(2010) 09 AHC CK 0467

Allahabad High Court

Case No: Application No. 30194 of 2010

Mahraj Singh		APPELLANT
	Vs	
State of U.P. and Another		RESPONDENT

Date of Decision: Sept. 23, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 239, 245, 482
- Essential Commodities Act, 1955 - Section 3, 7

Hon'ble Judges: Rajesh Dayal Khare, J

Bench: Single Bench

Final Decision: Disposed Off

Judgement

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

2. The present 482 Cr.P.C. petition has been filed for quashing the charge sheet No. 120 of 2010, dated 08.06.2010, arising out of Case Crime No. 35 of 2010, u/s 3/7 Essential Commodities Act, Police Station Tirwa, District Kannauj, pendingt before learned Additional Chief Judicial Magistrate, District Kannauj.

3. The contention of the counsel for the applicant is that no offence against the applicant 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 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.

5. The prayer for quashing the charge sheet is refused.

6. However, it is provided that if the applicant appears and surrenders 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 (SC) 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.

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