

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.408 of 2022

Smrutikant Rath and others *Appellants*
Mr. S. Panda, Advocate
-versus-
State of Odisha and another *Respondents*
Mr. M.K. Mohanty, A.S.C.

CORAM:

JUSTICE A.K. MOHAPATRA

ORDER
20.06.2022

Order No.

05.

1. This matter is taken up through Hybrid Arrangement (Virtual /Physical Mode).
2. The present criminal appeal is being taken up for hearing in question of the maintainability.
3. A report attached to the criminal appeal dated 02.12.2021 by the Stamp Reporter reveals that this criminal appeal files under Section 14-A(2) of S.C. and S.T. (P.A.) Act, 1989 may not lie to the Hon'ble Court as impugned order of taking cognizance has been passed on 12.04.2021.
4. Heard Mr. S. Panda, learned counsel for the appellant and Mr. M.K. Mohanty, learned Additional Standing for the State.
5. Mr. Panda, learned counsel for the appellant submits that the present criminal appeal against the order dated 12.04.2021 passed in C.T. Case No.144 of 2020 by the learned Presiding Officer, Special Court (SC/ST, POA Act), Cuttack taking cognizance of the offences and issuing summons for appearance is maintainable in view of the

provisions contained in Section 14-A of the S.C and S.T. (PoA) Act, 1989. He further submits that S.T. (PoA) Act, 1989 being a special statute shall over ride the provisions of the Cr.P.C. in the aforesaid context. He further submits that the appellant has rightly filed the appeal against the order dated 12.04.2021 taking cognizance of the offences alleged in the F.I.R. under Section 14-A of the S.T. (PoA) Act, 1989 which provides for appeal against the orders passed by the learned Special Courts under the said Act. Section 14-A of the S.C. and S.T. (PoA) Act, 1989 Sub-section(1) of Section 14-A which is relevant for the purpose of the present case is quoted herein below:-

["14A. Appeal : (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 the Exclusive Special Court granting or refusing bail."

6. A bare reading of Sub-section 14-A of the S.C. and S.T. (PoA) Act, 1989, it appears that notwithstanding anything contained in the Code of Criminal procedure 1973, 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. Therefore, there is no doubt that judgment, sentence and orders passed by the learned Special Court under the provisions of the S.C. and S.T. (PoA) Act, 1989 are all appealable and the appeal shall lie before the High Court both for facts as well as law. However, Sub-section (1) of Section 14 provides a right to appeal so far orders passed by the learned Special Court are concerned. Appeal under Section 14-A is maintainable against the orders passed by the learned Special Court except against the interlocutory orders. Therefore, there is no ambiguity with regard to

the maintainability of appeals against the orders passed by the Special Courts under the S.C. and S.T. (PoA) Act, 1989.

7. So far as the present case is concerned, the appellant has filed the present appeal challenging the order dated 12.04.2021 whereunder the learned Special Court has taken cognizance of offences punishable under Sections 376(2)(n)/294/34, I.P.C. read with Section 3(1)(r)(s)/3(2)(va) of the S.C. and S.T. (PoA) Act, 1989. Moreover, on being satisfied with the materials available on record, learned Special Court while taking cognizance of the alleged offences has directed for issuance of summons to the accused persons directing them to appear on 20.04.2021 to answer the charges.

8. Mr. Panda, learned counsel for the appellant in support of his contention that the present appeal is maintainable relied upon the judgment of Hon'ble Allahabad High Court in the matter of *Anuj Kumar @ Sanjay and others vrs. State of U.P.* Upon a careful perusal of the judgment relied upon by learned counsel for the appellant it appears that the Allahabad High Court in the above referred case was required to consider whether an application under Section 482, Cr.P.C. challenging an order taking cognizance of offence involving the provisions under S.C. and S.T. (PoA) Act, 1989 by the Special Court is maintainable or not? After analyzing the law and referring to certain judgments of Allahabad High Court, the Court has concluded that an application under Section 482, Cr.P.C. challenging the summoning order passed by the Special Court involving the provisions under S.C. and S.T. (PoA) Act, 1989 is not maintainable. Further the Allahabad High Court has held that if any, interlocutory order is passed by the Special Court in a case involving the provision under S.C. and S.T. (PoA) Act, 1989, the same will

come in the category of the orders as provided under Section 14-A(1) of the S.C. and S.T. (PoA) Act, 1989 and as against the said order only an appeal as provided under Section 14-A shall lie to the High Court.

