

Court No. - 91

Case :- APPLICATION U/S 482 No. - 39329 of 2013

Applicant :- Moh. Nadeem And 2 Ors.

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

Counsel for Applicant :- Manoj Kumar Srivastava, Ansar Ahmad

Counsel for Opposite Party :- Govt. Advocate, P0032/2012, Pankaj Kumar Mishra, Ray Sahab Yadav

Hon'ble Gajendra Kumar, J.

1. Heard learned counsel for the applicants and learned A.G.A. for the State.
2. The present 482 Cr.P.C. application has been filed to quash the entire proceeding of Case No. 420 of 2013 (State vs. Mohd. Nadeem & others), arising out of Case Crime No.76 of 2013, under Sections- 498A IPC and 3/4 D.P. Act, Police Station- Kotwali Nagar, District- Aligarh, pending in the court of Additional Judicial Magistrate, Court No. 4, Aligarh.
3. Learned counsel for the applicants submits 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**.
4. So far as the husband-applicant no.1, namely, Mohd. Nadeem is concerned following orders is being passed:-
5. 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 applicant has 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.

6. The prayer for quashing the proceedings is therefore refused.
7. 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 regular bail, his bail application shall be considered as per judgement and order of Apex Court in the case of ***Satendra Kumar Antil Vs. C.B.I. & Another, passed in S.L.P.(Crl.) No. 5191 of 2021, judgement dated 11.7.2022.***
8. For the period of 30 days from today or till the time of surrender of the applicant before the concerned court below, whichever is earlier, applicant shall not be arrested in the above case.
9. With the aforesaid directions, this application is finally disposed of so far as applicant no.1 is concerned.
10. So far as the applicant nos.2 and 3 are concerned the following order is being passed:-
11. 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.
12. List after expiry of the aforesaid period before appropriate Court.
13. Till the next date of listing, no coercive action shall be taken against the applicant nos.2 and 3 in the aforesaid case.

Order Date :- 8.11.2023

v.k.updh.