

Smt. Rekha Devi and ors. Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Sep-16-2009

Judge : Vinod Prasad,J.

Acts : Code Of Criminal Procedure (CPC) - Sections 482, 239, 227, 228; Indian Penal Code (IPC) - Sections 420, 467, 468, 471.

Appeal No. : APPLICATION U/S 482 No. - 28802 of 2010.

Appellant : Smt. Rekha Devi and ors.

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Dinesh Bahadur Singh, Adv.

Judgement :

1. Heard learned counsel for the applicants and the learned A.G.A. The applicants, through the present application under Section 482 Cr.P.C., have invoked the inherent jurisdiction of this court with the prayer that the proceeding of case no. 3894 of 2009, under Sections 420, 467, 468, 471 I.P.C., P.S. Kotwali, district Kanpur Nagar pending in the court of Special Chief Judicial Magistrate, Kanpur Nagar be quashed.

2. The contention of the learned counsel for the applicants is that no offence against the applicants is disclosed and the present prosecution has been instituted with malafide intentions for the purposes of harassment. He pointed out certain documents and statements in support of his contentions.

3. From the perusal of 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 submissions made at the bar relates to the disputed questions of fact, which cannot be adjudicated upon by this court under Sections 482 Cr.P.C. At this stage only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in cases of R.P. Kapur versus State of Punjab, AIR 1960 SC 866, State of Haryana versus Bhajan Lal, 1992 SCC (Cr) 426, State of Bihar versus P.P. Sharma, 1992 SCC(Cr) 192, and lately Zandu Pharmaceutical Works LTD. versus Mohd. Saraful Haq and another (Para 10), 2005 SCC (Cr.)283. The disputed defence of the accused cannot be considered at this stage.

4. Moreover, the applicants have got a right of discharge under Section 239 or 227/228 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.

5. In the event such an application is filed within one month from today, the trial court is directed to consider and dispose it off within a period of two months from the date of it's filing. The prayer for quashing the proceeding is refused.

6. The criminal miscellaneous application is rejected with a direction that the bail prayer of the applicants be considered on the same day after hearing the Public Prosecutor. With the aforesaid directions, this application is dismissed.

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