
(2010) 01 AHC CK 0187

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 361 of 2010

R.B. Singh (Raj Bahadur Singh) (Dr.)

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2010) 01 AHC CK 0187

Hon'ble Judges : Raj Mani Chauhan, J

Final Decision : Disposed Of

Judgement

Raj Mani Chauhan, J.—Heard learned counsel for the applicant and learned A.G.A. for the State.

This application under Section 482 Cr.P.C. has been moved by the accused applicant for quashing the charge sheet filed by the Investigating Officer in Case Crime No. 105 of 2009, under Section 3/7 Essential Commodities Act, Police Station Pali, District Hardoi as well as for quashing the proceeding of Criminal Case No. 118 of 2009 arising out of the above charge sheet, pending in the court of Special Judge (E.C Act), Hardoi.

2. The submission of learned counsel for the applicant is that above case was registered under Section 3/7 Essential Commodities Act by the police of police Station Pali, against the accused. The Investigating Officer after investigation of the case submitted charge sheet under Section 3/7 E.C. Act against the accused in the court of Special Judge, (E.C. Act), Hardoi. The accused had already moved Writ Petition before this Court for quashing the FIR, in which, this Court had been pleased to stay the arrest of the accused till filing of the charge sheet. Now the Investigating Officer has submitted charge sheet against the accused and after submission of charge sheet the order of stay passed by this Court in favour of accused has ceased to operate.

3. Learned counsel for the applicant contends that as per amended provision of

Essential Commodities Act, the cognizance of any offence under the 3/7 E.C.Act will be taken by the Magistrate and not by the Special Judge. In this case, the Special Judge has taken cognizance of the offence under the Essential Commodities Act which is apparently illegal. Learned counsel for the applicant further contends that the learned Special Judge without service of summon to the accused has issued nonbailable warrant against him which too is illegal.

The submission of learned counsel for applicant has got force. However, the accused applicant may raise his contention before the trial court, who will pass speaking order on the application filed by the accused.

4. The application under Section 482 Cr.P.C moved by the accused applicant is, therefore, finally disposed of with the observation that in case the accused appears before the learned Special Judge within a period of three weeks from today and moves any application that Special Judge, E.C.Act, is not empowered to take cognizance of the offence against the accused, the same will be disposed of by the learned Special Sessions Judge by passing speaking and reasoned order.

The trial court will not take the accused in custody till disposal of his application.

5. In case, the learned Special Judge finds that he is empowered to take cognizance and thereafter if accused moves any bail application, the same shall be disposed of by him preferably on the same day keeping in view the law laid down by the Full Bench of this Court in the case reported in 2004 (57) ALR 390 : Smt. Amrawati Vs. State of U.P. & by the Hon''ble Apex Court in the case of Lal Kamendra Pratap Singh Vs State of U.P and others reported in 2009 (2) SCC (Cri) page. 330.

6. In case the learned Special Judge finds that he is not empowered to take cognizance of the offence against the accused, he will send the charge sheet to the court of Chief Judicial Magistrate who will transfer the same to Additional Chief Judicial Magistrate/ Judicial Magistrate empowered to take cognizance of the offence. In that case, the accused applicant may appear before the court concerned and move bail application. If such application is moved by the accused, the same shall be disposed of by the court concerned preferably on the same day keeping in view the law laid down by the Full Bench of this Court in the case reported in 2004 (57) ALR 390 : Smt. Amrawati Vs. State of U.P. & by the Hon''ble Apex Court in the case of Lal Kamendra Pratap Singh Vs State of U.P and others reported in 2009 (2) SCC (Cri) page. 330.