

(2010) 02 AHC CK 0144
In the Allahabad High Court

Raheesa Begum and Othes

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Citation : (2010) 02 AHC CK 0144

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

Final Decision : Disposed Of

Judgement

R.D. Khare, J.—Heard learned counsel for the parties.

2. Present 482 Cr.P.C. petition has been filed for quashing the summoning order dated 20.10.2009, passed by the Additional Chief Judicial Magistrate, Hapur, District Ghaziabad, in complaint case no.1277 of 2009, under sections 420, 465, 468, 504, 506 IPC.

3. It is contended by the learned counsel for the petitioners that the petitioners has not executed any registered sale deed in favour of the complainant and, therefore, it is argued that criminal prosecution of the applicants is bad in law. It is further argued that Mukhtar Ali had divorced Rahisa Begum, applicant no.1 in the year 2000 thereafter they have been living separately. It is next contended that the applicant no.1 is the lady, therefore, her bail prayer may be considered by the Court below on the same day, if possible.

4. The contention of the learned counsel for the applicant is that no offence against the applicant is disclosed and the present prosecution has been instituted with malafide intentions for the purposes of harassment. He pointed out certain documents and statements in support of his contentions.

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 stage. Moreover, the applicants has got a right of discharge under Section 239, 227/228 or 245(2) 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 dated 20.10.2009, is refused.

7. However, considering the fact that the applicant no.1 is lady, it is provided that she 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, and for remaining applicants, it is provided that if they appear and surrender before the Court below within a period of 30 days from today and apply for bail, then their prayer for bail shall be considered in view of the settled law laid down by this Court in the case of Amarawati and another Vs. State of U.P., reported in 2004(57) ALR290, and a 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. and another reported in 2004(57) ALR290. 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, coercive action shall not 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 of.