

(2010) 09 AHC CK 0443
In the Allahabad High Court
Case No : Application No. 31446 of 2010

Smt.Satyawati and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Penal Code, 1860 (IPC) — Section 323, 324, 427, 452, 504

Citation : (2010) 09 AHC CK 0443

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Final Decision : Disposed Off

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 proceedings of Complaint Case No. 1312 of 2006 (Umesh Chandra v. Satyawati and Ors.) pending before learned Additional Chief Judicial Magistrate, Room No. 1, District Bareilly, under Sections 324, 323, 504, 506, 427, 452 I.P.C., Police Station Baradari, District Bareilly and also for quashing of the summoning order dated 10.01.2007 issued in the aforesaid case.

3. It is contended by learned Counsel for the applicants that the applicants moved an application for withdrawal of the summoning order which was dismissed on 15.07.2010, copy of which, is annexed as Annexure-8 to the affidavit accompanying the application, therefore it is contended that there is no latches on the part of the applicants in filing the present application. It is further contended that dispute with regard to contruction of the wall and when the opposite party No. 2 interferred then the applicant No. 1 lodged the F.I.R., in Case Crime No. 1147 of 2006, under Sections 324, 323, 504, 506, 427, 452 I.P.C., and it is thus contended that as a counter blast to the same, the present criminal proceedings has been initiated by the opposite party No. 2, which is bad

in law. It is further contended 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.

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. The prayer for quashing the proceedings is refused.

5. 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 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.