

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR CONDONATION OF DELAY) NO. 16335 of 2023

In F/CRIMINAL MISC.APPLICATION NO. 30235 of 2023

With

R/CRIMINAL APPEAL NO. 1789 of 2022

With

R/CRIMINAL APPEAL NO. 1057 of 2023

With

CRIMINAL MISC.APPLICATION (FOR CONDONATION OF DELAY) NO. 1 of 2023

In R/CRIMINAL APPEAL NO. 1225 of 2023

With

R/CRIMINAL APPEAL NO. 1897 of 2023

With

R/CRIMINAL MISC.APPLICATION NO. 14110 of 2023

In

F/CRIMINAL APPEAL NO. 27813 of 2023

With

R/CRIMINAL MISC.APPLICATION NO. 14972 of 2023

In

F/CRIMINAL APPEAL NO. 30224 of 2023

With

R/CRIMINAL APPEAL NO. 1875 of 2021

With

CRIMINAL MISC.APPLICATION (FOR STAY) NO. 1 of 2021

In R/CRIMINAL APPEAL NO. 1875 of 2021

With

R/CRIMINAL APPEAL NO. 468 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE NISHA M. THAKORE

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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STATE OF GUJARAT

Versus

SONU MANGLIPRASAD VISHWAKARMA

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Appearance:

Mr. MITESH AMIN, PUBLIC PROSECUTOR for the Applicant(s) No. 1 for the Respondent(s) No. 1,2,3

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CORAM:HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 18/09/2023

COMMON ORAL JUDGMENT

1. The lead matter in this group of matters is an application filed at the instance of the State, seeking condonation of delay filed under Section 5 of the Limitation Act praying for condonation of delay of 142 days caused in filing appeal under Section 378 (1) of Cr.P.C. Noticing the charge involved, this Court had called upon the learned Public Prosecutor to address one aspect of maintainability of the appeal itself, which is moved under Section 378(3) of Cr.P.C. Since, a similar issue was involved in the matters, where the learned advocates representing the original complainant/victim have moved this Court by filing appeal under Section 372 of Cr.P.C, all these matters were tagged and heard together on the limited aspect of maintainability of appeal.

2. Mr. Smit P. Vaghela, learned advocate had

appeared for the applicant-original complainant in Criminal Appeal No. 1057 of 2023 and had under instructions sought permission of this Court to amend the cause title by urging this Court to treat this appeal under Section 14A of the Atrocities Act read with Section 372 of Cr.P.C.

3. Mr. Siddhant Parikh, learned advocate had appeared on behalf of Mr. Hardik Dave, learned advocate on record for the respondent-original accused in Criminal Appeal No. 1057 of 2023.

4. Learned advocate Mr. Siddhant Parikh for the respondent-original accused had tendered written objections against the maintainability of the present appeal. It is submitted by the learned advocate that special provisions of appeal against the order of acquittal are covered under Section 14A of the Atrocities Act. He has further submitted that the Atrocities Act being a special legislation, it will have an overriding effect over the provisions

of the Code of Criminal Procedure. In support of his aforesaid submission, the learned advocate has relied upon the Latin Magazine “Generalia Specialibus Non Derogant: Special Things Derogate from General Things”. The attention of this Court was invited to the object of the Act, which was to prevent atrocities and hate crime against the members of Scheduled Castes and Scheduled Tribes and is required to be treated as a special legislation being enacted to serve such an object. The learned advocate had further drawn attention of this Court to Section 4 and 5 of the Code of Criminal Procedure and has emphasised on the fact that the phrase “affect any special or local law for the time being in force, or any special jurisdiction or power conferred or in special form of procedure prescribed” clearly goes to indicate that the Atrocities Act is special enactment, which confers a special jurisdiction on the Courts and lays down a special form of procedure to be followed. Section 5 of the Code further provides that the principle of prevalence and

overriding effect of a special statute in question over and above the provisions of the Code, goes to indicate that the field will be governed by the special enactment. Learned advocate had further relied upon the proviso appearing in Section 372 of the Code. The attention of this Court was invited to the fact that Section 14A of the Atrocities Act was inserted with effect from 26.01.2016 whereas the statutory right of appeal to the victim in the form of proviso to Section 372 of the Code was made effective from 31.12.2009. At this stage, the learned advocate had relied upon the Latin Magazine “Leges Posteriores Prioris Contrarias Abrogant” i.e. Later Laws Abrogate Earlier, Contrary Ounces, Section 14A of the Atrocities Act would, therefore, have an overriding effect over the proviso to Section 372 of the Code. Lastly, the learned advocate had referred to the judgements on interpretation of law dealing with the aspect of reading of “non-obstante clause” appearing in a section as to be applied while reading Section 14A of the Atrocities Act. By making

aforesaid submissions, the learned advocate has submitted that the appeal would exclusively lie under Section 14A of the Atrocities Act and has, therefore, urged this Court to pass appropriate orders.

