

Court No. - 14

Case :- APPLICATION U/S 482 No. - 2763 of 2022

Applicant :- Anuj Kumar @ Sanjay And Others

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Deptt.
Lko. And Others**

Counsel for Applicant :- Rajiva Dubey

Counsel for Opposite Party :- G.A.

Hon'ble Anil Kumar Ojha,J.

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

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, ँ of the Act, Police Station- Neemgaon, District- Lakhimpur Kheri, contained as Annexures No. 1 and 2 to this application.

It is further prayed that this Hon'ble Court may kindly be pleased to quash the entire criminal proceedings pending against the applicants in the court of Learned II Additional Sessions Judge/ Special Judge, S.C./S.T. Act, Lakhimpur Kheri vide Special Sessions Trial No. 93/2022, Crime No. 314/2020, U/s 323/504/506 I.P.C. & 3(1) ढ, ँ of the Act, Police Station-Neemgaon, District- Lakhimpur Kheri in pursuance of the impugned charge sheet and summoning order, contained as Annexures No. 1 and 2 to this application.

It is further prayed that this Hon'ble Court may kindly be pleased to issue a direction commanding the concerned court below to decide the bail application of the applicants providing them the benefit of the legal proposition laid down by the Hon'ble Apex Court in the reported case Satender Kumar Antil vs. Central Bureau of Investigation & Another, 2021(4) Crimes 139 (S.C.)."

In **Girish Kumar Suneja v. CBI, (2017) 14 SCC 809**, three Judge Bench of Hon'ble Apex Court has made following observations in para nos. 21, 22 and 23:

"21. The concept of an intermediate order was further elucidated in Madhu Limaye v. State of Maharashtra by contradistinguishing a final order and an interlocutory order. This decision lays down the principle that an intermediate order is one which is interlocutory in nature but when

reversed, it has the effect of terminating the proceedings and thereby resulting in a final order. Two such intermediate orders immediately come to mind-an order taking cognizance of an offence and summoning an accused and an order for framing charges. Prima facie these orders are interlocutory in nature, but when an order taking cognizance and summoning an accused is reversed, it has the effect of terminating the proceedings against that person resulting in a final order in his or her favour. Similarly, an order for framing of charges if reversed has the effect of discharging the accused person and resulting in a final order in his or her favour. Therefore, an intermediate order is one which if passed in a certain way, the proceedings would terminate but if passed in another way, the proceedings would continue.

22. The view expressed in *Amar Nath and Madhu Limaye* was followed in *K.K. Patel v. State of Gujarat* wherein a revision petition was filed challenging the taking of cognizance and issuance of a process. It was said :

It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide Amar Nath v. State of Haryana, Madhu Limaye v. State of Maharashtra, V.C. Shukla v. State through CBI and Rajendra Kumar Sitaram Pande v. Uttam. The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code. In the present case, if the objection raised by the appellants were upheld by the Court the entire prosecution proceedings would have been terminated. Hence, as per the said standard, the order was revisable."

23. We may note that in different cases, different expressions are used for the same category of orders-sometimes it is called an intermediate order, sometimes a quasi-final order and sometimes it is called an order that is a matter of moment. Our preference is for the expression "intermediate order" since that brings out the nature of the order more explicitly."

From the perusal of the prayer made by applicants, it is clear that applicants have prayed to quash the summoning order dated 16.02.2022 passed by II Additional Sessions Judge/ Special Judge, S.C./S.T. Act, Lakhimpur Kheri, which reads as follows:

"16.02.2022-

थाना स्थानीय नीमगांव के मुकदमा अपराध सं. 314/2020 अन्तर्गत धारा 323, 504, 506 भा.द.स. व 3(1)(द), 3(1)(घ) एस.सी./एस.टी. एक्ट के बाबत हुई विवेचना के बाद विवेचक शीतांशु कुमार क्षेत्राधिकारी मितौली जिला- खीरी द्वारा अभियुक्तगण संजय उर्फ अनुज कुमार, सूरज कुमार, धीरेन्द्र कुमार, रमाशंकर के विरुद्ध धारा 323, 504, 506 भा.द.स. व 3(1) द, ध एस.सी./एस.टी. एक्ट में दण्डनीय जुर्म का आरोप पत्र सं. 279/2020 दि. 11-11-2020 अधोहस्ताक्षरी के समक्ष पेश किया गया। पत्रवाली पर मौजूद चिक प्राथमिकी, आरोप पत्र, नक्शा नजरी, विवेचना के दौरान संकलित साक्ष्य व संबंधित केस डायरी का अवलोकन करने पर अभियुक्तगण संजय उर्फ अनुज कुमार, सूरज कुमार, धीरेन्द्र कुमार, रमाशंकर के विरुद्ध धारा 323, 504, 506 भा.द.स. व 3(1) द, ध एस.सी./एस.टी. एक्ट में दण्डनीय अपराध में प्रसंज्ञान लिये जाने का पर्याप्त आधार

