

**RESERVED**

**Court No. - 33**

**Case :- APPLICATION U/S 482 No. - 8635 of 2023**

**Applicant :- Abhishek Awasthi @ Bholu Awasthi**

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

**Counsel for Applicant :- Jayant Kumar**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 13427 of 2023**

**Applicant :- Rajni Mishra @ Rajni Rajhans**

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

**Counsel for Applicant :- Sudhir Kumar Srivastava**

**Counsel for Opposite Party :- G.A., Dharendra Kumar Srivastava**

With

**Case :- APPLICATION U/S 482 No. - 14452 of 2023**

**Applicant :- Krishna Kant Mishra And 2 Others**

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

**Counsel for Applicant :- Ajay Pandey**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 13822 of 2023**

**Applicant :- Prem Singh And Another**

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

**Counsel for Applicant :- Ram Chandra Solanki**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 13858 of 2023**

**Applicant :- Ajay Kumar**

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

**Counsel for Applicant :- Dur Vijay Singh, Seema Singh Jadaun**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 13880 of 2023**

**Applicant :- Sushil Kumar Singh And 6 Others**  
**Opposite Party :- State of U.P. and Another**  
**Counsel for Applicant :- Sanjay Kumar Yadav**  
**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 14600 of 2023**

**Applicant :- Harishchandra Yadav And 4 Others**  
**Opposite Party :- State Of U.P. And Another**  
**Counsel for Applicant :- Kunjesh Kumar Dubey**  
**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 14812 of 2023**

**Applicant :- Nadeem Qureshi**  
**Opposite Party :- State Of U.P. . And Another**  
**Counsel for Applicant :- Javed Habib**  
**Counsel for Opposite Party :- G.A.,Apul Misra**

With

**Case :- APPLICATION U/S 482 No. - 14826 of 2023**

**Applicant :- Dushyant @ Deepu Tinkoo And Another**  
**Opposite Party :- State Of U.P. And 3 Others**  
**Counsel for Applicant :- Ajay Sengar**  
**Counsel for Opposite Party :- G.A.,Akshay Raj Singh**

With

**Case :- APPLICATION U/S 482 No. - 10738 of 2023**

**Applicant :- Veer Singh @ Lala And Another**  
**Opposite Party :- State of U.P. and Another**  
**Counsel for Applicant :- Dhiraj Kumar Pandey**  
**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 10477 of 2023**

**Applicant :- Dilip Mishra And Another**  
**Opposite Party :- State of U.P. and Another**  
**Counsel for Applicant :- Abhishek Mishra,Dhirendra Babu Mishra**  
**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 14444 of 2023**

**Applicant :- Shiv Pal Singh And 4 Others**

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

**Counsel for Applicant :- Shiv Shanker Pandey**

**Counsel for Opposite Party :- G.A.,Dheeraj Kumar Dwivedi**

With

**Case :- APPLICATION U/S 482 No. - 11744 of 2023**

**Applicant :- Akram And Another**

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

**Counsel for Applicant :- Vinod Kumar Tripathi**

**Counsel for Opposite Party :- G.A.,Daya Shanker Pandey**

With

**Case :- APPLICATION U/S 482 No. - 11375 of 2023**

**Applicant :- Karu@ Dharmveer And Another**

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

**Counsel for Applicant :- Prem Chandra Dwivedi**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 12289 of 2023**

**Applicant :- Data Ram And 3 Others**

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

**Counsel for Applicant :- Binod Kumar Tripathi**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 12444 of 2023**

**Applicant :- Kamlesh And 2 Others**

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

**Counsel for Applicant :- Ratnesh Kumar Jaiswal**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 12871 of 2023**

**Applicant :- Ranjeet Singh Verma**

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

**Counsel for Applicant :- Dinesh Kumar Yadav**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 14838 of 2023**

**Applicant :- Ashok Kumar Singh Upadhyay**

**Opposite Party :- State Of U.P. 3 Others**

**Counsel for Applicant :- Raj Kapoor Upadhyay**

**Counsel for Opposite Party :- G.A.**

With

**Case :- APPLICATION U/S 482 No. - 9281 of 2023**

**Applicant :- Khalid And 3 Others**

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

**Counsel for Applicant :- Laxmi Narayan Rathour**

**Counsel for Opposite Party :- G.A.**

**Hon'ble J.J. Munir,J.**

1. The first question involved in this batch of Applications under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') is whether a challenge laid to the entire proceedings of a case under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SC/ ST Act') with no challenge to any interlocutory order i.e. a summoning order, would be within the mischief of the rule laid down in answer to Question No. (III) by the Full Bench in **Ghulam Rasool Khan v. State of U.P. and others, 2022 (8) ADJ 691 (FB) (LB)**.

2. The allied and the second question involved is : Whether challenge to a proceeding under the SC/ ST Act can be laid before this Court through an Application under Section 482 of the Code, in view of the principle in the Full Bench in **Ghulam Rasool Khan (supra)**, where along with proceedings, the order taking cognizance and summoning the applicant is also challenged.

