

(2010) 09 AHC CK 0501**Allahabad High Court****Case No:** None

Udaipal and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: Sept. 1, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 239, 245, 482
- Penal Code, 1860 (IPC) - Section 307, 504, 506

Hon'ble Judges: Rajesh Dayal Khare, J**Bench:** Single Bench**Final Decision:** Disposed Off**Judgement**

Rajesh Dayal Khare, J.

Heard learned Counsel for the applicants and learned A.G.A.

2. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of Sessions Trial No. 537 of 2007 State v. Mahipal Singh and Ors., under Sections 307, 504, 506 I.P.C., Police Station Jasrana, District Firozabad pending before learned Additional Sessions Judge (Fast Track Court No. 5). District Firozbad as well as for quashing of summoning order dated on 09.07.2010 issued in the aforesaid case.

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 a malafide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contention. It is further contended that the injured had given statement in the earlier investigation that there was an old enmity with the applicants and the opposite party No. 2. It is next contended that three persons are said to have been committed the offence but there is a single gun shot injury.

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 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 v. State of Punjab AIR 1960 S.C. 866; State of Haryana v. Bhajan Lal 1992 SCC (Cr.) 426; State of Bihar v. P.P. Sharma 1992 SCC (Cr.) 192 and lastly Zandu Pharmaceutical Works Ltd. v. Mohd. Saraful Haq and Anr. 2005 SCC (Cr.) 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.

5. The prayer for quashing the proceedings as well as summoning order is refused.

6. However, it is directed that the applicants shall appear and surrender before the court below within 30 days from today 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 (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 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 off.