

Ram Saran, and ors. Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-03-2010

Judge : Rajesh Dayal Khare, J.

Acts : Code of Criminal procedure - Sections 482 , 239, 227,228, 245(2); Indian Penal Code (IPC) - Sections 420, 467, 468.

Appeal No. : APPLICATION U/S 482 No. - 3963 of 1999

Appellant : Ram Saran, and Others.

Respondent : State of U.P.

Advocate for Pet/Ap. : L.K. Davey, Adv.

Judgement :

1. List revised. None appears to press the present 482 petition on behalf of the applicants. Learned A.G.A. is present for the State-respondent.
2. Counter affidavit filed by Sri Vedmani Sharma, learned counsel on behalf of opposite party no.2, is on record, which was served upon the applicants on 22.7.2009. However, no rejoinder affidavit has been filed till date.
3. The present 482 Cr.P.C. petition has been filed for quashing the proceedings of criminal case no.1443 of 1996, under Sections 420, 467, 468 IPC, pending before the Additional Chief Judicial Magistrate-I, Shahjahanpur.

4. The contention on behalf of the applicants is that no offence against the applicants is disclosed and the present prosecution has been instituted with a mala fide intention for the purposes of harassment. Certain documents and statements have been appended in support of his contention. As the applicant nos. 2, 3 & 4 are ladies, therefore, in the interest of justice their bail application is considered on the same day by the Court below.

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 applicants. All the submission made at the bar relates to the disputed question of fact, which cannot be adjudicated upon by this Court under Section 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 v. State of Punjab*, A.I.R. 1960 S.C. 866, *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 another* (Para-10) 2005 SCC (Cr.) 283. The disputed defense of the accused cannot be considered at this stage. Moreover, the applicants have got right of discharge under Sections 239, 227/228 or 245(2) Cr.P.C. as the case may be 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.

6. The prayer for quashing the proceedings is hereby refused.

7. 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 the bail application of the applicant nos. 2, 3 & 4 shall be considered by the Court below on the same day if possible, and for remaining applicant his prayer for bail shall be considered in view of the settled law laid by this Court in the case of *Amrawati and another v. State of U.P.* reported in 2004 (57) ALR 290 and in a recent decision in Criminal Appeal No. 538 of 2009, *Lal Kamendra 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. Interim order dated

9.9.1999 is hereby vacated.

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

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