
(2010) 09 AHC CK 0074
In the Allahabad High Court
Case No : U/S 482/378/407 No. 3638 of 2010

Avadhesh Kumar and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 14-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 323
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2010) 09 AHC CK 0074

Hon'ble Judges : Raj Mani Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Raj Mani Chauhan, J.—Learned Counsel for the petitioners files supplementary affidavit, which is taken on record.

2. Heard learned Counsel for the petitioners and learned Additional Government Advocate for the State as well as perused the documents available on record.

3. This petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") has been filed by the petitioners with the following prayers:

(i) To quash the impugned order of non bailable order warrant dated 27.1.2010 passed in Case No. 545/09-02 State v. Avadhesh and Anr. in Case Crime No. 58/2002, under Sections 323 IPC and 3(1)(x) SC/ST Act, P.S. Khodare, District Gonda.

(ii) To quash the impugned charge-sheet No. 11/02, dated 30.4.2002, in case crime No. 58/2002, under Sections 323 IPC & 3(1)(x) SC/ST Act.

4. The submission of learned Counsel for the petitioners is that the accused-petitioner No. 1-Avadhesh Kumar had already filed a writ petition before this Hon'ble Court for quashing the First Information Report in which the Hon'ble

Court was pleased to stay the arrest of the accused-petitioner No. 1 till filing of the charge-sheet. The Investigating Officer after investigation of the case filed charge-sheet against the accused on which the learned Magistrate has taken cognizance of the offence and issued summons but no summon was served to the accused-petitioner No. 1. The accused-petitioner No. 2-Sonu was regularly attending the trial court but unfortunately on two dates he could not appear before the trial court on account of his illness and thereafter the court below passed issuance of non-bailable warrant against him. Learned Counsel further submits that as per allegations made in the First Information Report as well as in the statement of witness recorded by the Investigating Officer u/s 161 of the Code, there is no whisper against the accused that they had used the caste name of the complainant, therefore no offence u/s 3(1)(x) SC/ST Act is made out against the accused. Therefore, the charge-sheet filed by the Investigating Officer as well as the impugned summoning order passed by the learned Magistrate are liable to be quashed. Learned A.G.A. opposed the petition.

5. Considered the submissions of learned Counsel for the petitioners and learned A.G.A. for the State.

6. I have gone through the documents available on record. The Investigating Officer after investigation of the case, prima facie, found evidence in support of offence under Sections 323 IPC and 3(1)(x) SC/ST Act and has submitted charge-sheet against the accused consequently the learned Magistrate has taken cognizance of the offence and summoned the accused which in my opinion does not suffer from any infirmity and does not call for any interference.

7. The petition is devoid of any merit and is liable to be dismissed.

8. The petition is, therefore, dismissed.

9. However, keeping in view the facts and circumstances of the case as well as the nature of offence, it is provided that in case the accused appear before the court below within three weeks from today and move any application for bail, the same will be heard and disposed of by the courts below expeditiously preferably on the same day.

10. It is also provided that in case the accused after release on bail move any application for their discharge at the appropriate stage before the Trial Court, the same will be disposed of by the Trial Court by passing speaking and reasoned order.

11. Till then the non bailable warrant issued against the accused will be kept in abeyance.