

Rajeshwar Prasad and ors. Vs. State of U.P. and anr.

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SooperKanoon Citation : sooperkanoon.com/478989

Court : Allahabad

Decided On : Feb-29-2008

Reported in : 2008CriLJ2555

Judge : Vijay Kumar Verma, J.

Appellant : Rajeshwar Prasad and ors.

Respondent : State of U.P. and anr.

Disposition : Petition dismissed

Judgement :

ORDER

Vijay Kumar Verma, J.

1. Heard Sri Vinod Srivastava, learned Counsel for the revisionists and learned A.G.A. for the State and perused the record.
2. Instant revision has been preferred against the summoning order dated 1-9-2005 passed by Additional Chief Judicial Magistrate, Court No. 2, Allahabad in criminal complaint case No. 2702 of 2004 (State v. Rajeshwar Prasad and Ors.), whereby the accused-revisionists have been summoned to face the trial. Order dated 6-1-2006 issuingailable warrant has also been challenged.

3. In view of the observations made by Hon'ble Apex Court in the case of Adalat Prasad v. Rooplal Jindal and Ors. 2004 (50) ACC 924 : AIR 2004 SC 4674 and Subramaniam Sethuraman v. State of Maharashtra and Anr. 2005 (51) ACC 684 : AIR 2004 SC 4711, revision against summoning order is not maintainable, as the Hon'ble Apex Court has held that the only remedy available to the accused against summoning order is to invoke the jurisdiction of High Court under Section 482 Cr. P.C. This Court also in the case of Bhajan Lal and Ors. v. State of U. P. and Anr. 2006 (55) ACC 942 : (2006) 5 All LJ 175 has held that revision against summoning order is not legally maintainable.

4. The order issuing warrant is interlocutory order within the meaning of Section 397(2) Cr. P.C. and hence, revision against the impugned order dated 6-1-2006 is also not maintainable. Reference in this regard may be made to the case of Mohd. Usman v. State of U.P. 2002 (40) ACC 901.

5. Hence, keeping in view the law laid down in aforesaid cases, instant revision has to be dismissed. However, the accused may move this Court in the proceeding under Section 482 Cr. P.C. If they so advised.

6. With these observations, the revision is hereby dismissed, being not legally maintainable. Interim order dated 9-3-2006 stands vacated. The office is directed to send a copy of this order to the lower Court concerned for further necessary action.