
(2010) 09 AHC CK 0112
In the Allahabad High Court
Case No : Application No. 31551 of 2010

Smt. Naval Kishori and Others	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 30-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Dowry Prohibition Act, 1961 — Section 3, 4
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 22, 8
Penal Code, 1860 (IPC) — Section 323, 498A, 504, 506

Citation : (2010) 09 AHC CK 0112

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Rajesh Dayal Khare, J.—Heard learned Counsel for the applicants and learned A.G.A.

2. The present 482 Code of Criminal Procedure petition has been filed for quashing the charge sheet dated 25.05.2010, arising out of Case Crime No. 403 of 2010, under Sections 498A, 323, 504, 506 I.P.C., and Section 3/4 of Dowry Prohibition Act, Police Station Katwali Katra, District Mirzapur.

3. It is contended by learned Counsel for the applicants that as per charge sheet, copy of which is annexed as Annexure-1 to the affidavit accompanying the application, Dheeraj Sharma, the applicant No. 4 was also made an accused against whom charge sheet was filed for the alleged incident dated 10.04.2010 as per F.I.R., copy of which is annexed as Annexure-2 to the affidavit accompanying the application and attention of this Court has also been drawn to Annexure-9 which is parcha No. 4 issued by the Investigating Officer stating therein that Dheera Sharma, applicant No. 4 was involved in Case Crime No. 170 of 2010, under Sections 8/22 of N.D.P.S. Act and was challaned on 05.04.2010 and was in Naini Jail. It is further contended that as Dheeraj Sharma was in Naini Jail since 05.04.2010, there was no occasion for him to be present at the time

of alleged incident dated 10.04.2010, therefore, it is argued that no such incident ever took place and the applicants have been falsely prosecuted. It is next contended that mediation between the parties have failed. It is lastly contended that the applicants No. 1, 2, and 3 are ladies, therefore, their bail application be considered on the same day, if possible.

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 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 Code of Criminal Procedure 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 (Cri.) 426, State of Bihar v. P.P. Sharma 1992 SCC (Cri.) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. (Para-10) 2005 SCC (Cri.) 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 Code of Criminal Procedure 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 charge sheet is refused.

6. However, it is directed that the applicants shall appear and surrender before the court below within 30 days from today and apply for bail, then the bail application of the applicants No. 1,2 and 3 shall be considered and disposed off on the same day, if possible and the prayer for bail of the applicant No. 4 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 applicants. However in case the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

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