3. The third and a corollary to the aforesaid questions is : Whether there is conflict of opinion between the learned Single Judge of this Court in **Sushil Kumar Singh v. State of U.P. and another, (2023) 123 ACC 544** and **Devendra Yadav and others v. State of U.P. and another, 2023 (5) ADJ 452**, necessitating reference to a larger bench.

4. In these Applications under Section 482 of the Code, for the limited purpose of answering the questions involved, it may not be necessary to refer to the facts of each case in copious detail, except those essential to examine the question of maintainability etc. involved. In that sense and for the purpose, none of the cases is *stricto sensu* a leading case, but for the ease of reference and making a well ordered determination, this Court proposes to treat APPLICATION U/S 482 No. - 8635 of 2023 as the leading case. The necessary and the very essential facts in each of the cases, part of this batch, imperative to go into the questions formulated hereinabove, are shown in tabular representation hereinbelow:

<b>Sl. No.</b>	<b>Application u/s 482 Nos.</b>	<b>Reliefs claimed</b>
1	10477 of 2023	To quash the entire proceeding of Session Trial No. 96 of 2017, State vs. Dilip Mishra and others (arising out of Case Crime No.12 of 2014), under Sections 323, 506 I.P.C. and Section 3 (1) (x) of the SC/ ST Act, P.S. Kaushambi, District Kaushambi.
2	13427 of 2023	To quash the entire proceeding of S.T. No.117 of 2022, State vs. Rajesh Singh Yadav and others (arising out of Case Crime No.426 of 2019), under Sections 147, 323, 504, 506 IPC and Section 3 (1) (r) (s) of SC/ ST Act, P.S. Baragaon, District Varanasi.
3	13822 of 2023	To quash Special Sessions Trial No.511 of 2020, State vs. Prem Singh and others (arising out Case Crime No.151 of 2020), under Sections 323, 504 I.P.C. and Section 3(1) (r), (s) of the SC/ ST Act, Police Station Civil Lines, District Etawah, pending in the Court of the Special Judge (SC/ST

		Act), Etawah
4	14600 of 2023	To quash the entire proceeding of S.S.T 22 of 2022, State vs. Harishchandra Yadav and others (arising out of Case Crime No.203 of 2021), under Sections 323, 504, 147, 149, 452 IPC and Section 3(2)(va) of the SC/ ST Act, P.S Handia, District Prayagraj, pending in the Court of the Special Judge SC/ST Allahabad.
5	14826 of 2023	To quash the entire proceedings of Sessions Trial No. 0010 of 2023, State of U.P. vs. Dushyant @ Deepu Patel and others (arising out of Case Crime No. 0017 of 2023), under Sections 452, 323, 504, 506 IPC, and Section 3 (1) (r) (s) of the SC/ ST Act, P.S. Konch, District Jalaun pending in the Court of the Special Judge (SC/ ST Act), Jalaun at Orai.
6	12289 of 2023	To quash the impugned Charge Sheet No. 123 of 2020 dated 14.10.2020, arising out of Case Crime No. 143 of 2020, under Sections 336, 323, 504 IPC and 3 (2) (va) of the SC/ ST Act, P.S. Sakeet, District Etah, pending in the Court of the Special Judge SC/ST (P.A.) Act, Etah.
7	10738 of 2023	To quash the charge sheet dated 22.06.2022 as well as entire proceedings of Special Session Case No. 1997 of 2022, State vs. Sushil Kumar and another (arising out of Case Crime No. 280 of 2022), under Sections 323, 452, 354B, 504, 506 I.P.C. and Section 3(1)(r) and 3(1) (s) and 3(2)(va) SC/ST Act against applicant No.1 and Sections 323, 452, 504, 506 I.P.C. and Section 3(1)(r) and 3(1)(s) of the SC/ST Act against applicant No.2, P.S. Deoband, District Saharanpur.
8	14444 of 2023	To quash the charge sheet dated 30.10.2009 as well as summoning order dated 19.11.2009 passed by the Special Judge, SC/ST Act, Kanpur Dehat in S.T. No.1453 of 2022, State vs Shiv Pal Singh and others (arising out of Case Crime No.448 of 2009), under Sections 147, 504, 506, 352 IPC and Section 3(1)(x) of SC/ ST Act, Police Station Rasoolabad, District Kanpur Dehat.
9	12871 of 2023	To quash the cognizance order dated 17.02.2023 and charge sheet dated 27.12.2022 as well further proceedings of Case No. 424 of 2023, State vs. Ranjeet Singh (arising out of Case Crime No.368 of 2022), under Sections 354, 504, 506, IPC, and 3(2) (va) of the SC/ ST Act, P.S. Gagahedi, District Saharanpur, pending in the Court of the Special Judge (SC/ ST Act), Saharanpur.
10	14452 of 2023	To quash the cognizance order dated 17.07.2019

