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**(2010) 09 AHC CK 0477**

**In the Allahabad High Court**

**Case No : Application U/S 482 No. 30037 of 2010**

Laxmi Narayan @ Guddu Rajbhar and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

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**Date of Decision : 27-09-2010**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 482  
Penal Code, 1860 (IPC) — Section 323, 498(A)

**Citation : (2010) 09 AHC CK 0477**

**Hon'ble Judges : Bala Krishna Narayana, J**

**Bench : Single Bench**

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**Judgement**

Bala Krishna Narayana, J.—Heard learned Counsel for the applicant and learned A.G.A.

2. The present 482 Cr.P.C. petition has been filed for quashing the summoning order dated 30.5.2008 passed by CJM, Ballia in case No. 33 of 2009 by which they have been summoned for facing trial for offences punishable under Sections 498A, 323 IPC, P.S.- Sikandarpur, District Ballia.

3. The contention of the counsel for the applicants 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.

4. 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 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.

5. The prayer for quashing the summoning order dated 30.5.2009 is refused.

6. However, it is directed that the applicants shall appear and surrender before the courts below within 30 days from today and apply for bail, his prayer for bail shall be considered and decided if possible, on same day, in view of the 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. For a period of 30 days from today or till the disposal of the application for grant of bail, whichever is earlier, no coercive action shall be taken against the applicant. However, in case, the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

7. With the aforesaid directions, this application is finally disposed of.