
(2012) 01 AHC CK 0141
In the Allahabad High Court
Case No : Application No. 18450 of 2010

Vijai Rajauriya and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 16-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 498A

Citation : (2012) 01 AHC CK 0141

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Judgement

Hon'ble Rajesh Dayal Khare, J.—Heard Sri Gauri Shanker Mishra, learned counsel for the opposite party no.2 and learned A.G.A. for the State. On the request of learned counsel for the applicants, another Bench of this Court, vide order dated 10.6.2010 had referred the matter to mediation centre. The Incharge mediation centre vide its report dated 6.1.2011 had reported that mediation has failed, copy of which report is on record.

2. The present 482 Cr.P.C. petition has been filed for quashing proceeding of the case no. 534 of 2009 u/s 498A I.P.C. and 4 of the Dowry Prohibition Act, Police Station Moth, District Jhansi, pending before the Judicial Magistrate Moth, Jhansi.

3. 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.

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 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 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 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.

5. The prayer for quashing the proceedings aforesaid is refused.

6. Interim order, if any, stands vacated.

7. However, it is provided that if the applicants appear and surrender before the court below within 30 days from today and apply for bail, then the bail application of the applicant nos. 3, 6 & 8, be considered and disposed of on the same day, if possible, by the Court below and for remaining applicants their prayer for bail, be considered and decided in view of the settled law laid by this Court in the case of Amrawati and another Vs. State of U.P. reported in 2004 (57) ALR 290 as well as judgement passed by Hon"ble Apex Court reported in 2009 (3) ADJ 322 (SC) Lal Kamendra Pratap Singh Vs. 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.

8. Learned counsel for the opposite party no.2 undertakes to inform learned counsel for the applicants about the order passed today in writing within 24 hours. With the aforesaid directions, this application is finally disposed off.