		and charge-sheet dated 01.06.2019 as well as the entire criminal proceeding of Criminal Case No.615 of 2019, State vs. Krishna Kant Mishra and others (arising out of Case Crime No.41 of 2019), under Sections 323, 504, 506 IPC and Section 3(1) (s) and 3(2)(va) of the SC/ST Act, P.S. Mahewaghat, District Kaushambi, pending in the Court of the Special Judge (SC/ST) Act, Kaushambi.
11	13858 of 2023	To quash the Charge Sheet No. 342 of 2022 dated 24.12.2022 and entire proceeding of Special Session Trial No. 82 of 2022, State vs. Ajay Kumar (arising out of Case Crime No. 346 of 2022), under Sections 323, 504, 506 IPC and Section 3 (2) (va) of the SC/ ST Act, P.S. Hathras Junction, District Hathras, pending in the Court of the Special Judge (SC/ST Act), Hathras.
12	13880 of 2023	To quash the Charge Sheet dated 23.11.2019 and 30.11.2021 as well as entire criminal proceeding of Special Session Case No. 266 of 2022, State vs. Sushil Kumar Singh and others (arising out of Case Crime No. 226 of 2019), under Sections 419, 420, 506 IPC and Sections 3(1)(r) and 3(1)(s) of the SC/ ST Act, P.S. Sidhari, District Azamgarh, pending in the Court of the Special Judge, S.C./S.T. Act, Azamgarh.
13	14812 of 2023	To quash Charge Sheet No.273-A of 2022 dated 28.09.2022 and cognizance order dated 01.11.2022 as well as entire proceeding of Session Trial No. 1603/2022, State vs. Nadeem Qureshi (arising out of Case Crime No. 0318 of 2022), under Sections 147, 307, 504, 506 IPC and Section 3(1)(r), 3(1)(s) & 3(2)(v) of the SC/ ST Act, P.S. Kotwali, District Pilibhit, pending in the Court of the Special Judge, SC/ST Act, Pilibhit.
14	8635 of 2023	To quash the impugned summoning order dated 30.06.2022 as well as the entire proceedings in Special Criminal Case No.656 of 2020, Anisha Devi vs. Bholu and others, under Sections 323, 354, 452, 506 I.P.C. and under Section 3(2)(va) of the SC/ ST Act, P.S. Najirabad, District Kanpur Nagar, pending in the Court of the Special Judge SC/ST Act, Kanpur Nagar.
15	11744 of 2023	To quash the summoning order dated 28.02.2023 as well as entire further proceedings in Criminal Complaint Case No. 20 of 2022, Kishan Rao vs. Akram and others, under Sections 323, 504, 506 IPC and Section 3(2)(va) of the SC/ST Act, P.S. Hapur Dehat, District Hapur, pending in the Court of the Additional Sessions Judge/ Special Judge, SC/ST Act, Hapur.

16	9281 of 2023	To quash the summoning order dated 09.01.2023 as well as Special Session Trail No.01 of 2023, Chandrabhan Jatav vs. Khalid and others (arising out of Complaint Case No. 30 of 2021), under Sections 452, 354, 323, 504 I.P.C. and Section 3(2)(va) of SC/ ST Act, P.S. Kotwali Jalaun and District Jalaun
17	12444 of 2023	To set aside the summoning order dated 10.01.2023 passed by the Special Judge, SC/ST Act in a Complaint Case No. 86 of 2022, Smt. Dulari vs. Bholanath and others, under Sections 323, 504 IPC and Section 3(1)(r), 3(1)(s) of the SC/ ST Act, P.S. Marihan, District Mirzapur, pending in the Court of the Special Judge, SC/ST Act, Mirzapur.
18	14838 of 2023	To quash the summoning order dated 24.12.2013 as well as entire proceedings of Complaint Case No. 893 of 2013, Smt. Bhuri Devi vs. Ghamandi Singh and others, under Sections 376, 377, 506 IPC and Section 3(1) (v) of the SC/ ST Act, P.S. Gangiri, District Aligarh, pending in the Court of the Special Judge (SC/ST Act), Aligarh.
19	11375 of 2023	To quash the cognizance order dated 18.01.2022 passed by Special Judge (SC/ST Act), Agra in S.S.T. No.184 of 2020, State vs. Karu alias Dharmveer and another (arising out of Case Crime No.125 of 2020), under Sections 323, 504, 506 IPC and Sections 3(1)(s), 3(2)(va) of the SC/ ST Act, P.S. Bah, District Agra, pending in the Court of the Special Judge (SC/ST Act), Agra.

5. The Full Bench of this Court in **Ghulam Rasool Khan** (*supra*) had before their Lordships to answer, amongst others, Question No. (III), that has bearing on the point involved here. It would be apposite to refer to *in extenso*, the short opinion of the Full Bench in **Ghulam Rasool Khan** on the point, which sets out the question and renders the answer. In Ghulam Rasool Khan, their Lordships dealt with Question No. (III) in words that follow:

“Question No. (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.?

12. The aforesaid question has been dealt with by Full Bench of this Court in In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra), where the question framed was as under :

'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 (in short 'Cr.P.C.') 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 High Court under Article 226/227 of the Constitution or its revisional powers under Section 482 Cr.P.C. shall stand ousted?'

