

Court No. - 6

Case :- APPLICATION U/S 482 No. - 12246 of 2020

Applicant :- Ambrish Srivastva @ Chhotu And 2 Ors.

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Rinki Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Mahesh Chandra Tripathi, J.

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

The present 482 Cr.P.C. application has been filed to quash the entire proceeding of Criminal Case No.559/218 of 2020 arising out of Case Crime No.08 of 2019 (State v. Ambrish Srivastva & Ors.) under Section 323, 504, 506, 498A IPC & 3/4 D.P. Act, P.S. Kotwali, Distt. Hamirpur as well as consequential summoning order dated 10.02.2020 passed by the court of CJM, Hamirpur.

Learned counsel for the applicants submits that the entire allegations levelled against the applicants are baseless and unfounded. The allegations imputed by the complainant are concocted only for ulterior motive. He further contends that the husband as well as entire family members of the husband-applicant no. 1 have been falsely implicated in the present case by the opposite party no. 2 on the general allegations, which is against the well settled principles of law as laid down by the Hon'ble Supreme Court in the **2012 (10) SCC 741** in the matter of **Geeta Mehrotra and Another Vs. State of Uttar Pradesh**.

So far as the husband-applicant no. 1, namely, Ambrish Srivastva @ Chhotu is concerned following orders is being passed:-

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 or 245 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 is therefore refused.

However, it is provided that if the applicant no.1 appears and surrenders before the court below within 30 days from today and applies for bail, then the bail application of the applicant 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 judgment 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 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.

With the aforesaid directions, this application is finally disposed of so far as applicant no. 1 is concerned.

So far as the applicant nos.2 and 3 are concerned, the following order is being passed:-

Issue notice to the opposite party no. 2 returnable within four weeks. Steps be taken within ten days.

Learned A.G.A. prays for and is granted four weeks time to file counter affidavit. The opposite party no. 2 may also file counter affidavit within the said period. As prayed by the learned counsel for the applicants two weeks thereafter is granted for filing rejoinder affidavit.

List after expiry of the aforesaid period before appropriate Court.

Till the next date of listing, no coercive action shall be taken against the applicant nos.2 and 3 in the aforesaid case.

The party shall file computer generated copy of such order downloaded from the official website of High Court Allahabad, self attested by the applicants alongwith a self attested identity proof of the said person (preferably Aadhar Card) mentioning

the mobile number to which the said Aadhar Card is linked.

The concerned Court/Authority/Official shall verify the authenticity of such computerized copy of the order from the official website of High Court Allahabad and shall make a declaration of such verification in writing.

Order Date :- 28.8.2020

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