

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
(LUCKNOW)**

CRIMINAL APPEAL NO. -1000 of 2018

Decided on : July 28, 2022

Ghulam Rasool Khan and othersAppellants

Through:- Mr. Sajjad Hussain, Advocate

Vs.

State of U.P. and othersRespondents

Through:- Mr. Prachis Pandey, Additional Government
Advocate for respondent no. 1
Mr. Sandeep Singh, Advocate for respondent
no. 2

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE
HON'BLE SAURABH LAVANIA, JUDGE
HON'BLE AJAI KUMAR SRIVASTAVA-I, JUDGE**

ORDER

RAJESH BINDAL, C.J.

1. On a reference made by the learned Single Judge vide order dated August 3, 2018 to a larger Bench and constitution thereof by Hon'ble the Chief Justice, on administrative side, for consideration of the following questions, the matter has been placed before us :

- (i) Whether a Single Judge of this Court while deciding Criminal Appeal (Defective) No. 523/2017 In re : Rohit Vs. State of U.P. and another 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?

2. It is a case in which the appellants had filed an appeal under Section 14A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989¹ challenging the order dated September 14, 2017 vide which the learned Court below had taken cognizance of the matter and the appellants had been summoned to face trial. The order dated April 12, 2018, vide which bailable warrants had been issued against the appellants, was also challenged.

3. Learned counsel for the appellants while referring to an order passed by a Single Bench of this Court in **Criminal Appeal Defective No. 523 of 2017** titled as **Rohit Vs State of U.P. and another**² submitted that an appeal filed after expiry of period of limitation provided under Section 14A of the 1989 Act, can be converted into a bail application in exercise of inherent powers under Section 482 Cr.P.C. As in the case in hand, the appeal was filed beyond 180 days, the same should be permitted to be converted into bail application and dealt with accordingly.

¹ 1989 Act

² (2017) 6 ALJ 754

4. On the other hand, learned counsel appearing for the respondents submitted that primarily all the questions, which have been referred to be considered by Full Bench of this Court, have been answered by a Full Bench of this Court in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015**³. He further submitted that Section 14A (3) of the 1989 Act, which provides period of limitation for filing an appeal and limited discretion in case of delay, has been struck down. Meaning thereby, an appeal against an order passed by the Court below under the provisions of the 1989 Act, can be filed at any time. The judgment in **Rohit's case (supra)**, as relied by learned counsel for the appellants, has specifically been overruled. This Court cannot rewrite the provisions of law, the same have to be interpreted as such.

5. Heard learned counsel for the parties and perused the paper book.

6. To appreciate the arguments raised by learned counsel for the parties with reference to interpretation of Section 14A of the 1989 Act, it would be appropriate to reproduce the aforesaid Section hereunder :

“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.

(2) Notwithstanding anything contained in subsection (3) of section 378 of the Code of Criminal Procedure, 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.

(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

3 (2018) 6 ALJ 631

appealed from:

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.

Provided further that no appeal shall be entertained after the expiry of the period of one hundred and eighty days.

(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. The aforesaid Section was inserted in the 1989 Act vide Act No. 1 of 2016 with effect from January 26, 2016. Sub-section (1) thereof starts with non-obstante clause. It provides that notwithstanding anything contained in the Code of Criminal Procedure, 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 Court concerned. Sub-section (2) thereof provides that notwithstanding anything contained in Section 378(3) of Cr.P.C., an appeal shall lie to this Court against an order of the court below granting or refusing bail. Sub-section (3) thereof, which again starts with non-obstante clause, provides for a period of ninety days to challenge any judgment, sentence or order in appeal. However, delay in filing the appeal can be condoned if sufficient cause is shown. Second proviso to sub-section (3) provides that no appeal shall be entertained after expiry of one hundred and eighty days. This provides for limited condonation of delay.

Question No. (I)

Whether a Single Judge of this Court while deciding Criminal Appeal (Defective) No. 523/2017 In re : Rohit Vs. State of U.P. and another vide judgment dated

29.08.2017 correctly permitted the conversion of appeal under Section 14A of the Act, 1989 into a bail application by exercising the inherent powers under Section 482 of the Cr.P.C.?

8. The aforesaid question does not require discussion in detail for the reason that the earlier judgment of this Court in **Rohit's case (supra)** has specifically been overruled by a Full Bench of this Court in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra)**. The relevant paragraph 109 of the aforesaid judgment is extracted hereunder :-

“**109.** The proposition of a revival of the powers of this Court either under Section 482 Cr.P.C. or Sections 397 Cr.P.C. cannot be countenanced, more so in view of our opinion on the first question. The view expressed by the learned Judge in Rohit in this context to the effect that since there is no express repeal of Section 439 Cr.P.C., the same would revive upon the expiry of 180 days also does not commend acceptance. The learned Judge, in our considered view, has clearly erred in proceeding to consider the applicability of Section 439 Cr.P.C. on the principles of an express or implied repeal of a provision. What we find is an implied exclusion of the applicability of Section 439 Cr.P.C. by a special statute. We, therefore, 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, be overruled.”