13. The answer to the aforesaid was in the negative. It was held that against the judgments or orders, for which remedy has been provided under Section 14A of the 1989 Act, invoking the jurisdiction of this Court by filing petition under Articles 226 or 227 of the Constitution of India, a revision under Section 397 Cr.P.C. or an application under Section 482 Cr.P.C., will not be maintainable. The relevant paragraphs thereof are extracted below :

'64. At the outset, our answer to the first part of the question is in the negative. In other words, where an appeal under sub-section (1) and/or sub-section (2) of Section 14A of the Amending Act is maintainable against any judgment, sentence or order, not being interlocutory in nature, a petition under the provisions of Articles 226/227 of the Constitution of India or a revision under Section 397 Cr.P.C. or a petition under Section 482 Cr.P.C. would not be maintainable. ....

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89. In our considered view, the contention which has been urged by Sri Sushil Shukla that the powers of the High Court under Section 482 Cr.P.C. and its revisional power under Section 397/401 Cr.P.C. alongwith the provisions contained under Article 226/227 of the Constitution of India are not ousted by the provisions of Section 14 A of the Act of 2015 where an appeal has been provided from any judgment/sentence or order not being an

interlocutory order of a Special Court/Exclusive Special Court to the High Court both on facts and on law is too broadly framed so as to merit acceptance. It must be borne in mind that the statute itself provides a remedy to an accused against any judgment, sentence and order of the Special Court/Exclusive Special Court to the High Court. Therefore, any person, who is aggrieved by an order of the Special Court/Exclusive Special Court can approach and prefer an appeal to the High Court for redressal of his grievance and any grievance of an accused/victim against the order of the Court below can be examined both on facts and law by the High Court.....

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94. 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.'

14. Hence, the answer to Question No. (III) will be in negative namely, 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."

**6.** The questions confronting this Court arose for the first time on 24<sup>th</sup> March, 2023 in the leading case, where Mr. Jayant Kumar, learned Counsel for the applicant and Mr. D.K. Srivastava, learned A.G.A. for the State, were at serious contention if an Application u/s 482 of the Code was maintainable, challenging proceedings of a case under the SC/ST Act, including the summoning order. On 24.03.2023, upon hearing learned Counsel for the parties in the leading case, I passed the following order:

*“Heard Mr. Jayant Kumar, learned Counsel for the applicant and Mr. D.K. Srivastava, learned A.G.A. for the State on the issue whether proceedings and the summoning order passed in a case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, can be challenged invoking this Court’s jurisdiction under Section 482 of the Code of Criminal Procedure. Learned Counsel for the applicant has particularly relied upon the decision of the Supreme Court in **B. Venkateswaran and others v. P. Bakthavatchalam, AIR 2023 SC 262** rendered after the Full Bench decision of this Court in **Ghulam Rasool Khan and others v. State of U.P. and others, 2022 (8) ADJ 691 (FB) (LB)**, whereon the learned A.G.A. has placed reliance.*

*Orders reserved.*

*Till delivery of orders, further proceedings in Special Criminal Case No. 656 of 2020, Anisha Devi vs. Bholu and others, under Sections 323, 354, 452, 506 IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, P.S. Najirabad, District Kanpur, pending before the Special Judge, SC/ST Act, Kanpur Nagar, shall remain stayed.”*

7. On that date, it was not within the cognizance of this Court, and perhaps, of the learned Counsel appearing in the leading case as well, that two days earlier, my esteemed Brother Shekhar Kumar Yadav had dealt with the issue in **Sushil Kumar Singh** (*supra*) and rendered judgment, holding an Application u/s 482 of the Code not maintainable, where the challenge was to the entire proceedings of a case, involving an offence under the SC/ ST Act as well as the cognizance order.

8. In **Sushil Kumar Singh**, his Lordship has considered the law laid down by the Supreme Court in **Ramavawatar v. State of Madhya Pradesh, AIR 2021 SC 5228** and **Hitesh Verma v. State of Uttarakhand, AIR 2020 SC 5584**, and the holding of the Full Bench in **Ghulam Rasool Khan** to conclude that in the face of a statutory remedy under Section 14-A (1) of the SC/ ST

Act, the exercise of inherent powers by this Court under Section 482 of the Code would not be available to quash proceedings of a case under the SC/ ST Act, including the order of cognizance etc. The reasons that have weighed with the Court in **Sushil Kumar Singh** to take that view would be shortly adverted to. It must, however, be remarked that **B. Venkateswaran** (*supra*), a decision rendered after the Full Bench in **Ghulam Rasool Khan** was not considered.

9. After orders were reserved by me in the leading case, a number of other applications, included in this bunch, came up, where the same question was involved. By the time, some of these matters were being heard for admission, a decision of my esteemed Brother Rahul Chaturvedi in **Devendra Yadav** (*supra*) was brought to my notice, where his Lordship has taken a diametrically opposite view to the one in **Sushil Kumar Singh**. The decision in **Devendra Yadav** was rendered on April the 10<sup>th</sup>, 2021 and cited at the Bar with much vehemence by learned Counsel for the applicant in support of the view that notwithstanding the remedy under Section 14-A(1) of the SC/ ST Act, an Application u/s 482 of the Code would be maintainable to quash proceedings, including the order of cognizance/ summoning. It must be remarked that the decision in **Devendra Yadav**, though later in point of time, does not take note of the holding of the learned Single Judge in **Sushil Kumar Singh** at all.

