

(2010) 07 AHC CK 0367
In the Allahabad High Court

Mumtaz Ahmad and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 482
Penal Code, 1860 (IPC) — Section 409, 419, 420, 467, 468

Citation : (2010) 07 AHC CK 0367

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Rajesh Dayal Khare, J.—Heard learned Counsel for the applicants, learned A.G.A. and Sri S.K. Chaubey, learned Counsel who has put in appearance on behalf of opposite party No. 2 by filing his parcha, which is taken on record.

2. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of Case No. 4915 of 2009, under Sections 419, 420, 467, 468, 471, 409 I.P.C., Police Station Kotwali, District Mau, pending before learned Chief Judicial Magistrate, District Mau.

3. Sri S.K. Dubey, learned Counsel for the opposite party No. 2 states that the co-accused namely, Muzaffar Ali had filed a Criminal Misc. Application No. 10422 of 2010, challenging the charge sheet filed in the present case, and this Court refused to interfere in the charge sheet, which application has been disposed off, by this Court with a direction to the applicant in the said petition to apply for grant of bail and to file discharge application by an order dated 16.04.2010, copy of the said order has been produced before this Court, which is taken on record.

4. The contention of the counsel for the applicants is that no offence against the applicants 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.

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 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 (Cri.) 426, State of Bihar v. P.P. Sharma 1992 SCC (Cri.) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. (Para-10) 2005 SCC (Cri.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got right of discharge u/s 239 or 227/228 or 245 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 proceedings is refused.

7. However, it is directed that the applicants shall appear and surrender before the court below within 30 days from today and apply for bail, their prayer for bail shall be considered and decided in view of the settled 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 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 finally disposed off.