

**Jitendra Kumar and anr. Vs. State of U.P. and anr.**

**Jitendra Kumar and anr. Vs. State of U.P. and anr.**

**SooperKanoon Citation :** [sooperkanoon.com/487531](http://sooperkanoon.com/487531)

**Court :** Allahabad

**Decided On :** Feb-23-2001

**Reported in :** 2001CriLJ2872

**Judge :** S.K. Agarwal, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 324 and 506; Code of Criminal Procedure (CrPC) , 1974 - Sections 482

**Appeal No. :** Criminal Misc. Application No. 4375 of 1999

**Appellant :** Jitendra Kumar and anr.

**Respondent :** State of U.P. and anr.

**Advocate for Def. :** A.G.A.

**Advocate for Pet/Ap. :** Sanjeev Trivedi and ;Suresh Chandra Dwivedi, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**S.K. Agarwal, J.**

1. Heard learned counsel for the applicants and learned A.G.A.

2. The contention of the learned counsel for the applicants is that the defence plea of alibi was not considered by the police despite the same having been brought to its notice at the investigative stage itself. The submission of charge-sheet even after taking all these documents supporting /plea of alibi prima facie shows that the applicant's case was not probed or investigated, Apart from this it is also contended that summoning order has been passed without any application of mind. Summoning order in police challan case is issued on the basis of the allegations made in the charge-sheet. I have gone through the copy of the charge-sheet, which has been filed as Annexure-6 to the affidavit, which clearly indicates that a case is made out on the basis of the evidence collected by the investigating agency under Section 323, 324 and 506 I.P.C. Even the perusal of the first information report clearly shows that an offence was committed against the injured persons. The contention of the learned counsel for the applicants that these applicants did not participate in the offence cannot be gone into at this stage by this Court exercising its jurisdiction under Section 482 Cr.P.C. Separation of grain from the chaff cannot be made on the basis of affidavit, counter affidavit and rejoinder affidavit, meaning thereby that it can be done only after the conclusion of the recording of evidence. In the present case, undoubtedly, State has not preferred to file a counter affidavit. The question raised before me are subject to evidence and cannot be decided by this Court exercising its power under Section 482 Cr.P.C. at this stage. The questions of fact can always be settled after evidence is taken into consideration.

3. This petition is accordingly dismissed.

4. However, it is requested by the learned counsel for the applicants that Jitendra Kumar is a X-ray Technician in Government Hospital. Thereby he is a public servant. The other co-accused Virendra Kumar is also serving as a teacher in a private school. Therefore, their services will be put in jeopardy if they are retained in jail beyond the period of 24 hours.

5. Considering the facts and circumstances it is expedient in the interest of justice to direct the release of the applicants on bail on their furnishing personal bond with two sureties each in the like amount to the satisfaction of the trial Court. Offences

under Sections 323, 324, I.P.C. are bailable offences. So far as offence under Section 506 I.P.C. is concerned it is made out or not shall be determined during the trial.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**