(emphasis supplied)

9. The Single Judge judgment of this Court in **Rohit's case (supra)** has been overruled in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra)**. Hence, the answer to the question is in negative.

Question No. (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.?

10. While considering the validity of Section 14A (2) of the 1989 Act and second proviso to sub-section (3) thereof, the Full Bench of this Court in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra)** found that the 1989 Act being a Special Statute, will override the provisions of Cr.P.C. Section 14A of the 1989 Act starts with non-obstante clause which gives overriding effect on anything contained in Cr.P.C. As far as sub-section (3) thereof is concerned, it overrides anything contained in any other law for the time being in force. Meaning thereby the provisions of the Limitation Act, 1963⁴ has also been overridden. While dealing with the issue of validity of Section 14A(2) of the 1989 Act, the Full Bench of this Court in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra)** opined that the provisions of Section 439 Cr.P.C. are clearly excluded as far as its application to the specific procedure provided in the 1989 Act is concerned. The relevant paragraphs 27, 28 and 31 are extracted hereunder :-

“27. The sole issue which ultimately arises for consideration is whether the provisions of Section 439 Cr.P.C. stand overridden and in case the answer to this question be in the affirmative whether in such a situation sub-section (2) is rendered ultra vires. Having conferred our

⁴ Act, 1963

thoughtful consideration on the submissions advanced in this respect, we find ourselves unable to conclude that sub-section (2) is liable to be declared ultra vires. At the very outset, we cannot possibly lose sight of the fact that the 1989 Act is a special statute and would on basic principles of statutory construction, override any other general enactment which may govern the investigation, enquiry and trial of criminal offences. We also cannot possibly ignore the non obstante clauses employed by the Legislature in the substantive provisions of Section 14A. We must also necessarily bear in mind that Section 20 of the 1989 Act in unambiguous and unequivocal terms provides that it would have overriding effect over all other statutes that may contain or prescribe a procedure to the contrary.

28. The provisions of this special enactment would also clearly have overriding effect over other enactments including the Cr.P.C. in light of Sections 4 and 5 thereof. While Section 4(2) of the Cr.P.C. provides that all offences under any other law are to be investigated, enquired into, tried and otherwise dealt with in accordance with its provisions, this statutory mandate is subject to the provisions in any other enactment which may regulate the manner of enquiring into, trying or dealing with offences. Section 5 only preserved those enactments which incorporated or embodied specific provisions contrary to the Code which were in force at the time when Cr.P.C. was promulgated. The provisions of the Cr.P.C. therefore would apply only in a situation where an enactment did not make any provision for investigation, enquiry or trial independently or where it was silent on these aspects. The 1989 Act however erects a comprehensive machinery for enquiry, investigation and trials of offences under the Act. It is therefore evident that it is the provisions

of this special enactment which must prevail when it is found that its provisions prescribe a procedure inconsistent with those in the Cr.P.C. The answer to the first part of the question formulated by us, must necessarily be in the affirmative and we do therefore hold that the provisions of section 439 Cr.P.C. clearly stand eclipsed in light of the special procedure put in place by the 1989 Act. It is manifest that the concurrent powers recognised as existing in the High Courts by virtue of Section 439 Cr.P.C. stand impliedly excluded and overridden.

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31. The decision of the Supreme Court in Salimbhai is thus in our considered opinion a clear and complete answer on the exclusion of the powers of the High Court under sections 439 and 482 Cr.P.C. insofar as the issue of bail is concerned.”

11. Thus the answer to Question No.(II) will be in negative. 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.

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. along with 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.

Question No. (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?

15. In the earlier Full Bench of this Court in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra)**, one of the questions considered was with regard to validity of second proviso to sub-section(3) of Section 14A of the 1989 Act, which provides limitation for condonation of delay in filing appeals under Section 14A of the aforesaid Act. The aforesaid proviso was held to be ultra vires. The relevant paragraphs are extracted below :-

“55.It has left an aggrieved person without of remedy of even a first appeal against any judgment, sentence or order passed under the 1989 Act on the expiry of 180 days. As we contemplate the fatal consequences which would visit an aggrieved person on the expiry of 180 days, we shudder at the deleterious impact that it would have and find ourselves unable to sustain the second proviso which must necessarily be struck down, as we do, being in violation of Article 14 and 21 of the Constitution.

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62. While we reject the challenge to section 14A (2), we declare that the second proviso to Section 14A (3) is violative of Articles 14 and 21 of the Constitution and it is consequently struck down.”

16. The second proviso to sub-section(3) of Section14A of the 1989 Act having been struck down by this Court in **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015 (supra)**, 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.

17. In view of our aforesaid discussions, the answers to the questions referred are as under :-

- (i) Question No.(I) is answered in negative as **Rohit Vs State of U.P. and another, (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.

18. While answering the questions referred to by the learned Single Judge, let the present criminal appeal be now placed before appropriate Court as per the roster on August 11, 2022.

(Ajai Kumar Srivastava-I)
Judge

(Saurabh Lavania)
Judge

(Rajesh Bindal)
Chief Justice

Lucknow
July 28, 2022
Manish Himwan

Whether the order is speaking : Yes/No
Whether the order is reportable : Yes^v/No