
(2010) 02 AHC CK 0096
In the Allahabad High Court

Mona @ Easter Prasad and Another	APPELLANT
Vs	
State of U.P. and Another	RESPONDENT

Date of Decision : 22-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0096

Hon'ble Judges : R.D.Khare, J

Final Decision : Disposed Of

Judgement

Rajesh Dayal Khare,J.

1. Supplementary affidavit filed today, is taken on record.
2. Heard learned counsel for the applicants and learned A.G.A. for the State respondent.
3. By the present application under Section 482,Cr.P.C. the applicants have invoked the inherent jurisdiction of this Court with a prayer that the summoning order dated 1.8.2008 passed by Additional Chief Judicial Magistrate, court no. 1, Mathura in complaint case no. 2088 of 2008 under Sections 494 IPC be quashed.
4. It is contended by the learned counsel for the applicants that the marriage certificate, which has been filed, is a forged document, which has been authenticated by annexure2 to the supplementary affidavit. It is also contended that no offence against the applicants is disclosed and the present prosecution has been instituted with malafide intention for the purposes of harassment. It is next contended that the applicant no.1 is lady, therefore, her bail application may be considered on the same day.
5. 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 applicants. All the submission made at the bar relates to the disputed questions of fact, which cannot be adjudicated upon by this Court under Section 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. State of Punjab, AIR 1960 SC 866, 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 (Para10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this state. Moreover, the applicants have got a right of discharge under section 239, 245(2) or 227/228, Cr.P.C. as the case may be through a proper application for the said purpose and they are free to take all the submissions in the said discharge application before the trial Court.

6. The prayer for quashing the summoning order is refused.

7. However, it is provided that if the applicant no.1 appears and surrenders before the court below within a period of 30 days from today and applies for bail, then her prayer for bail shall be considered and decided, expeditiously, if possible on the same day, in accordance with law after hearing the Public Prosecutor. It is further provided that if the applicant no.2 appears and surrenders before the court below within a period of 30 days from today and applies for bail, then his prayer for bail shall be considered in view of the settled law laid down by the Seven Judges" decision of this Court in the case of Amarawati and another Vs. State of U.P., reported in 2004(57) ALR290 and in the recent decision of the Supreme Court dated 23.3.09 in Criminal Appeal No. 538 of 2009, Lal Kamendra Pratap Singh v. State of U.P., after hearing the Public Prosecutor. 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 applicants. However, in case the applicants do not appear before the court below within the aforesaid period, coercive action shall be taken against them.

8. With the aforesaid directions, this application is disposed off.