है।

आदेश

अभियुक्तगण संजय उर्फ अनुज कुमार, सूरज कुमार, धीरेन्द्र कुमार, रमाशंकर के विरुद्ध धारा 323, 504, 506 भा.द.स. व 3(1) द, ध एस.सी/एस.टी. एक्ट के जुर्म का प्रसंज्ञान लिया जाता है। प्रकरण विशेष सत्र वाद के रूप में दर्ज हो। अभियुक्तगण संजय उर्फ अनुज कुमार, सूरज कुमार, धीरेन्द्र कुमार, रमाशंकर की उपस्थिति सुनिश्चित किये जाने हेतु उनके विरुद्ध सम्मन निर्गत हो। पत्रवाली दिनांक 18-04-2022 को पेश हो।

In Re: Provision of Section 14a of SC/ST (Prevention of Atrocities) Amendment Act, 2015, full Bench of this Court has held as follows:

"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?"

*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.**"*

In **Girish Kumar Suneja v. CBI (Supra)**, Honble Apex Court in para 21 has specifically stated referring the judgement of **Madhu Limaye Vs. State of Maharashtra (1997) 4 SCC 551** that taking cognizance of an offence and summoning the accused is intermediate order, thus impugned summoning order dated 16.02.2022 is an intermediate order.

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.

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."

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.

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.

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.

Perusal of prayer further reveals that prayer has also been made to issue a direction commanding the court below to decide the bail application of the applicants providing them the benefit of the legal proposition laid down by the Hon'ble Apex Court in the reported case ***Satender Kumar Antil vs. Central Bureau of Investigation & Another, (2021) 10 SCC 773.***

In ***Satender Kumar Antil (supra)***, the Hon'ble Apex Court has issued guidelines to trial courts and High Courts to keep them in mind while considering the bail applications. A copy of the aforesaid judgment was also ordered to be circulated to the Registrars of different High Courts to be further circulated to the trial courts so that necessary bail matters do not come up before Hon'ble Apex Court. Relevant portion of ***Satender Kumar Antil (supra)*** is quoted as under:-

"5. The trial courts and the High Courts will keep in mind the aforesaid guidelines while considering bail applications. The caveat which has been put by the learned ASG is that where the accused have not cooperated in the investigation non appeared before the investigating officers, nor answered summons when the courts feels that judicial custody of the accused is necessary for the completion of the trial, where further investigation including a possible recovery is needed, the aforesaid approach cannot give them benefit, something we agree with.

10. A copy of this order be circulated to the Registrars of the different High Courts to be further circulated to the trial courts so that the necessary bail matters do not come up to this Court."

During the course of arguments, Advocates complained that Districts Courts do not follow dictum of ***Satender Kumar Antil (supra)*** unless specifically directed by the High Court. This is a sorry state of affair. The law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil (supra)*** is law of land and is binding upon all courts in India.

Hence, there is no need to issue a direction to the trial court concerned to decide the bail application applying the legal proposition laid down by the Hon'ble Apex Court in the reported case ***Satender Kumar Antil (supra)***.

However, it would be appropriate that a copy of this order be sent to the Registrar General of Allahabad High Court, who if required may issue circular to all the courts in the State of Uttar Pradesh under subordination of High Court of Judicature at Allahabad to follow the law laid down by the Hon'ble Apex Court in ***Satender Kumar Antil (supra)***.

This Application U/s 482 Cr.P.C. is ***disposed of*** with the observation that applicants are permitted to file fresh petition before the appropriate forum.

Order Date :- 25.5.2022

Aditya