
(2010) 09 AHC CK 0130
In the Allahabad High Court
Case No : Application No. 690 of 1994

Zamil Bharti and Others

APPELLANT

Vs

C.J.M. and Another

RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 227, 228, 239, 245, 482

Citation : (2010) 09 AHC CK 0130

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. Heard learned A.G.A. for the State.

2. Another Bench of this Court vide order dated 16.02.1994 had issued notice to the opposite party No. 2 and in the meantime stayed the further proceedings of Complaint Case No. 1111 of 1993 (Shabana Begum v. Jamil Bharti and Ors.) pending before learned Chief Judicial Magistrate, Bijnaur.

3. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of Complaint Case No. 1111 of 1993 (Shabana Begum v. Jamil Bharti and Ors.) pending before learned Chief Judicial Magistrate, Bijnaur.

4. 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.

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 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 (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 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 the proceedings is refused.

7. Interim order dated 16.02.1994 is hereby vacated.

8. However, it is directed that the applicants shall appear and surrender before the court below within 30 days, from the date of communication of this order by the concerned Court below to the applicant 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. The concerned Magistrate is directed to send notice to the applicants immediately after receipt of communication from this Court. For a period of 45 days from the date of communication of this order 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.

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

10. The registry of this Court is directed to communicate the order of this Court passed today to the concerned Court below forthwith.