

# **Dinesh Chandra vs State Of U.P. And Another on 24 May, 2022**

**Author: Suresh Kumar Gupta**

**Bench: Suresh Kumar Gupta**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 90

Case :- APPLICATION U/S 482 No. - 12228 of 2022

Applicant :- Dinesh Chandra

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

Counsel for Applicant :- Roopesh Kumar Nigam

Counsel for Opposite Party :- G.A.

Hon'ble Suresh Kumar Gupta,J.

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

For the order proposed to be passed, there is no need to issue notice to the opposite party no. 2, therefore issuance of notice is dispense with.

The present application under Section 482 Cr.P.C. has been filed with the prayer to quash the summoning order dated 24.9.2019 passed by Additional Sessions Judge, Court no. 3, Varanasi as well as entire proceedings of complaint case no. 5 of 2019 under Sections 26 (2) (i & v), 58, 59 (iii) of Food Safety and Standards Act, 2006 , Police Station- Kotwali, District- Jaunpur and non bailable warrant issued vide order dated 15.9.2021.

Learned counsel for applicant has submitted that the false and frivolous complaint has been lodged with malafide intention. It is further submitted that the investigating officer without fair and proper

investigation wrongly filed the charge-sheet against the applicants and thereby, the trial court without applying judicial mind wrongly summoned the applicants.

It is next submitted that no offence as described in the F.I.R. or in the statement of the witnesses recorded during the course of investigation has taken place and the whole story as narrated in the F.I.R. as well as in the statement of the witnesses has been cooked and manufactured, therefore, the court below has materially erred in summoning the petitioners, as such the orders are liable to be set aside.

Before arguing the case on merits, learned counsel for the applicant while pressing the present petition submits that the court below while summoning the petitioner has materially erred and did not follow the dictum of law as propounded by the Hon'ble Supreme Court in various cases that summoning in criminal case is a serious matter and the court below without dwelling into material and visualizing the case on the touch stone of probability should not summon accused person to face criminal trial. It is further submitted that the court below has not taken into consideration the material placed before the trial court and, therefore, the trial court has materially erred in summoning the petitioner.

So far as quashing of entire proceedings is concerned, 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 petitioners. All the submission made relates to the disputed question of fact, which cannot be adjudicated upon by this Court. 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 petitioners have got a right of discharge according to the provisions prescribed in 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, non bailable warrant and cognizable order is refused.

So far as regard the cognizance and summoning order passed by the learned trial court concerned, at the stage of taking cognizance, trial court can simply form an opinion as to whether the case is fit for taking and committing the matter for trial or not. In the present case, learned trial court clearly expressed his opinion that he perused all the record and clearly indicated that the material placed before him is sufficient to proceed the case. Thus, the cognizance order is not a proforma order. Every aspect is touched by learned trial court and petitioner failed to adduce any evidence which caused prejudiced to him. So, the cognizance and summoning order is perfectly valid and there is no occasion to quash the same.

However, considering the facts and circumstances of the case, 15 days' time from today is granted to the applicant to appear before the court below and if he applies for bail, then bail application shall be considered and decided in accordance with law propounded by the Apex Court in Satender

Kumar Antil Vs. Central Bureau of Investigation and another (Special Leave to Appeal (Crl.) No.5191 of 2021, decided on 07.10.2021. In this case Hon'ble the Apex Court has already laid down guidelines for grant of bail, without fettering the discretion of the courts concerned and the statutory provisions governing consideration in grant of bail, no specific directions need be issued by this Court as it is expected that the court concerned will take into consideration the necessary guidelines already issued by the Apex Court.

For a period of 15 days from today, no coercive action shall be taken against the applicant.

Accordingly, the petition under Section 482 Cr.P.C. is disposed of.

Order Date :- 24.5.2022 Anuj Singh