

(2012) 01 AHC CK 0250
In the Allahabad High Court
Case No : Application No. 1567 of 2012

Shivendra Bahadur Pal and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 482
Penal Code, 1860 (IPC) — Section 427, 504, 506
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1X)

Citation : (2012) 01 AHC CK 0250

Hon'ble Judges : Bala Krishna Narayana, J

Bench : Single Bench

Judgement

Hon"ble Bala Krishna Narayana, J.—Heard Learned Counsel for the applicants and learned A.G.A. for the State and perused the record. The present 482 Cr.P.C. petition has been filed for quashing the entire criminal proceeding in Case No. 400 of 2011 (State v Shivendra Bahadur Pal & others), under sections 504, 506 and 427 IPC and 3(1)(X) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, P.S. Kaptanganj, District Basti pending in the court of the II-Additional Chief Judicial Magistrate, Basti, on which learned Magistrate has taken cognizance of the aforesaid offences.

2. The contention of the counsel for the applicants is 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.

3. 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 submissions made at the bar relate to the disputed questions 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 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 (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be considered at this stage.

4. Moreover, the applicants have 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 they are free to take all the submissions in the said discharge application before the Trial Court.

5. The prayer for quashing the entire criminal proceeding in the aforesaid criminal case is refused. However, it is directed that if the applicants 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 another Vs. State of U.P. reported in 2004 (57) ALR 290 as well as judgement passed by Hon''ble Apex Court reported in Lal Kamendra Pratap Singh Vs. State of U.P. 2009 (3) ADJ 322 (SC) for a period of 30 days from today 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. With the aforesaid directions, this application is finally disposed of.