

**(2010) 09 AHC CK 0437**

**Allahabad High Court**

**Case No:** Application No. 5843 of 1999

Mohd. Hanif

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision:** Sept. 24, 2010

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 239, 482
- Essential Commodities Act, 1955 - Section 3, 7

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

**Bench:** Single Bench

**Final Decision:** Dismissed

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**Judgement**

Rajesh Dayal Khare,J.

1. List revised none appears to press this application on behalf of applicant.
2. This case is listed peremptorily today.
3. Heard learned A.G.A. for the State.
4. Vide order dated 16.11.1999 another Bench of this Court had granted time to the learned A.G.A. to file counter affidavit and in the meantime stayed the proceedings of Criminal Misc. Case No. 02 of 1999, pending before learned Special Judge (E.C.Act), District Moradabad for a period of three months. Counter affidavit on behalf of State has been filed after service upon the learned Counsel for the applicant on 09.12.199 but till date no rejoinder affidavit has been filed.
5. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of Case No. 02 of 1999, (State v. Hanif), u/s 3/7 of Essential Commodities Act, pending before learned Special Judge (E.C. Act), District Moradabad.
6. It has been averred in the present application u/s 482 Cr.P.C., that no offence against the applicant is disclosed and the present prosecution has been instituted

with a malafide intention for the purposes of harassment.

7. 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 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 426, State of Bihar v. P.P. Sharma 1992 SCC 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. (Para-10) 2005 SCC 283. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has 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 he is free to take all the submissions in the said discharge application before the Trial Court.

8. The prayer for quashing the proceedings is refused.

9. Interim order, dated 16.11.1999 is hereby vacated.

10. However, it is directed that the applicant 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 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 Kamendra Pratap Singh v. State of U.P. The concerned Magistrate is directed to send notice to the applicant 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 applicant. However, in case, the applicant does not appear before the Court below within the aforesaid period, coercive action shall be taken against him.

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

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