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Neutral Citation No. - 2024:AHC-LKO:42447

A.F.R.

Court No. - 11

Case :- APPLICATION U/S 482 No. - 5169 of 2024

Applicant :- Sumit Kumar Alias Sumit Kumar Gupta And Others
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt. Lko. And Another
Counsel for Applicant :- Alok Srivastava,Pranav Tivaree
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi, J.

1. Heard Sri Alok Srivastava-II, the learned counsel for the applicant, Sri Anurag Verma, the learned AGA-I for the State and perused the record.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the charge-sheet No. 01/2023 dated 16.03.2023 as well as the summoning order dated 25.05.2023 and the order dated 27.03.2024 passed by the learned Special Judge SC/ST Act, Gonda issuing a non-bailable warrant against the applicant and the entire proceedings of Sessions Case No. 806 of 2023; State versus Sumit Kumar Gupta & Ors, relating to Case Crime No. 70 of 2023, under Sections 323, 504, 506, 241 IPC & Sections 3 (1)(Da)(Dha) of Scheduled Caste and Scheduled Tribe Act, Police Station Kaudia, District Gonda pending in the Court of learned Special Judge SC/ST Act, Gonda.

3. The learned AGA-I has raised a preliminary objection that the applicant has got a statutory remedy of filing an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribe (Prevention of Atrocities) Act, and, therefore, the application under Section 482 Cr.P.C. should not be entertained.

4. The learned AGA-I has relied upon a decision of this Court in **Pawan Kumar Alias Pawan Yadav v. State of UP & Ors**: 2024 AHC LKO 13846: Application under Section 482 Cr.P.C. No. 730 of 2024 decided on 16.02.2024.

5. Per contra, the learned counsel for the applicant has relied upon a decision rendered by the coordinate Bench of this Court in **Devendra Yadav & 7 Ors v. State of U.P & Os**: Application under Section 482 Cr.P.C. No. 11043 of 2023 decided on 10.04.2023.

6. Section 14-A of the Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989 (which will hereinafter be referred to as 'the Act') provides as follows:—

> ***"14-A. Appeals**.— (1) **Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), an appeal shall lie, from any judgment, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law***.
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> *(2) Notwithstanding anything contained in sub-section (3) of Section 378 of the Criminal Procedure Code, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.*
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> *(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from:*
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> *Provided that the High Court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days:*
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> *Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.*
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> *(4) Every appeal preferred under sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.*

7. A bare perusal of Section 14-A of the Act shows that it starts with the words "***Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)"***.

8. The question of maintainability of an application under Section 482 Cr.P.C. in spite of availability of remedy of filing an appeal under

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Section 14-A of the S.C./S.T. Act has been considered by this Court in **Shivam Kashyap v. State of U.P.**: 2024 SCC OnLine All 376, and the relevant part of the aforesaid judgment are being reproduced below: -

> ***"7.*** *In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2018 SCC OnLine All 2087 : (2018) 6 ALJ 631, the five questions considered by the Full Bench, and answers given to those questions, were as follows:—*
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> *"A. Whether provisions of sub-section (2) of Section 14-A and the second proviso to subsection (3) of Section 14-A of the Amending Act, are violative of Articles 14 and 21 of the Constitution, being unjust, unreasonable and arbitrary?*
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> *While we reject the challenge to section 14A(2), we declare that the second proviso to Section 14A(3) is clearly violative of both Articles 14 and 21 of the Constitution. It is not just manifestly arbitrary, it has the direct and unhindered effect of taking away the salutary right of a first appeal which has been recognised to be an integral facet of fair procedure enshrined in Article 21 of the Constitution. The absence of discretion in the Court to consider condonation of delay even where sufficient cause may exist renders the measure wholly capricious, irrational and excessive. It is consequently struck down.*
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> *B. Whether in view of the provisions contained in Section 14-A of the Amending Act, a petition under the provisions of Article 226/227 of the Constitution of India or a revision under Section 397 of the Code of Criminal Procedure or a petition under Section 482 Cr. P.C., is maintainable. OR in other words, whether by virtue of Section 14-A of the Amending Act, the powers of the High Court under Articles 226/227 of the Constitution or its revisional powers or the powers under Section 482 Cr. P.C. stand ousted?*
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> *We therefore answer Question (B) by holding that* ***while the constitutional and inherent powers of this Court are not "ousted" by Section 14A, they cannot be invoked in cases and situations where an appeal would lie under Section 14A.*** *Insofar as the powers of the Court with respect to the revisional jurisdiction is concerned, we find that the provisions of Section 397 Cr. P.C. stand impliedly excluded by virtue of the special provisions made in Section 14A. This, we hold also in light of our finding that the word "order" as occurring in sub-section(1) of Section 14A would also include intermediate orders.*
>
> *C. Whether the amended provisions of Section 14-A would apply to offences or proceedings initiated or pending prior to 26 January 2016?*

