

(2010) 09 AHC CK 0522**Allahabad High Court****Case No:** Application No. 30277 of 2010

Pawan Saxena

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(2), 482
- Penal Code, 1860 (IPC) - Section 420, 467, 468, 471

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

Rajesh Dayal Khare, J.

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

2. The present 482 Petition has been filed for quashing of the charge sheet dated 10.08.2009 filed in case crime No. 1112 of 2008 under Sections 420, 467, 468, 471 IPC and also for quashing of the proceedings of case No. 1376 of 2009 pending before the Judicial Magistrate, Moradabad.
3. The allegation is that the applicant, who is an employee of the U.P. Power Corporation Ltd. has forged his transfer order.
4. 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.
5. 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 he is free to take all the submissions in the said discharge application before the Trial Court.

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

7. 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.

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