

Court No. - 38

Case :- APPLICATION U/S 482 No. - 35066 of 2018

Applicant :- Ramu Yadav

Opposite Party :- State Of U.P. And Another

Counsel for Applicant :- Bibhuti Narayan Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rajiv Gupta,J.

Heard learned counsel for the applicant, learned A.G.A. and perused the record.

The present application under Section 482 Cr.P.C. has been filed for quashing the entire criminal proceedings of charge-sheet No. 55 dated 06.05.2018 and order dated dated 29.06.2018 passed by Additional Sessions Judge, Court No. 1, Maharajganj, under Sections 363, 366 IPC and 16/17 of the POCSO Act 2012, PS- Chauk, District Maharajganj and further proceedings of S.S.T. No. 191 of 2018 (State Vs. Ramu Yadav and others) pending in the Court of Additional Sessions Judge, Court No. 1, Maharajganj.

The contention of counsel for the applicant is that no offence against the applicant is disclosed and the present application has been instituted with a malafide intention for the purposes of harassment. He pointed out certain documents in support of his contention.

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 submissions made at the bar relate to the disputed questions 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 the Supreme Court in the cases of **R.P. Kapur Vs. State of Punjab, A.I.R. 1960 S.C. 866, State of Haryana Vs. Bhajan Lal, 1992 SCC (Cr.) 426, State of Bihar Vs. P.P. Sharma, 1992 SCC (Cr.) 192** and lastly **Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another, (Para-10) 2005 SCC (Cr.) 283.**

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 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.

The prayer for quashing the proceedings of the aforementioned case is refused.

However, it is directed that if the applicant appears and surrenders before the court below within 30 days from today and applies for bail, his prayer for bail shall be considered and decided in view of settled law laid down by this Court in the case of **Amrawati and another Vs. State of U.P. reported in 2004 (57) ALR 290** as well as judgement passed by Hon'ble Apex Court in the case of **Lal Kamendra Pratap Singh Vs. State of U.P. reported in 2009 (3) ADJ 322 (SC)**.

For a period of 30 days from today or till the applicant surrenders and apply for 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 finally **disposed of**.

Order Date :- 28.9.2018

Arun Gangwar