
(2012) 01 AHC CK 0178
In the Allahabad High Court
Case No : Application No. 41785 of 2011

Deepak Singh

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245(2), 482
Penal Code, 1860 (IPC) — Section 406, 419, 420, 506

Citation : (2012) 01 AHC CK 0178

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Hon"ble Rajesh Dayal Khare, J.—Heard learned counsel for the applicant, Shri H.K. Yadav, learned counsel, who put in appearance on behalf of opposite party No. 2 and learned A.G.A. for the Staterespondent. The present application has been filed for quashing of the charge sheet dated 08.07.2011 filed in Case Crime No. 434 of 2011, under Sections 419, 420, 406, 506 IPC, PS Sarai Lakhansi, district Mau as well as for quashing the cognizance taking order dated 24.08.2011 passed by the Chief Judicial Magistrate, Mau.

2. Learned counsel for the applicant contends that dispute with regard to payment and non-payment of the amount due between the applicant and opposite party No. 2, which is purely of civil nature, for which criminal prosecution has been illegally initiated by opposite party No. 2, which is nothing, but gross misuse of the process of the Court.

3. Learned counsel for the applicant further contends that as the aforesaid matter with regard to payment and nonpayment of amount due to either of the party, can be well settled before the Mediation Centre.

4. Shri H.K. Yadav, learned counsel for opposite party No. 2 states that he is not agreeable to refer the matter to the Mediation Centre for mediation.

5. The contention of the counsel for the applicant is that no offence against the

applicant is disclosed and the present prosecution has been instituted with malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contentions.

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 submissions made at the bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482, Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur Vs. The State of Punjab, , State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge u/s 239, 245(2) or 227/228, 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 the charge sheet dated 08.07.2011 and cognizance taking order dated 24.08.2011 is refused.

8. However, in the circumstances of the case, it is provided that if the applicant moves an application for surrender before the court concerned within three weeks from today, the Magistrate concerned shall fix a date about two weeks thereafter for the appearance of the applicant and in the meantime release the applicant on interim bail on such terms and conditions as the court concerned considers fit and proper till the date fixed for the disposal of the regular bail.

9. The court concerned shall also direct the Public Prosecutor to seek instructions from the investigating officer by the date fixed and also give an opportunity of hearing to the informant and thereafter decide the regular bail application of the applicant in accordance with the observations of the Full Bench of this Court in Amarawati and Another (Smt.) Vs. State of U.P., , affirmed by the Supreme Court in Lal Kamendra Pratap Singh Vs. State of U.P. and Others, and reiterated by the Division Bench of this Court in Sheoraj Singh alias Chuttan Vs. State of UP and others, LXV 2009 ACC 781.

10. If further instructions are needed or if adjournment of the case on the date fixed for hearing becomes unavoidable, the Court may fix another date, and may also extend the earlier order granting interim bail, if it deems fit.

11. In case the applicant fails to appear before the court concerned on the dates fixed or he fails to cooperate with the investigating officer during investigation, it will be open to the Public Prosecutor to move an application for cancelling the order of interim/final bail and the Court concerned may pass an appropriate order on merits. With the aforesaid observations, this petition is disposed of.