10. It is, in my opinion, imperative to notice the question that was considered and answered in **Devendra Yadav** by the Court. It would be suffice to notice the following observations of the Court in **Devendra Kumar** :

"8. The full bench in paragraph 13 and 14 of its judgment negated its reply by making a mention that :

13. The answer to the aforesaid was in the negative. It was held that against the judgments or orders, for which remedy has been provided under Section 14A(1) of the 1989 Act, invoking the jurisdiction of this Court by filing petition under Articles 226 or 227 of the Constitution of India, a revision under Section 397 Cr.P.C. or an application under Section 482 Cr.P.C., will not be maintainable.

14. Hence, the answer to Question No. (III) will be in negative namely, that the aggrieved person having remedy of appeal under Section 14A(1) of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr.P.C..

9. Learned AGA has strenuously hammered his submissions that present 482 Cr.P.C. application is not maintainable in the light of the aforementioned observations made by full Bench of this Court in the case of Gulam Rasool Khan (supra).

10. Responding to the aforesaid preliminary objection, Sri Mohit Singh, learned counsel for the applicants refuted the submissions by making a mention that there are catena of decisions of Hon'ble Apex Court with regard to the maintainability of the 482 Cr.P.C. application, even though the provisions of SC/ST Act is present.

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, 2021 SCC Online SC 966, decided on 25.10.2021 in CrI. 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 'non-compoundable 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 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 (28.7.2022) 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 and others v. P. Bakthavatchalam, 2023 SC Online SC 14, decided on 5.1.2023 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 Sections 3(1)(v) 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. 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.''

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

**11.** The learned Single Judge in **Sushil Kumar Singh** has taken due note of the holding of the Supreme Court in **Ramavawatar (supra)** and **Hitesh Verma (supra)**, but held that these do not have any bearing on the issue, because the point involved was not considered by their Lordships in either of the decisions. In **Sushil Kumar Singh**, the remarks of the Court, that are relevant, read:

"7. In the case of *Ramavawatar (supra)* the issue was whether criminal proceedings arising out of non compoundable offence can be quashed against a person accused of hurting the sentiments of the victim who belongs to the Scheduled Caste category by exercising special powers of the court? The Hon'ble Apex Court has ruled that where it appears to the Court that the offence in question, although covered under the SC/ST Act, is (i) primarily private or civil in nature;, or (ii) where the alleged offence has not been committed on account of the caste of the victim; or (iii) 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.

8. However, in the case of *Hitesh Verma* (supra), appellant had sought quashing of the charge-sheet on the ground that the allegation does not make out an offence under the Act against the appellant merely because respondent No. 2 was a Scheduled Caste since the property dispute was not on account of the fact that respondent No. 2 was a Scheduled Caste. The property disputes between a vulnerable section of the society and a person of upper caste will not disclose any offence under the Act unless, the allegations are on account of the victim being a Scheduled Caste.

9. This Court is also mindful of the two Full Bench decisions of this Court rendered in *Ghulam Rasool Khan v. State of UP*, 2022 Latest Case Law 8330 Alld and In Re : -Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (CRIMINAL WRIT-PUBLIC INTEREST LITIGATION No. - 8 of 2018) decided on 10.10.2018.

10. In Re : *Provision of Section 14-A of SC/ST (Prevention of Atrocities) Amendment Act, 2015* (supra), Full Bench of this Court has considered the question "(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?

11. The Full Bench answered the said question in the negative. It was held that against the judgments or orders, for which remedy has been provided under Section 14-A of the 1989 Act, invoking the jurisdiction of this Court by filing petition under Articles 226 or 227 of the Constitution of India, a revision under Section 397 Cr. P.C. or an application under Section 482 Cr. P.C., will not be maintainable.

12. In another case of *Ghulam Rasool Khan* (supra), which is another Full Bench of this Court also considered the following question as to 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.? The Full Bench answered the said question in negative holding that the aggrieved person having remedy of appeal under Section 14-A of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr. P.C.

**13.** Both the cases relied upon by the learned counsel for the applicants are not applicable in the facts of the present case as the same are silent over the technical issue of maintainability of the petition under Section 482 Cr. P.C. after insertion of Section 14-A of Act, 1989 and unless the said issue is decided consciously, any departure from the statutory provision would be a bad precedent. The cases relied upon by the learned counsel for the applicants have been decided by Hon'ble Apex Court considering the fact that the dispute involved therein was either in the nature of private dispute or compromise took place between the parties.

**14.** It is no doubt true that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection as has been reminded by Hon'ble Supreme Court in catena of decisions on various occasions. Perusal of Section 14-A of the Act, 1989, itself shows that it starts with a non obstante clause. The legislative intent behind inserting non-obstante clause in any provision is to enforce overriding effect of that provision over any other provision or any other prevailing law. When a statutory remedy is created by enactment for redressal of grievances, the exercise of inherent power by way of a petition u/S 482 Cr. P.C. could not be invoked ignoring the statutory dispensation.

