
(2010) 09 AHC CK 0475
In the Allahabad High Court
Case No : Application No. 29916 of 2010

Santosh Tyagi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 482

Penal Code, 1860 (IPC) — Section 409

Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974
— Section 7

Citation : (2010) 09 AHC CK 0475

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Bala Krishna Narayana, J.—Heard Sri K.D. Tiwari, learned Counsel for the applicant, Sri Randhir Singh, learned Counsel for the complainant and learned A.G.A.

2. The present 482 Cr.P.C. petition has been filed for quashing the charge sheet of case No. 3896 of 2010 in case crime No. 108 of 2009, u/s 7 of Uttar Pradesh Educational Institutions (Prevention of Dissipation of Assets) Act, 1974 & 409 I.P.C., P.S. Saidnagli, District J.P. Nagar, pending in the Court of C.J.M. J.P. Nagar.

3. The contention of the counsel for the applicant is that no offence against the applicant 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.

4. 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 applicant. 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 426, State of Bihar v. P.P. Sharma 1992 SCC 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. (Para-10) 2005 SCC 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge u/s 239 or 227/228, Cr.P.C. as the case may be through a proper application for the said purpose and he is free to take all the submissions in the said discharge application before the Trial Court.

5. The prayer for quashing the charge sheet is refused.

6. However, it is directed that the applicant shall appears and surrenders before the court below within 30 days from today and applies for bail, his 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 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 applicant. However, in case, the applicant does not appear before the Court below within the aforesaid period, coercive action shall be taken against him.

7. With the aforesaid directions, this application is finally disposed off.