

(2010) 09 AHC CK 0496

In the Allahabad High Court

Case No : Application U/S 482 No. 7509 of 1991

Shaurabh Khamka and Others

APPELLANT

Vs

Shambhoo Sharan Sanjeev Kumar

RESPONDENT

Date of Decision : 06-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Penal Code, 1860 (IPC) — Section 409, 418, 420, 504, 506

Citation : (2010) 09 AHC CK 0496

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Rajesh Dayal Khare, J.—Sri Surendra Kumar Singh, learned Counsel, has put in appearance on behalf of applicants by way of filing his parcha today in the Court which is taken on record.

2. Heard learned Counsel for the applicants and learned A.G.A.

3. Another Bench of this Court vide its order 05.07.1991 had issued notice and stayed the further proceedings of Case Crime No. 131 of 1991, pending before learned Munsif Magistrate, District Farrukhabad at Fatehgarh.

4. The present 482 Cr.P.C. petition has been filed for quashing the proceedings arising out of Case Crime No. 131 of 1991, under Sections 409, 418, 420, 504, 506 I.P.C., Police Station Qayamganj, District Farrukhabad, pending before learned Munsif Magistrate, District Farrukhabad at Fatehgarh. It is contended by learned Counsel for the applicants that the cause of action arose at District Kanpur, therefore, the Court at District Farrukhabad has no jurisdiction to try the case. It is further contended that the matter is purely of civil nature and initiation of Criminal proceedings against the applicants is bad in law. It is next contended by learned Counsel for the applicants that no offence against the applicants 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.

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 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 (Cr.) 426, State of Bihar v. P.P. Sharma 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicants have got right of discharge u/s 239 or 227/228 or 245 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 proceedings is refused.

7. Interim order dated 05.07.1991 is hereby vacated.

8. However, it is directed that the applicants shall appear and surrender before the court below within 30 days from today and apply for bail, their 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 (SC) 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 applicants. 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 directions, this application is finally disposed off.