

**(2012) 01 AHC CK 0646**

**In the Allahabad High Court**

**Case No :** Application U/s 482 No. - 41746 of 2011

Triveni Vishwakarma And Others

APPELLANT

Vs

State Of U.P. And Another

RESPONDENT

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**Date of Decision :** 12-01-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245(2), 482  
Penal Code, 1860 (IPC) — Section 379, 504, 506

**Citation :** (2012) 01 AHC CK 0646

**Hon'ble Judges :** Rajesh Dayal Khare, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

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## **Judgement**

Hon"ble Rajesh Dayal Khare, J.—Heard learned counsel for the applicants and learned A.G.A. for the State-respondent. The present application has been filed for quashing of the proceedings of Complaint Case No. 308 of 2011, under Sections 504, 506, 379 IPC, PS Kotwali, district Ghazipur and also for quashing the summoning order dated 08.09.2011 passed by learned Xth Judicial Magistrate, Ghazipur.

2. It is contended by the learned counsel for the applicants that the present proceeding is nothing, but a counter blast to the proceedings initiated by the applicants against opposite party No. 2.

3. It is also contended by the learned counsel for the applicants that the present matter is purely of civil nature, which has been dragged into criminal prosecution of the applicants at the behest of opposite party No. 2, which is bad in law.

4. 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 malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contentions.

5. 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 relates to the disputed questions of fact, which cannot be adjudicated upon by this Court u/s 482, Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the 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. Moreover, the applicants have got a right of discharge u/s 239, 245(2) 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.

6. The prayer for quashing of the proceedings and summoning order dated 08.09.2011 is refused.

7. However, it is provided that if the applicants appear and surrender before the court below within a period of 30 days from today and apply for bail, then their prayer for bail shall be considered in view of the settled law laid down by the Seven Judges" decision of this Court in the case of Amarawati and another Vs. State of U.P., 2004(57) ALR- 290 and in the recent decision of the Supreme Court in the case of Lal Kamendra Pratap Singh Vs. State of U.P. and Others, , after hearing the Public Prosecutor.

8. 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 of.