
(2010) 03 AHC CK 0124
In the Allahabad High Court

Pinki and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 482
Penal Code, 1860 (IPC) — Section 147, 323, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2010) 03 AHC CK 0124

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

Bench : Single Bench

Final Decision : Disposed Of

Judgement

D.R. Azad, J.—Heard learned Counsel for the applicants, learned Counsel for the complainant, learned A.G.A. for the State and perused the material placed on record.

2. This Criminal Misc. application u/s 482 Cr.P.C. has been filed by the applicants for quashing the case No. 1605 of 2007 (State v. Vijay and Ors.) under Sections 147, 323, 504 and 506 I.P.C. and Section 3(1)(10) of S.C./S.T. Act , Police Station and District Siddharth Nagar and for staying further the proceedings of the aforesaid case, pending in the court of Chief Judicial Magistrate, Siddharth Nagar during the pendency of the present application before this Court.

3. The contention of the learned Counsel for the applicants is that no offence under Sections 147, 323, 504 and 506 I.P.C. and Section 3(1)(10) of S.C./S.T. Act , is made out against the applicants. It is further contended that the present prosecution has been instituted against the applicants with malafide intention and only with a view to harass them. Learned Counsel for the applicants has pointed out certain documents and statement in support of his contention.

4. From the perusal of the material available on record and the submission made by the learned Counsel for the parties and also looking into the facts and

circumstances of the case at this stage, it cannot be said that no offence is made out against the applicants. The submissions made at the bar relates to the disputed question of facts , which cannot be adjudicated upon by this Court u/s 482 Cr.P.C. At this stage, only prima facie, commission of offence is to be seen in the light of the judgments of Hon"ble Apex Court in the cases of R.P. Kapur Vs. The State of Punjab, State of Haryana v. Bhajan Lal 1992 S.C.C. (Crl.) 426 , State of Bihar v. P.P. Sharma S.C.C (Crl.) 1992 and Zandu Pharmaceutical Works Ltd v. Mohd. Saraful Haq and Anr. 2005 S.C.C. (Crl.) 283.

5. The disputed defence of the accused , cannot be considered at this stage and these are the matters which the trial court will have to take into consideration at the time of trial. This Court is not supposed to sit in judgment over the factual features of the case, because, that will depend, upon what evidence is available in the case. However, applicants have right for discharge under Sections 227/228 or 239 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 Case No. 1605 of 2007 (State v. Vijay and Ors.) under Sections 147, 323, 504 and 506 I.P.C. and Section 3(1)(10) of S.C./S.T. Act, is refused.

7. However, it is provided that if the applicants surrender before the court below within 30 days from today and apply for bail, their bail application shall be considered and decided in view of the settled law laid down by the Seven Judges, decision of the Court in the case of Amarawati and Anr. v. State of U.P. reported in 2004 (57) ALR 290 .

8. For a period of thirty 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 in Case No. 1605 of 2007 (State v. Vijay and Ors.) under Sections 147, 323, 504 and 506 I.P.C. and Section 3(1)(10) of S.C./S.T. Act, However, in case the applicants do not appear before the court below within the aforesaid period, coercive action shall be taken against them.

9. With the aforesaid direction, this application u/s 482 Cr.P.C. is disposed of finally.