**15.** Section 482 of the Code envisages the three circumstances under which the inherent jurisdiction may be exercised by High Court, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. It is trite law that the inherent power of the High Court under Section 482 of the Code ought to be exercised to prevent miscarriage of justice or to prevent the abuse of the process of the court or to otherwise secure the ends of justice and the Court possesses wide discretionary powers. It is well settled that the

inherent powers under section 482 Cr. P.C. can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by any particular statute. If an effective statutory alternative remedy is available, this court should refrain from exercising its extraordinary power under section 482 Cr. P.C., especially when the applicant has not availed of that remedy."

(emphasis supplied)

**12.** This Court has also noticed the opinion of Brother Anil Kumar Ojha in **Anuj Kumar @ Sanjay and Ors. v. State of U.P. & Ors., (2022) 05 ILR A 1479**, that considers the points in hand. In **Anuj Kumar @ Sanjay (supra)**, it has been observed:

"7. Now it is to be seen whether Application U/s 482 Cr.P.C. lies against the impugned summoning order dated 16.02.2022 or appeal will lie under Section 14A(1) of the S.C./S.T. Act.

8. Relevant portion of Section 14A(1) of the S.C./S.T. Act. are quoted below for ready reference:

"14A. Appeals.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 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."From the perusal of provisions of Section 14A(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities Act), 1989, it is clear that an Appeal shall lie from any judgement, cognizance order, order not being interlocutory order of Special Court, or an exclusive Special Court to the High Court, both on facts and on law."

9. Full Bench of this Court in Re: Provision of Section 14a of SC/ST (Prevention of Atrocities) Amendment Act, 2015 while answering question B has specifically stated- "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.

10. Thus if any intermediate order is passed by Special Court or an exclusive Special Court in case relating to an offence in the S.C./S.T. Act, that will come in the category of order as

provided under Section 14A(1) of SC/ST Act against which only an appeal shall lie before the High Court, both on facts and on law.

11. In view of the above discussion, I am of the considered opinion that Application U/s 482 Cr.P.C. cannot be filed against summoning order dated 16.02.2022 passed by Learned II Additional Sessions Judge/ Special Judge, S.C./S.T. Act, Lakhimpur Kheri."

13. The material part of the relief in **Anuj Kumar @ Sanjay**, as extracted in the report, reads:

"2. Applicants have filed this application with following prayers:-

"Wherefore, it is most respectfully prayed in the interest of justice that this Hon'ble Court may kindly be pleased to allow this application U/s 482 Cr.P.C. and quash the impugned charge-sheet and summoning order dated 16-2-2022, passed by Learned II Additional Sessions Judge/ Special Judge, S.C./S.T. Act, Lakhimpur Kheri summoning the applicants to face trial vide Special Sessions Trial No. 93/2022, Crime No. 314/2020, U/s 323/504/506 I.P.C. & 3(1) ढ, ध of the Act, Police Station- Neemgaon, District- Lakhimpur Kheri, contained as Annexures No. 1 and 2 to this application. ...."

14. The relief, therefore, in **Anuj Kumar @ Sanjay** is more or less of the type involved in those categories of cases where the entire proceedings along with the order of cognizance as well as summoning has been sought to be quashed. The opinions of the two learned Single Judges of this Court in **Sushil Kumar Singh** and **Anuj Kumar @ Sanjay** appear to be in conflict with the opinion of the learned Single Judge in **Devendra Yadav** on the point if an Application u/s 482 of the Code challenging a charge-sheet together with the summoning/ cognizance order is maintainable. While the learned Judges, who have decided **Sushil Kumar Singh** and **Anuj Kumar @ Sanjay**, have held that for a relief of this kind, where the accused seeks quashing of the proceedings of the case/ charge-sheet together with the

summoning and the cognizance order, the remedy is by way of an appeal under Section 14-A (1) of the SC/ ST Act, the learned Judge deciding **Devendra Yadav** has held that notwithstanding the decision of the Full Bench in **Ghulam Rasool Khan**, an Application u/s 482 of the Code to quash proceedings of a case under the SC/ ST Act, together with the summoning order, would be maintainable under Section 482 of the Code.

**15.** As this Court sees the decisions in **Devendra Yadav** on one hand and **Sushil Kumar Singh** and **Anuj Kumar @ Sanjay** on the other, I find that there is clear conflict of opinion between the learned Judges of this Court on the first and the second questions. It would, therefore, be futile for me, sitting singly, to analyse the conflicting reasonings of their Lordships and give my own, adding to the intensity of conflict. Apart from the added conflict that any further opinion by me, sitting singly, would bring, any comment on merits now would be contrary to the settled principles of judicial discipline in such matters. That such a course is to be scrupulously eschewed is a well acknowledged principle, a very resounding statement whereof is to be found in the remarks of their Lordships of the Supreme Court in **Sundarjas Kanyalal Bhatija and others v. Collector, Thane, Maharashtra and others, (1989) 3 SCC 396**. In **Sundarjas Kanyalal Bhatija (supra)**, it was observed:

