

Case :- APPLICATION U/S 482 No. - 38700 of 2018

Applicant :- Anshul Vashistha And 2 Others

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

Counsel for Applicant :- Akank Kumar Jain

Counsel for Opposite Party :- G.A.

Hon'ble Siddharth,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 order dated 11.10.2017 through which the court below rejected the discharge application of the applicants under section 245(2)Cr.P.C. and entire proceedings of Criminal Case No. 2778 of 2016(arising out of Cse Crime No. 0016 of 2016) under sections 498-A, 323, 504, 506 I.P.C. and section 3/4 of Dowry Prohibition Act, P.S. Mahila Thana District Firozabad pending in the court of Additional Chief Judicial Magistrate, Firozabad.

Learned counsel for the applicants 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, -Anshul Vashistha 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 Anshul Vashistha 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 Kamendra Pratap Singh Vs. State of U.P.** For a period of 45 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 him.

With the aforesaid directions, this application is finally disposed of so far as applicant no. 1 Anshul Vashistha 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 a week.

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.

Order Date :- 26.10.2018

Atul kr. sri.