We hold that the provisions of Section 14A would be applicable to all judgments, sentences or orders as well as orders granting or refusing bail passed or pronounced after 26 January, 2016. We further clarify that the introduction of this provision would not effect proceedings instituted or pending before this Court provided they relate to a judgment, sentence or order passed prior to 26 January 2016. The applicability of Section 14A does not depend upon the date of commission of the offence. The determinative factor would be the date of the order of the Special Court or Exclusive Court.

D. Whether upon the expiry of the period of limitation for filing of an appeal as specified in the second proviso to Section 14-A(3), Section 439 Cr. P.C. and the powers conferred on the High Court in terms thereof would stand revived?

We hold that the powers conferred on the High Court under Section 439 Cr. P.C. do not stand revived. We find ourselves unable to sustain the line of reasoning adopted by the learned Judge in Rohit that the provisions of Section 439 Cr. P.C. would remain in suspension during the period of 180 days and thereafter revive on its expiry. The conclusion so arrived at cannot be sustained on any known principle of statutory interpretation. We are therefore, constrained to hold that both Janardan Pandey as well as Rohit do not lay down the correct law and must, as we do, stand overruled.

E. Whether the power to directly take cognizance of offences shall be exercisable by the existing Special Courts other than the Exclusive Special Courts or Special Courts to be specified under the amended Section 14?"

The existing Special Courts do not have the jurisdiction to directly take cognizance of offences under the 1989 Act. This power stands conferred only upon the Exclusive Special Courts to be established or the Special Courts to be specified in terms of the substituted section 14. However it is clarified that the substitution of Section 14 by the Amending Act does not have the effect of denuding the existing Special Courts of the authority to exercise jurisdiction in respect of proceedings under the 1989 Act. They would merely not have the power to directly take cognizance of offences and would be bound by the rigours of Section 193 Cr. P.C. Even if cognizance has been taken by the existing Special Courts directly in light of the uncertainty which prevailed, this would not ipso facto render the proceedings void ab initio. Ultimately it would be for the objector to establish serious prejudice or a miscarriage of justice as held in Rati Ram."

***8.** In Ghulam Rasool Khan v. State of U.P., 2022 SCC OnLine All 975, another Full Bench of this Court dealt with the following questions:—*

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(i) Whether a Single Judge of this Court while deciding Criminal Appeal (Defective) No. 523/2017 In re : Rohit v. State of U.P. vide judgment dated 29.08.2017 correctly permitted the conversion of appeal under Section 14 A of the Act, 1989 into a bail application by exercising the inherent powers under Section 482 of the Cr. P.C.?

(ii) Whether keeping in view the judgment of Rohit (supra), an aggrieved person will have two remedies available of preferring an appeal under the provisions of Section 14 A of the Act, 1989 as well as a bail application under the provisions of Section 439 of the Cr. P.C.?

(iii) Whether an aggrieved person who has not availed of the remedy of an appeal under the provisions of Section 14 A of Act, 1989 can be allowed to approach the High Court by preferring an application under the provisions of Section 482 of the Cr. P.C.?

(iv) What would be the remedy available to an aggrieved person who has failed to avail the remedy of appeal under the provision of Act, 1989 and the time period for availing the said remedy has also lapsed?

9. *The Full Bench answered the aforesaid questions as follows:—*

(i) Question No. (I) is answered in negative as Rohit v. State of U.P., (2017) 6 ALJ 754 has been overruled by Full Bench of this Court in In Re : Provision of section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015, (2018) 6 ALJ 631.

(ii) Question No. (II) is answered in negative holding that an aggrieved person will not have two remedies namely, i.e. filing an appeal under Section 14A of the 1989 Act as well as filing a bail application in terms of Section 439 Cr. P.C.

(iii) Question No. (III) is answered in negative holding that the aggrieved person having remedy of appeal under Section 14A of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr. P.C.

(iv) Question No. (IV) - There will be no limitation to file an appeal against an order under the provisions of 1989 Act. Hence, the remedies can be availed of as provided.