"**16.** The attention of the High Court in the present case was drawn to the decision in *Chikalthane case*. Counsel for the State and interveners seemed to have argued that the present case really fell fairly and squarely within what was said there. They were indeed on terra firma since the decision in *Chikalthane case* was a clear authority against every contention raised by the petitioners. Faced with this predicament, counsel for the petitioners urged before the High Court that their case should be referred to a larger Bench to reconsider the decision in *Chikalthane case*. But

learned Judges, (Dharmadhikari and Kantharia, JJ.) did not pay heed to that submission. They neither referred the case to a larger Bench nor followed the view taken in the *Chikalthane case*. It was not as if they did not comprehend the issue to be determined and the principle to be applied. They were very much aware of it when they remarked:

In our opinion, once it is accepted that this is a piece of conditional legislation, then it will have to be held that the principle of natural justice would not apply to such a case as held by the Division Bench of this Court in *Village Panchayat, Chikalthane case* nor it could be said that because under a mistaken notice the Federation was heard, the denial of such a right to the petitioners will amount to hostile discrimination within the contemplation of Article 14 of the Constitution of India.

**17.** After referring to these simple legal principles, it is unfortunate that the issue at stake was little explored. The key question raised in the case was side-tracked and a new strategy to interfere with the decision of the Government was devised. The learned Judges directed the Government to publish again a draft notification for reconsideration of the matter. They gave liberty to the writ petitioners and the interveners to submit their representations. They observed that "this is a fit case where the parties should be given a reasonable opportunity of being heard". They did not quash the impugned notification, but told the Government to make necessary changes in the light of fresh consideration. All these directions were issued after recording a positive finding that the exclusion of Ulhasnagar from the Corporation was arbitrary and irrational. The net result of it is that there is now no discretion with the Government to keep Ulhasnagar away from the Corporation.

**18.** It would be difficult for us to appreciate the judgment of the High Court. One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-Judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned Single Judge or a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter shall be referred to a

larger Bench. It is a subversion of judicial process not to follow this procedure.

**19.** Deprecating this kind of tendency of some judges, Das Gupta, J., in *Mahadeolal Kanodia v. Administrator General of W.B.* [AIR 1960 SC 936 : (1960) 3 SCR 578 : (1961) 1 Ker LR 64] said: (AIR p. 941, para 19)

We have noticed with some regret that when the earlier decision of two Judges of the same High Court in *Deorajin case* [*Deorajin Debi v. Satyadhan Ghosal*, 58 Cal WN 64 : AIR 1954 Cal 119] , was cited before the learned Judges who heard the present appeal they took on themselves to say that the previous decision was wrong, instead of following the usual procedure in case of difference of opinion with an earlier decision, of referring the question to a larger Bench. Judicial decorum no less than legal propriety forms the basis of judicial procedure. If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decision.

**20.** The attitude of Gajendragadkar, C.J., in *Lala Shri Bhagwan v. Ram Chand* [AIR 1965 SC 1767 : (1965) 3 SCR 218] was not quite different: (AIR p. 1773, para 18)

"It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself".

**21.** Chief Justice Pathak, in a recent decision stressed the need for a clear and consistent enunciation of legal principle in the decisions

of a court. Speaking for the Constitution Bench (*Union of India v. Raghbir Singh* [(1989) 2 SCC 754] ) learned Chief Justice said: (SCC p. 766, para 9)

"The doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs. And, therefore, the need for a clear and consistent enunciation of legal principle in the decisions of a court."

**22.** Cardozo propounded a similar thought with more emphasis [*The Nature of the Judicial Process*, Benjamin N. Cardozo, p. 33] :

I am not to mar the symmetry of the legal structure by the introduction of inconsistencies and irrelevancies and artificial exceptions unless for some sufficient reason, which will commonly be some consideration of history or custom or policy or justice. Lacking such a reason, I must be logical just as I must be impartial, and upon like grounds. It will not do to decide the same question one way between one set of litigants and the opposite way between another.

In our system of judicial review which is a part of our constitutional scheme, we hold it to be the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective as a guide to behaviour. It must be determined with reasons which carry convictions within the courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinion. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute.

**23.** Judge Learned Hand has referred to the tendency of some judges "who win the game by sweeping all the chessmen off the table" [*The Spirit of Liberty*, Alfred A. Knopf, New York, p. 131 (1953)] . This is indeed to be deprecated. It is needless to state that the judgment of superior courts and Tribunals must be written

only after deep travail and positive vein. One should never let a decision so until he is absolutely sure it is right. The law must be made clear, certain and consistent. But certitude is not the test of certainty and consistency does not mean that there should be no word of new content. The principle of law may develop side by side with new content but not with inconsistencies. There could be waxing and waning the principle depending upon the pragmatic needs and moral yearnings. Such development of law particularly, is inevitable in our developing country. In *Raghubir Singh case* [(1989) 2 SCC 754] , learned Chief Justice Pathak had this to say: (SCC p. 767, para 11)

"Legal compulsions cannot be limited by existing legal propositions, because, there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted value of present time and place, relevant to the dispensing of justice within the new parameters."

