

(2010) 09 AHC CK 0503**Allahabad High Court****Case No:** Application No. 31552 of 2010

Bhagwan Das and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision: Sept. 30, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 227, 228, 239, 245(2), 482
- Penal Code, 1860 (IPC) - Section 406, 420, 504, 506

Hon'ble Judges: Rajesh Dayal Khare, J**Bench:** Single Bench**Judgement**

Rajesh Dayal Khare, J.

Heard learned Counsel for the applicants and learned AGA for the State-respondent.

2. The present 482 Petition has been filed for quashing of the proceedings of complaint case No. 2092 of 2007 (Ompal Singh v. Smt. Virma Devi and Ors.) under Sections 420, 406, 504, 506 IPC pending before the Judicial Magistrate, Etah.

3. It is contended by the learned Counsel for the applicants 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 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 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 applicants have got right of discharge u/s 239 or 245(2) or 227/228, Code of Criminal Procedure as the case may 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 complaint case is refused.

6. However, it is provided that if the applicants appear and surrender before the court below within 30 days from today and apply for bail, then their prayer for bail shall be considered in view of the settled law laid by the Seven Judges" decision of 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 applicants. However in case the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

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