

**IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD**  
**SITTING AT LUCKNOW**

**A.F.R.**

**Neutral Citation No. - 2024:AHC-LKO:12872**

**RESERVED**

**Judgment reserved on 18.01.2024**  
**Judgment delivered on 13.02.2024**

**Court No. - 27**

**Case :-** APPLICATION U/S 482 No. - 12798 of 2023

**Applicant :-** Shivam Kashyap

**Opposite Party :-** State Of U.P. Thru. Addl. Chief Secy. Deptt. Of Home Affairs Lko. And Another

**Counsel for Applicant :-** Trideep Narayan Pandey, Deepanker Kumar, Priya Singh

**Counsel for Opposite Party :-** G.A., G.K. Dikshit, Gopal Krishna Dixit

**Hon'ble Subhash Vidyarthi J.**

1. Heard Sri Trideep Narayan and Ms. Charu Singh Advocates, the learned counsel for the applicant, Sri Anurag Verma, the learned A.G.A.-I appearing on behalf of the State and Sri G. K. Dikshit, the learned counsel for the opposite party no.2/complainant.
2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has challenged validity of the charge-sheet dated 12.10.2023 and the entire proceedings of Sessions Case No.3088 of 2023, arising out of Case Crime No.385 of 2023, under Sections 147, 148, 302, 307 I.P.C. & Section 3 (2) 5 of Scheduled Caste and the Scheduled Tribes ( Prevention of Atrocities) Act, 1989, registered at Police Station Sushant Golf City, District Lucknow, pending in the Court of Special Judge, SC/ST Act, Lucknow.
3. The learned A.G.A.-I has raised a preliminary objection that the applicant has not challenged the validity of the summoning order and without him having been summoned, the applicant would have no cause of action to challenge the proceedings. He has submitted

that the applicant has the statutory remedy of filing an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He has placed reliance upon the Full Bench judgment in the case of **Ghulam Rasool Khan and others versus State of U. P. and others** : 2022 (8) A.D.J. 691 = 2022 SCC OnLine All 975.

4. In reply to the aforesaid preliminary objection, the learned Counsel for the applicant has placed reliance upon the Full Bench judgment in “**In re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015**” : 2018 SCC OnLine All 2087 and **Union of India v. State of Maharashtra**, (2020) 4 SCC 761.
5. Section 14-A of the Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989 (which will hereinafter be referred to as ‘the Act’) provides as follows: -

*“14-A. Appeals.— (1) Notwithstanding anything contained in the 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 sub-section (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 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.*

6. A bare perusal of Section 14-A of the Act shows that it starts with the words “*Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)*”.
7. **In Re : Provision of Section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act ; (2018) 6 ALJ 631 = 2018 SCC OnLine All 2087**, the five questions considered by the Full Bench, and answers given to those questions, were as follows: -

*“A. Whether provisions of sub-section (2) of Section 14-A and the second proviso to subsection (3) of Section 14-A of the Amending Act, are violative of Articles 14 and 21 of the Constitution, being unjust, unreasonable and arbitrary?”*

*While we reject the challenge to section 14A(2), we declare that the second proviso to Section 14A(3) is clearly violative of both Articles 14 and 21 of the Constitution. It is not just manifestly arbitrary, it has the direct and unhindered effect of taking away the salutary right of a first appeal which has been recognised to be an integral facet of fair procedure enshrined in Article 21 of the Constitution. The absence of discretion in the Court to consider condonation of delay even where sufficient cause may exist renders the measure wholly capricious, irrational and excessive. It is consequently struck down.*

*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.*

C. Whether the amended provisions of Section 14-A would apply to offences or proceedings initiated or pending prior to 26 January 2016?

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

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

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

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

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

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

- (i) *Whether a Single Judge of this Court while deciding Criminal Appeal (Defective) No. 523/2017 In re : Rohit v. State of U.P. vide judgment dated 29.08.2017 correctly permitted the conversion of appeal under Section 14 A of the Act, 1989 into a bail application by exercising the inherent powers under Section 482 of the Cr. P.C.?*
- (ii) *Whether keeping in view the judgment of Rohit (supra), an aggrieved person will have two remedies available of preferring an appeal under the provisions of Section 14 A of the Act, 1989 as well as a bail application under the provisions of Section 439 of the Cr. P.C.?*
- (iii) *Whether an aggrieved person who has not availed of the remedy of an appeal under the provisions of Section 14 A of Act, 1989 can be allowed to approach the High Court by preferring an application under the provisions of Section 482 of the Cr. P.C.?*
- (iv) *What would be the remedy available to an aggrieved person who has failed to avail the remedy of appeal under the provision of Act, 1989 and the time period for availing the said remedy has also lapsed?*

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

- (i) *Question No. (I) is answered in negative as Rohit v. State of U.P., (2017) 6 ALJ 754 has been overruled by Full Bench of this Court in In Re : Provision of section 14 (a) of SC/ST (Prevention of Atrocities) Amendment Act, 2015, (2018) 6 ALJ 631.*
- (ii) *Question No. (II) is answered in negative holding that an aggrieved person will not have two remedies namely, i.e. filing an appeal under Section 14A of the 1989 Act as well as filing a bail application in terms of Section 439 Cr. P.C.*
- (iii) *Question No. (III) is answered in negative holding that the aggrieved person having remedy of appeal under Section 14A of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr. P.C.*
- (iv) *Question No. (IV) - There will be no limitation to file an appeal against an order under the provisions of 1989 Act. Hence, the remedies can be availed of as provided.*

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

*(i) Whether a Single Judge of this Court while deciding Criminal Appeal (Defective) No. 523/2017 In re : Rohit 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? ” ”*

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

*“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing*

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

12. In **Union of India v. State of Maharashtra**, (2020) 4 SCC 761 relied upon by the learned Counsel for the applicant, the question involved was regarding the bar created under Section 18 of the Act against grant of anticipatory bail in offences under the Act and the question of maintainability of an Application under Section 482 Cr.P.C. was not involved in that case. Therefore, that judgment is no relevant for the decision of the point involved in the present case.
13. Therefore, the mere reference of the aforesaid questions would not affect the binding nature of the law laid down in **Ghulam Rasool Khan** (Supra).
14. In view of the aforesaid discussion, the law on the point stands clarified by two Full Benches, that inherent powers of this Court under Section 482 Cr.P.C. cannot be invoked in cases and situations where an appeal would lie under Section 14A and aggrieved person having remedy of appeal under Section 14A of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr. P.C.
15. Accordingly, as the applicant has the remedy of filing an appeal under Section 14-A available to him, he cannot invoke the inherent powers of this Court under Section 482 Cr.P.C. The application under Section 482 Cr.P.C. is ***dismissed*** for this reason, leaving it

open to the applicant to file an appeal under Section 14-A of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

**(Subhash Vidyarthi, J.)**

**Order Date :- 13.02.2024**  
Ram.