**24.** And he continued: (SCC p. 767, para 12)

"The universe of problems presented for judicial choice-making at the growing points of the law is an expanding universe. The areas brought under control by the accumulation of past judicial choice may be large. Yet the areas newly presented for still further choice, because changing social, economic and technological conditions are far from inconsiderable. It has also to be remembered, that many occasions for new options arise by the mere fact that no generation looks out on the world from quite the same vantage-point as its predecessor, nor for that matter with the same perception. A different vantage-point or a different quality of perception often reveals the need for choice-making where formerly no alternatives, and no problems at all, were perceived."



25. Holmes tells us [*The Common Law*, Oliver Wendell Holmes, p. 36 (1881)] :

"The truth is, that the law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at the end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off. It will become entirely consistent only when it ceases to grow."

26. Apart from that the judges with profound responsibility could ill-afford to take stolid satisfaction of a single postulate past or present in any case. We think, it was Cicero who said about someone: "He saw life clearly and he saw it whole". The Judges have to have a little bit of that in every case while construing and applying the law."

**16.** There are some more illuminating observations of a Division Bench of this Court in **Shyamu v. State of U.P. and others, 2010 SCC OnLine All 1250**, where it has been observed:

"8. It is a cardinal principle of our jurisprudence, that if a learned Single Judge disagrees with the view taken by another learned Judge on the interpretation of a provision, in the normal course, the learned Judge should refer the matter to a larger Bench unless the ratio of the judgment is clearly distinguishable. Judicial discipline requires such an approach to avoid inconsistency in judicial pronouncements and further to enable the authorities to exercise their powers in terms of the interpretation given by the Court to the provisions. We may gainfully refer to the judgment of the Supreme Court in the case of *Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel*, AIR 1968 SC 372, wherein the Supreme Court has observed that where a learned Single Judge chooses to take a view different from the view taken by another learned Single Judge, he is ordinarily bound to refer the matter to a Division Bench. We may only quote the following observations : -

"... It has been held time and again that a Single Judge of a High Court is ordinarily bound to accept as correct judgments of courts of coordinate jurisdiction and of Division Benches and of the Full Benches of his Court

and of this Court. The reason of the rule which makes a precedent binding lies in the desire to secure uniformity and certainty in the law."

9. This principle flows on the proposition that if decisions of the same or a superior Court are ignored, even though directly applicable, by a Judge in deciding a case arising before him, on the view that every Judge is entitled to take such view as he chooses on the question of law arising before him, the law will be bereft of all its utility if it should be thrown into a state of uncertainty by reasons of conflicting decisions. In this regard, the observation of Gajendragadkar, C.J., in *Lala Shri Bhagwan v. Shri Ram Chand*, (1965) 3 SCR 218, is quoted below : -

"It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety."

10. Merely because the judgment is of a larger Bench would not necessarily mean that the same is binding. There are exceptions to the rule. One of the exceptions is the doctrine of *per incuriam*. *Per incuriam* means 'a decision rendered by ignorance of a previous binding decision, such as a decision of its own or of a Court of coordinate or higher jurisdiction or in ignorance of the terms of a Statute or of a rule having the force of law. A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be *per incuriam*. Another exception would be that judgment of the coordinate Bench has really not decided the issue. What is binding is the *ratio decidendi* of the judgment. *Ratio decidendi* of a judgment can be culled down by addressing oneself firstly - as to whether the question was under consideration, secondly - as to whether the question was required to be decided, and thirdly - whether the question has been answered by a speaking order.

That will constitute the ratio of a judgment and it is this ratio of the judgment, which would normally be binding on a coordinate Bench.”

**17.** Though, I must say that I attempted to add some words of my own, in agreement or dissent with the two diametrically opposite views taken by the learned Single Judges in **Devendra Yadav** on one hand and **Sushil Kumar Singh** and **Anuj Kumar @ Sanjay** on the other, I have refrained from saying anything, because of the principles that I have noticed in matters of conflict of opinion between earlier Benches of the same strength. But, I do find that there is a clear conflict on the first and the second questions formulated hereinabove between **Sushil Kumar Singh** and **Anuj Kumar @ Sanjay** on one hand and **Devendra Yadav** on the other. In none of the decisions expressing contrary opinions, do I find the opinions to be *per incuriam* or *sub silentio*, to agree with one and not with the other; or with both.

**18.** The point, that is involved here, has been directly considered in both sets of views expressed by the learned Single Judges of this Court, fully alive to the statute and the law on the point. They might have deferred for their own reasons, but that conflict is to be resolved by a larger Bench. It is not to be accentuated by me, sitting singly.

**19.** In view of all that has been said above, the questions formulated in Paragraphs Nos.1 and 2 of this judgment would have to be referred to a larger Bench.

**20.** Let the papers of this case be placed by the Registry at the earliest, considering the urgency involved in the matter, before His Lordship the Hon'ble the Chief Justice for being laid before a larger Bench. The interim orders passed in all these matters shall continue to operate till the matter comes up before

the larger Bench, whereafter appropriate extension of interim orders or further interim orders shall be sought by the parties concerned before the larger Bench.

**Order Date :-** September 20, 2023

Anoop

**(J.J. Munir, J.)**