10. *The learned A.G.A. has informed the Court that the following questions have been referred by the order dated 20.09.2023 passed in Abhishek Awasthi @ Bholu Awasthi v. State of U.P., Application under Section 482 No. 8635 of 2023 and other connected matters:—*

(i) Whether a Single Judge of this Court while deciding Criminal Appeal (Defective) No. 523/2017 In re : Rohit v. State of U.P. vide judgment dated 29.08.2017 correctly permitted the conversion of appeal under Section 14 A of the Act, 1989 into a

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bail application by exercising the inherent powers under Section 482 of the Cr. P.C.?

(ii) Whether keeping in view the judgment of Rohit (supra), an aggrieved person will have two remedies available of preferring an appeal under the provisions of Section 14 A of the Act, 1989 as well as a bail application under the provisions of Section 439 of the Cr. P.C.?

(iii) ***Whether an aggrieved person who has not availed of the remedy of an appeal under the provisions of Section 14 A of Act, 1989 can be allowed to approach the High Court by preferring an application under the provisions of Section 482 of the Cr. P.C.****?*

(iv) What would be the remedy available to an aggrieved person who has failed to avail the remedy of appeal under the provision of Act, 1989 and the time period for availing the said remedy has also lapsed?""

11. *Although the questions have been referred to a larger Bench by means of an order dated 20.09.2023 passed by a coordinate Bench of this Court at Allahabad in Application under Section 482 No. 8635 of 2023 and other connected matters, the decision in Ghulam Rasool Khan (Supra) will hold good till a decision is taken by a larger Bench. In this regard, a reference to the following passage from judgment of the Hon'ble Supreme Court in Union Territory of Ladakh v. Jammu & Kashmir National Conference, 2023 SCC OnLine SC 1140 will be appropriate:—*

"35. *We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 680. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."*

12. *In Union of India v. State of Maharashtra, (2020) 4 SCC 761 relied upon by the learned Counsel for the applicant, the*

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question involved was regarding the bar created under Section 18 of the Act against grant of anticipatory bail in offences under the Act and the question of maintainability of an Application under Section 482 Cr. P.C. was not involved in that case. Therefore, that judgment is no relevant for the decision of the point involved in the present case.

***13.** Therefore, the mere reference of the aforesaid questions would not affect the binding nature of the law laid down in Ghulam Rasool Khan (Supra).*

***14.** In view of the aforesaid discussion, the law on the point stands clarified by two Full Benches, that inherent powers of this Court under Section 482 Cr. P.C. cannot be invoked in cases and situations where an appeal would lie under Section 14A and aggrieved person having remedy of appeal under Section 14A of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr. P.C."*

9. In **Devendra Yadav v. State of U.P.**, 2023 SCC OnLine All 164, which has been relied upon by the learned Counsel for the applicant, a coordinate Bench of this Court distinguished **Ghulam Rasool** (Supra) for the followins reasons: -

> ***"11.** Sri. Mohit Singh, learned counsel for the applicant has cited a judgment of Hon'ble Apex Court in the case of Ramawatar v. State of Madhya Pradesh reported in 2021 SCC OnLine SC 966 decided on 25.10.2021 in Crl. Appeal No. 1393 of 2011, whereby the full Bench of Hon'ble Apex Court decided the issue in most lucid terms. The relevant paragraph nos. 9 and 16, which are quoted herein below:—*
>
> > ***"9. Having heard learned Counsel for the parties at some length, we are of the opinion that two questions fall for our consideration in the present appeal. First, whether the jurisdiction of this Court under Article 142 of the Constitution can be invoked for quashing of criminal proceedings arising out of a 'noncompoundable offence? If yes, then whether the power to quash proceedings can be extended to offences arising out of special statutes such as the SC/ST Act?***
> >
> > ***16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on***

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the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."

