

(2010) 10 AHC CK 0075
In the Allahabad High Court
Case No : Criminal M.W.P. No. 19443 of 2010

Smt. Kamala Devi and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-10-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 203, 204, 245(1), 245(2), 482
Penal Code, 1860 (IPC) — Section 167, 177, 182, 218, 466

Citation : (2011) 1 ACR 996

Hon'ble Judges : S.C. Agarwal, J

Bench : Single Bench

Judgement

S.C. Agarwal, J.—Heard learned Counsel for the Petitioners, learned A.G.A. for the State and perused the material available on record.

2. No notice is issued to private Respondents in view of the order proposed to be passed today, however, liberty is reserved for private Respondents to apply for variation or modification of this order if they feel so aggrieved.

3. This writ petition has been filed with a prayer to quash the order dated 23.2.2010, passed by Chief Judicial Magistrate, Sonbhadra in Complaint Case No. 7426 of 2008, Jasoo Ram v. Kamala Devi and Ors. as well as order dated 22.9.2010, passed by Addl. Sessions Judge, Sonbhadra in Criminal Revision No. 34 of 2010.

4. On a complaint filed by Respondents No. 2 and 3, the Petitioners were summoned to face trial under Sections 167, 177, 182, 218 and 466, I.P.C. The summoning order was challenged by means of an application u/s 482, Code of Criminal Procedure No. 30410 of 2009, which was disposed of vide order dated 14.12.2009 with a direction to move an appropriate application within 15 days raising all the grievances before the Magistrate. Such an application was moved by the Petitioners and the same was rejected by the Magistrate and the revision has also been dismissed. Hence, this petition.

5. After passing of the summoning order u/s 204, Code of Criminal Procedure, there is no provision for moving an application u/s 203, Code of Criminal Procedure for recalling the summoning order. In fact, the Magistrate has no power to recall the order passed by him. Only application u/s 245(1), Code of Criminal Procedure or 245(2), Code of Criminal Procedure could be moved praying for discharge at appropriate stage. In these circumstances, I do not find any error or illegality in the order passed by the Magistrate.

6. Learned Counsel for the Petitioners submitted that Petitioner No. 1 is the Pradhan and Petitioner No. 2 is the Secretary of village panchayat. The allegations against them are that they reported false death of Respondents No. 2 and 3 on account of which they could not get old age pension. The plea of the Petitioners is that there was a bona fide mistake on the part of the Petitioners, and as soon as the mistake came to their notice, it was rectified and now Respondents No. 2 and 3 are getting old age pension.

7. Considering all the facts and circumstances of the case, the writ petition is disposed of with a direction that if the Petitioners surrender before the Magistrate concerned within a period of three weeks from today and apply for bail, their prayer for bail be considered by the Courts below on the same day keeping in view a Full Bench decision of this Court in the case of Amrawati and Anr. v. State of U.P. 2004 (57) AIR 290 : 2004 (3) ACR 2888, as affirmed by Hon"ble Apex Court in Lal Kamendra Pratap Singh v. State of U.P. 2009 (3) ADJ 322 : 2009 (2) ACR 2063 (SC).

For a period of three weeks, no coercive process shall be executed/issued against the Petitioners.