
(2013) 11 AHC CK 0129
In the Allahabad High Court
Case No : Application No. 40626 of 2013

Dilip Srivastava

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 13-11-2013

Acts Referred:

Citation : (2013) 11 AHC CK 0129

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Advocate : Arun Kumar Tripathi, for the Appellant;

Final Decision : Disposed Of

Judgement

Bala Krishna Narayana, J.—Heard learned counsel for the applicant and learned A.G.A. The present application u/s 482 Cr. P.C. has been filed for quashing the entire proceedings of Case No. 310 of 2009, Dilip Kumar Srivastava Vs. State of U.P., under sections 392, 427 IPC, Police Station-Kotwali, District-Fatehpur and case crime no. 112 of 2009, State Vs. Dilip Kumar Srivastava, under sections 504, 506, 307 IPC and section 27/80 of Arms Act, Police Station-Kotwali, District-Fatehpur, pending in the court of A.D.J., Court No. 2, Fatehpur.

2. 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 a malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contention.

3. 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 relate to the disputed questions 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 Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar and Another Vs. P.P. Sharma,

IAS and Another, and lastly Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, . The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge u/s 239 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.

4. The prayer for quashing the proceedings of the aforementioned case is refused.

5. However, it is directed that if the applicant appears and surrenders before the court below within 45 days from today and applies for bail, his prayer for bail shall be considered and decided in view of the settled law laid by this Court in the case of Amrawati and another Vs. State of U.P. reported in 2004(57) ALR 290 as well as judgment passed by Hon''ble Apex Court reported in Lal Kamendra Pratap Singh Vs. State of U.P. and Others, . For a period of 45 days from today or till the applicant surrenders and applies for bail whichever is earlier, no coercive action shall be taken against the applicant. However, in case, the applicant does not appear before the Court below within the aforesaid period, coercive action shall be taken against him. With the aforesaid directions, this application is finally disposed of.