

**(2016) 07 AHC CK 0199**

**In the Allahabad High Court**

**Case No :** Criminal Misc. Application No. 16789 of 2016.

**Ritesh Singh @ Lav Kush Singh and another - Applicants @HASH State of U.P. and 3 Others - Opposite Party**

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**Date of Decision :** 08-07-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 482  
Penal Code, 1860 (IPC) — Section 147, Section 148, Section 149, Section 307, Section 352

**Citation :** (2016) 97 ACrC 110 : (2017) 1 ADJ 337

**Hon'ble Judges :** Mrs. Vijay Lakshmi, J.

**Bench :** Single Bench

**Advocate :** Arvind Srivastava and Raj Kumar Singh, Advocate, for the Applicant; G.A, for the Opposite Party

**Final Decision :** Disposed Off

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## **Judgement**

Mrs. Vijay Lakshmi, J. - Heard learned counsel for the applicants and learned AGA for the State.

2. The applicants, by means of this application under section 482 Cr.P.C., have invoked the inherent jurisdiction of this Court with prayer to quash the investigation and all consequential proceedings being conducted by the S.H.O., P.S. Sureri, District Jaunpur, in pursuance of the F.I.R. dated 2.1.2016 bearing Case Crime No. 3 of 2016 under section 147, 148, 149, 352, 307 I.P.C. P.S. Sureri, District Jaunpur.

3. Learned counsel for the applicants has contended that the applicants have never formed any unlawful assembly with any deadly weapon nor they have participated in the present crime with common object. All the alleged injuries are simple in nature and there is no supplementary x-ray report. It is further contended that the injury report has been concocted with the collusion of medical officer in order to falsely implicate the applicants. It is next submitted that the applicants have no criminal history and the investigation is pending since 2.1.2016 but up till this date no charge-sheet has been submitted. It is further

submitted that the alleged firearm injury is on the non-vital part of the body of the injured and even if the charges are found to be proved, sentence of more than 7 years cannot be awarded. It is next submitted by learned counsel that in view of this, arrest of the applicants should not be effectuated by the police personnel mechanically. Reliance has been placed on *Ajay Mitra v. State of M.P.*, 2003 Law Suit (SC) 110.

4. Learned AGA has opposed the application by contending that the investigation is still going on and pending investigation the courts have no jurisdiction to interfere in a criminal case. Learned AGA has further contended that *Ajay Mitra's* case relates to quashing of FIR and it has no application in the present case.

5. Considered the submissions.

6. In the case of *Shashikant v. C.B.I.* (2007) 1 SCC 630 the Apex Court has held as under:-

"Ordinarily a writ court cannot direct investigation agency to carry out investigation in a particular manner. It can interfere with functioning of investigating agency only in exceptional cases."

7. No such case is made out in the present case.

8. In the case of *Eastern Spinning Mills v. Rajiv Poddar*, 1989 Supp.(2) SCC 385 the Apex Court has held as under:-

"Save in exceptional cases where non interference would result in miscarriage of justice, the court and the judicial process should not interfere at the stage of investigation of offences."

9. The allegations against the applicants as per FIR version are that when the fields of the complainant were being measured under the orders of the S.D.M. Madiyahun, the accused persons reached there and exhorted with words "Jaan se mar dalo. Koi bachna nahin chahiye". Hearing this the applicants opened fire causing injuries to Suraj Singh and Zileadar Singh. The injury reports of Suraj Singh and Zileadar Singh have been annexed by the applicants as Annexure no. 2 to the affidavit filed in support of the application, which shows that all the injuries of Suraj Singh were kept under observation and x-ray was advised. Injury no. 1 of Zileadar Singh was also kept under observation and x-ray was advised. However, there is no supplementary x-ray report on the record. The investigation is going on and in the facts and circumstances of the case there appears no ground to stay the investigation.

10. Even the investigation cannot be directed to be concluded within a time bound period and if it has not been concluded within the period of ninety days as provided under section 167 Cr.P.C. the applicants can avail the benefit of statutory bail. Though it cannot be directed that the investigation be concluded within a time bound period, however, it is expected from the Investigating Officer that he will try his best to conclude the investigation, (which according to the

applicants is pending since more than six months, in a fair and impartial manner expeditiously).

11. Keeping in view the facts and circumstances of the case and considering the nature of the allegations made in the F.I.R., the provisions of section 157 Cr.P.C. and the view taken by the Apex Court in the case of Joginder Kumar v. State of U.P. 1994 Cr.L.J 1981 it is also directed that the applicants shall not be arrested in above mentioned case, till some credible evidence is collected by the Investigating Officer during Investigation against them.

12. The application under section 482 Cr.P.C. stands disposed of accordingly.