
(2010) 09 AHC CK 0164

In the Allahabad High Court

Case No : Application U/S 482 No. 4637 of 1993

Ajai Kumar Gupta and Another

APPELLANT

Vs

Smt. Rekha Gupta and Another

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Penal Code, 1860 (IPC) — Section 406

Citation : (2010) 09 AHC CK 0164

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Rajesh Dayal Khare, J.—List revised. None appears to press the application on behalf of the applicants. Learned A.G.A. is present for the State respondent.

2. This Court vide its order dated 30.07.2010 had issued notice to the applicants to engage another counsel as learned Counsel for the applicant, as he then was, has been elevated as Judge of this Court. Pursuant to that order notices were sent to the applicants and as per office report dated 25.9.2010, notices, sent to the applicant, have not been returned back after service.

3. This Court vide its order dated 5.4.1993 had issued notice to the respondent No. 1 and in the meantime proceedings in Case Crime No. 1915/1990, u/s 406 I.P.C. pending before the Judicial Magistrate, Firozabad were stayed but till date no counter affidavit has been filed.

4. The present 482 Cr.P.C. application has been filed for quashing of Complaint Case No. 1915/1990 State v. Ajai Kumar and Ors. pending before the Judicial Magistrate, Firozabad.

5. It has been averred in the present application that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment.

6. From the perusal of the material on record and looking into the facts of the case at this stage it cannot be said that no offence is made out against the applicant. All the submission made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court u/s 482 Cr.P.C. At this stage only prima facie case is to be seen in the light of the law laid down by Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, State of Haryana v. Bhajan Lal 1992 SCC (Cr.) 426, State of Bihar v. P.P. Sharma 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. (Para10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got right of discharge u/s 239 or 227/228 or 245 Cr.P.C. as the case may be through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

7. The prayer for quashing of complaint case is refused.

8. However, it is provided that if the applicants appear and surrender before the court below within 30 days from the date of communication of this order by the concerned court below and apply for bail, their prayer for bail shall be considered and decided in view of the settled law laid by this Court in the case of Amrawati and Anr. v. State of U.P. reported in 2004 (57) ALR 290 as well as Judgment passed by Hon"ble Apex Court reported in 2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh v. State of U.P., after hearing the Public Prosecutor. The concerned Magistrate is directed to send notice to the applicants immediately after receipt of communication from this Court. For a period of 45 days from the date of communication of this order or till the disposal of the application for grant of bail whichever is earlier, no coercive action shall be taken against the applicants. However in case the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

9. With the aforesaid directions, this application is finally disposed off.

10. Interim order dated 05.04.1993 is hereby vacated.

11. The Registry of this Court is directed to communicate this order to the court concerned, forthwith.