

Shyam Singh and Others Vs State of U.P. and Another

Court: Allahabad High Court

Date of Decision: Jan. 12, 2012

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 227, 228, 239, 245(2), 482
Penal Code, 1860 (IPC) â€” Section 147, 148, 149, 295, 297

Hon'ble Judges: Rajesh Dayal Khare, J

Bench: Single Bench

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. 259 of 2011, under Sections 147, 148, 149, 352, 504, 506,

427, 379, 295, 297 IPC, pending before the Judicial Magistrate-I, Agra and also for quashing the summoning order dated 13.09.2011 passed in

the aforesaid case.

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. 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.

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 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.

5. The prayer for quashing of the proceedings and summoning order dated 13.09.2011 is refused.

6. 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 Kamlendra

Pratap Singh Vs. State of U.P. and Others, , after hearing the Public Prosecutor.

7. 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.