(2010) 09 AHC CK 0230

Allahabad High Court

Case No: Application No. 31471 of 2010

Neeraj Yadav		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Sept. 29, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 239, 245, 482
- Prevention of Food Adulteration Act, 1954 - Section 13(2), 16, 7

Citation: (2010) 09 AHC CK 0230

Hon'ble Judges: Rajesh Dayal Khare, J

Bench: Single Bench

Judgement

Rajesh Dayal Khare, J.
Heard learned Counsel for the applicant and learned A.G.A.

2. The present 482 Code of Criminal Procedure petition has been filed for quashing proceedings of the Complaint Case No. 3573 of 2008 (State v. Neeraj Yadav) u/s 7/16 of Prevention of Food Adulteration Act, Police Station Kanth, District Moradabad, pending before learned Ist Additional Chief Judicial Magistrate, District Moradabad.

3. It is contended by learned Counsel for the applicant that sample was sent to Public Analyst on 25.10.2007, report was given on 01.12.2007 copy of which, never sent to the applicant and the complaint was filed on 15.12.2008, therefore, there is a violation of Section 13(2) of the prevention of Food Adulteration Act, 1954, and as such the complaint is liable to be quashed. 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 applicant. 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 applicant has 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 he is free to take all the submissions in the said discharge application before the Trial Court.

5. The prayer for quashing the proceedings is refused.

6. However, it is directed that the applicant shall appear and surrender before the court below within 30 days from today and applies for bail, his 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 Kamlendra 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 applicant. However in case, the applicant does not appear before the Court below within the aforesaid period, coercive action shall be taken against him. With the aforesaid directions, this application is finally disposed off.