12. *Since the case of Gulam Rasool Khan was decided in the year 2022*28.07.2022) whereas Ramawtar case was decided in 2021, thus, it has been contended by the counsel that 482 Cr. P.C. application is maintainable even it relates to SC/ST Act.*

13. *Sri. Singh, learned counsel for the applicant submitted that while deciding the case of Gulam Rasool Khan (supra), learned Division Bench of this Court has never relied upon or even considered the ratio laid down in the judgment of Ramawatar v. State of M.P. and thus could be safely be termed as per incuriam.*

14. *There is yet another judgment of Hon'ble Apex Court cited by learned counsel for the applicants in the case of B. Venkateswaran v. P. Bakthavatchalam reported in 2023 SCC OnLine SC 14 decided on 05.01.2023 in Criminal Appeal No. 1555 of 2022. In so many words the, the Hon'ble Apex Court has opined that:—*

"From the aforesaid, it seems that the private civil dispute between the parties is converted into criminal proceedings. Initiation of the criminal proceedings for the offences under <u>Sections 3(1)(v)</u> and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, therefore, is nothing but an abuse of process of law and Court. From the material on record, we are satisfied that no case for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out, even prima facie. None of the ingredients of Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out and/or satisfied. <u>Therefore, we are of the firm opinion and view that in the facts and circumstances of the case, the High Court ought to have quashed the criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure. The impugned judgment and order passed by the High Court, therefore, is unsustainable and the same deserves to be quashed and set aside and the criminal proceedings initiated against the appellants deserves to be quashed and set aside</u>."

15. *Thus from the aforesaid discussions, it is clear that Hon'ble Apex Court has clearly and time and again have opined that*

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> *elaborating the aforesaid provision of full bench of this Court as well as Hon'ble Apex Court and taking the help of the aforesaid judgments, the Court is of the considered opinion that 482 Cr. P.C. application could be filed assailing the summoning order."*

10. The Hon'ble Single Judge deciding **Devendra Yadav** (Supra) somehow omitted to notice that Section 14-A of the S.C./S.T. Act was not taken into consideration either in **Ramawatar** or in **B. Venkateswaran v. P. Bakthavatchalam**.

11. In **Amrendra Pratap Singh v. Tej Bahadur Prajapati**: (2004) 10 SCC 65, the Hon'ble Supreme Court held that:

> *"A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement.*

In **State of Orissa v. Mohd. Illiyas**: (2006) 1 SCC 275 it was reiterated that: -

> ***"12….*** *A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates : (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a court has been decided is alone binding as a precedent. (See State of Orissa v. Sudhansu Sekhar Misra (1968) 2 SCR 154 and Union of India v. Dhanwanti Devi (1996) 6 SCC 44.) A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem 1901 AC 495 the Earl of Halsbury, L.C. observed that every judgment must be read as*

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> *applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be the exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."*

12. In **P.S. Sathappan v. Andhra Bank Ltd.**: (2004) 11 SCC 672, a Constitution Bench consisting of five Hon'ble Judges held that: -

> ***"144.*** *While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.*
>
> ***145.*** *A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See Haryana Financial Corpn. v. Jagdamba Oil Mills (2002) 3 SCC 496, Union of India v. Dhanwanti Devi (1996) 6 SCC 44, Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation) (2002) 257 ITR 123 (Del), State of U.P. v. Synthetics and Chemicals Ltd. (1991) 4 SCC 139, A-One Granites v. State of U.P. (2001) 3 SCC 537 and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111.*
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> ***146.*** *Although decisions are galore on this point, we may refer to a recent one in State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal (2004) 5 SCC 155 wherein this Court held: (SCC p. 172, para 19)*
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> *"It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."*
>
> ***147.*** *It is further well settled that a decision is not an authority for the proposition which did not fall for its consideration."*

13. The Hon'ble Single Judge deciding **Devendra Yadav** (Supra) somehow omitted to notice that Section 14-A of the S.C./S.T. Act was not taken into consideration either in **Ramawatar** or in **B. Venkateswaran v. P. Bakthavatchalam**.

14. The question of effect of Section 14-A of the S.C./S.T. Act on entertainability of a petition under Section 482 Cr.P.C. was neither raised not decided in **Ramawatar** or in **B. Venkateswaran v. P.**

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Bakthavatchalam and, therefore, those decisions are not relevant for deciding this question. Therefore, those decisions would not affect the binding values of the Full Bench decisions in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act** and **Ghulam Rasool Khan v. State of U.P.**.

15. In view of the aforesaid discussion, the application under Section 482 Cr.P.C. filed by the applicant seeking quashing of the charge-sheet, the summoning order and the entire proceedings of Case under Sections 323, 504, 506, 241 IPC & Sections 3 (1)(Da)(Dha) of 14-A of the Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989 is not entertainable and the same is **dismissed**, leaving it open to the applicant to avail the statutory remedy under Section 14-A of the 14-A of the Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989.

(Subhash Vidyarthi J)

Order Date: 04.06.2024
Pradeep/-