

Sitara and ors. Vs. State of Uttar Pradesh (U.P.) and anr.

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Court : Allahabad

Decided On : Sep-28-2010

Judge : Rajesh Dayal Khare, J.

Acts : Indian Penal Code (IPC) - Sections 420; Code of Criminal Procedure (CrPC) - Section 156(3), 482, 239, 245(2), 227, 228.

Appeal No. : APPLICATION U/S 482 No. - 30321 of 201.

Appellant : Sitara and ors.

Respondent : State of Uttar Pradesh (U.P.) and anr.

Advocate for Pet/Ap. : Nipun Singh, Adv.

Judgement :

1. Heard learned counsel for the applicant and learned A.G.A. for the State respondent. The present application has been filed for quashing the proceedings of complaint case no. 677 of 2009 under Section 138, 142 of Negotiable Instruments Act, P.S. Civil Line District Aligarh pending in the court of A.C.J.M., court no. 8, Aligarh.

2. It is contended by the learned counsel for the applicant that no amount was due to be paid by the applicant to the opposite party no.2 and no cheque was ever give by the applicant to the opposite party no.2, therefore, initiation of proceedings under the charged section is bad in law. It is further contended that no notice

under Section 138 of N.I. Act was served upon the applicant, hence the complaint is bad in law. It is next contended that no offence against the applicant is disclosed and the present prosecution has been instituted with mala fide intention for the purposes of harassment. He pointed out certain documents and statements in support of his contentions.

3. 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 questions of fact, which cannot be adjudicated upon by this Court under Section 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 v. State of Punjab, AIR 1960 SC 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.

4. The disputed defence of the accused cannot be considered at this stage. Moreover, the applicant has got a right of discharge under section 239, 245(2) or 227/228, Cr.P.C. as the case may be 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.

5. The prayer for quashing the proceedings is refused. However, it is provided that if the applicant appears and surrenders before the court below within a period of 30 days from today and applies for bail, then his prayer for bail shall be considered in view of the settled law laid down by the Seven Judges' decision of this Court in the case of Amarawati and another v. State of U.P., reported in 2004(57) ALR-290 and in the recent decision of the Supreme Court in the case of Lal Kamendra Pratap Singh v. State of U.P., reported in 2009 (4) SCC 437, after hearing the Public Prosecutor.

6. 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. With the aforesaid

directions, this application is disposed off.

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