
(2010) 08 AHC CK 0217
In the Allahabad High Court

Smt. Raj Kumari and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 09-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Penal Code, 1860 (IPC) — Section 147, 323, 452, 504, 506

Citation : (2010) 08 AHC CK 0217

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Rajesh Dayal Khare, J.—List revised none appears to press this application on behalf of applicants.

2. Learned A.G.A. is present on behalf of State.

3. Vide order dated 24.07.1995, another Bench of this Court had issued notice and stayed the further proceedings of Complaint Case No. 4070 of 1993, under Sections 147, 323, 504, 506, 452 I.P.C., pending before learned Ist Additional Chief Judicial Magistrate, Allahabad.

4. Although notice issued to the opposite party No. 2 has been served but till date no counter affidavit has been filed.

5. The present 482 Cr.P.C. petition has been filed for quashing Complaint Case No. 4070 of 1993, under Sections 147, 323, 504, 506, 452 I.P.C., pending before learned Ist Additional Chief Judicial Magistrate, Allahabad.

6. It has been averred in the present application u/s 482 Cr.P.C., that no offence against the applicants is disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment.

7. 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. 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.

8. The prayer for quashing the proceedings is refused.

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

10. Interim order dated 24.07.1995 is hereby vacated.

11. Registry/Office is directed to communicate the order of this Court passed today, to the concerned Court below, forthwith.