be highly improper to allow such an application.

7. The accused are now on bail and it is, therefore, not necessary to pass any further orders in this application.