# Amit Kumar and Another Vs State of U.P. and Another

## Application No. 30141 of 2010

**Court:** Allahabad High Court

**Date of Decision:** Sept. 22, 2010

**Acts Referred:**
Criminal Procedure Code, 1973 (CrPC) â€" Section 227, 228, 239, 245(2), 482#Penal Code, 1860 (IPC) â€" Section 406, 504, 506

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

**Bench:** Single Bench

**Final Decision:** Disposed Of

## 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 summoning order dated 25.6.2010 passed by Judicial Magistrate, Hawali,

Farrukhabad in Complaint Case No. 2636 of 2009, u/s 406, 504, 506 I.P.C.

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 (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. (Para-10) 2005 SCC (Cr.) 283. The disputed defence of the accused cannot be

considered at this stage. Moreover, the applicant has got right of discharge u/s 239 or 245(2) or 227/228, Cr.P.C. 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 of the summoning order 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, then

his 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 (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 of.