

Court No. - 49

Case :- APPLICATION U/S 482 No. - 2652 of 2018

Applicant :- Ram Kishor Agnihotri And 4 Others

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

Counsel for Applicant :- Raj Kumar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

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

The present application under Section 482 Cr.P.C. has been filed for quashing the entire proceedings of court below and charge sheet in Case Crime No. 174 of 2014, under Sections- 147, 452, 323, 504, 506, 427 IPC, P. S.- Jaswant, Nagar, District Etawah.

The contention of the counsel for the applicants is that no offence against the applicants are disclosed and the present prosecution has been instituted with a malafide intention for the purposes of harassment. He pointed out certain documents and statements 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 applicants. 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 Supreme Court in 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 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.

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

However, it is directed that if the applicants appear and surrender before the court below within 45 days from today and apply for bail, his prayer for bail shall be considered and decided in view of the settled law laid 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 reported in 2009 (3) ADJ 322 (SC) ***Lal Kamlendra Pratap Singh Vs. State of U.P.***

For a period of 45 days from today or till the applicants surrender and apply for bail whichever is earlier, no coercive action shall be taken against the applicant. However, in case, the applicants do not appear before the Court below within the aforesaid period, coercive action shall be taken against them.

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

Order Date :- 31.1.2018/Nisha