9. Upon careful consideration of the provisions contained in Section 14-A(1) of the S.C. and S.T. (PoA) Act, 1989, this Court is of the considered view that the said provision provides that the said clause which starts with the words “notwithstanding anything contained in the Code of Criminal procedure, 1973” clearly indicates that the legislative intention in enacting Section 14-A is to oust / override the applicability of Cr.P.C. to the cases under the S.C. and S.T. (PoA) Act, 1989 in the context of the subject matter under the said Sub-section i.e. appealable judgments and orders. Therefore, the provisions contained in Section 14-A (1) of the S.C. and S.T. (PoA) Act, 1989 is only to be considered while considering further challenge to the orders passed by the learned Special Court constituted under the S.C. and S.T. (PoA) Act, 1989. Further Section 14-A (1) of the S.C. and S.T. (PoA) Act, 1989 provides that an appeal shall lie from any judgment, sentence or order not being an interlocutory order of a Special Court to the High Court both on facts and law. Therefore, there is no doubt or ambiguity while understanding the provisions of Section 14-A(1) of the S.C. and S.T. (PoA) Act, 1989 and accordingly, orders passed by the Special Court constituted under the S.C. and S.T. (PoA) Act, 1989, not being in the nature of an interlocutory order is appealable to the High Court subject to the period of limitations provided in the said section.

10. Now coming back to the facts of the present case, it is to be seen as to whether the order dated 12.04.2021 passed by the learned

Presiding Officer, Special Court (SC/ST, POA Act), Cuttack is an interlocutory order or not. On a careful reading of the order dated 12.04.2021 it appears that the learned Presiding Officer, Special Court (SC/ST, POA Act), Cuttack while accepting the charge-sheet filed by the Investigating Agency had taken cognizance of offences under Sections 376(2)(n)/294/34, I.P.C. read with Section 3(1)(r)(s)/3(2)(va) of the S.C. and S.T. (PoA) Act, 1989 and after taking cognizance of the offences, learned Presiding Officer, Special Court (SC/ST, POA Act), Cuttack had directed for issuance of summons to the accused persons. So far the nature of the order passed in the present case i.e. whether the same is interlocutory order or not, the law in this regard has been well settled by several judgment of the Hon'ble Supreme Court of India in the case of ***Girish Kunar Suneja vs. CBI***, (2017) 14 SCC 809 and while taking note of the judgment in ***Madhu Limaye vs. State of Maharashtra*** and leading judgment of the Hon'ble Apex Court in paragraphs-21, 22 and 23 of the judgment has some to the conclusion are as follows:-

“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 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

persons 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 passed during the interim stage (vide *Amar Nath v. State of Haryana*, *Madhu Limaye v. State of Maharashtra*, *V.C. Shulka 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 379(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.”

11. In view of the aforesaid analysis of law, this Court has no hesitation to hold that the order taking cognizance and issuing summons to the accused person is not clearly an interlocutory order, but an intermediate order. Therefore, the same is appealable in view of the provisions contained under Section 14-A(1) of the S.C. and S.T. (PoA) Act.

12. So far ouster of jurisdiction of this Court under Section 482, Cr.P.C. is concerned, this Court does not agree with such a proposition of law. The power conferred under Section 482, Cr.P.C. is inherent power. Therefore, the same by no stretch of imagination can be construed that the same is to be guided and controlled by the provisions of any statute. While saying so, this Court is also aware of the proposition of law that when a statute provides for a specific remedy i.e. when an alternative remedy is provided the parties are required to exhaust the said remedy first. In the present case under Section 14-A(1) of the S.C. and S.T. (PoA) Act provides for a statutory appeal against the order passed by the learned Special Court, which is not interlocutory in nature. Since the impugned order passed in the present case is an intermediate order and not an interlocutory order, this Court is of the considered view that the same is appealable under Section 14-A(1) of the S.C. and S.T. (PoA) Act.

13. In view of the aforesaid findings arrived at by this Court, the present appeal is maintainable.

14. On further perusal of the aforesaid order, it is seen that there is delay of 37 days in preferring the appeal. Learned counsel for the appellant is directed to take steps for condonation of delay.

15. List this matter in the week commencing from 18th of July. 2022.

(A.K. Mohapatra)
Judge