5. Mr. Kuldip Vaidhya, learned advocate appearing on behalf of the applicant-original complainant in CRMA No. 14110 of 2023 in Cr.A. No. 27813 of 2023 had drawn attention of this Court to the order dated 28.07.2022 passed by the Hon'ble High Court of Judicature at Allahabad (Lucknow) in Cr.A. No. 1000 of 2018 in the case of ***Gulam Rasool Khan and Ors. V/s. State of U.P. and Ors.*** By referring to the aforesaid decision of the Larger Bench, the learned advocate had drawn attention of this Court to the questions raised in the reference, which falls for consideration of the aforesaid Larger Bench. The learned advocate has fairly conceded to the aforesaid legal position with regard to the maintainability of appeal under Section 14A of the Atrocities Act and has urged this Court to treat this appeal

under Section 14A of the Atrocities Act. He had further invited attention of this Court to the fact that the present application seeking delay of 76 days caused in filing appeal against the judgement and order dated 17.03.2023 passed by the Special (Atrocity) Court, was examined by the Registry for the purpose of computation of the number of days of delay taking into consideration the fact that the appeal was moved under Section 372 of the Code. However, noticing the difference in the period of limitation prescribed under the respective provision of law, he urged this Court to treat his case accordingly by treating this appeal under Section 14A of the Atrocities Act.

6. In rest of the matters, the learned advocates appearing for the original complainant had, in one voice, urged this Court to treat the appeal under Section 14A of the Atrocities Act and had prayed for amendment in the cause title of the appeal. The learned advocates have relied upon the

submissions made by the learned advocate in Cr.A. No. 1057 of 2023.

7. Learned Public Prosecutor Mr. Mitesh Amin appearing for the State of Gujarat has, at the outset, invited attention of this Court to the scheme of the Atrocities Act. Learned PP had submitted that taking into consideration the definition of the relevant terms appearing under Section 2(b), 2(b)(d), 2(c), 2(d) and 2(e) (c) goes to indicate that special meaning has been attributed to each of these terms as appearing in the relevant provisions in the aforesaid Act which ultimately serves the object with which the Act was enacted. By drawing attention of this Court to the definition of term “victim” appearing under Section 2(e) (c) as compared to the definition of the term “victim” appearing under Section 2(d) of the Code of Criminal Procedure, he submitted that the connotation “victim” bears a wider meaning. He has further submitted that the offending Section 3 Sub-section 2(V) and (V)(a) includes within its ambit the offences related

to IPC as well as the offences specified in the schedule appended to the aforesaid Act. By referring to the aforesaid provision, he submitted that the Special Court and exclusive Special Court vested with jurisdiction to deal with such offence related to IPC as well as those arising out of this Act have been constituted as provided under Section 14 of the Atrocities Act. He further submitted that Section 14A was inserted by Act No. 1 of 2016 with effect from 26.01.2016. According to him, the plain reading of the aforesaid provision makes it clear that any appeal arising from any judgement, sentence or order, not being an interlocutory order, of a Special Court or exclusive Special Court would lie to the High Court, both on questions of facts and on law. The reference was also made to Section 15A of the Atrocities Act to contend that the legislation has made provision to protect the rights of the victims including the original complainant by conferring them right to apply to the Special Court or to this Court in appeal for being heard at any proceedings under this

Act in respect of bail, discharge, release, parole, conviction or sentence of an accused or any connected proceedings or arguments and are also conferred right to file written submissions on conviction, acquittal or sentencing. He, therefore, submitted that an inference can be drawn from the aforesaid provisions and scheme of the special enactment that the provisions of the Code of Criminal Procedure has been excluded more so in view of the special provision prescribed for appeal in the form of Section 14A of the Atrocities Act.

8. Heard the learned advocates appearing for the respective parties as well Mr. Mitesh Amin, learned Senior Counsel and Public Prosecutor who has appeared on behalf of the State of Gujarat. Ms. Monali Bhatt, learned APP and Ms. Vrunda Shah, learned APP had assisted the Court on behalf of the State of Gujarat. Having examined the relevant provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act),

1989 as well as the Code of Criminal Procedure, 1973. The question, which falls for consideration for this Court in these appeals, which are taken up for hearing only for the limited purpose of issue maintainability of appeal, reads thus;

“Whether appeal would be maintainable under Section 372 at the instance of the original complainant/victim and in the case of appeal at the instance of State under Section 378(1)(3) of the Code, or the appeal would lie under Section 14A of the Atrocities Act. ?”

9. Before examining the aforesaid question, it would be relevant to consider the section 14A itself. It is worth mentioning here that Section 14A has been inserted in the statute book, by Act No. 1 of 16 vide a Section 9, under Section 14 of Chapter 4 of the Atrocities Act. Prior to the aforesaid amendment, Section 14 of the Atrocities Act deals with the aspect

of constitution of Special Court. Section 14, before substitution, stood as under:

“14. Special Court and Exclusive Special Court- (1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts.

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In very trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be

completed within a period of two months from the date of filing of the charge sheet.] ”

10. The aforesaid Section came to be substituted by Act No. 1 of 2016 vide a Section 8 with effect from 26.01.2016. The same now reads as under:

“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 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 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."

11. From the plain reading of the aforesaid provision, one cannot ignore the fact that the said section starts with a non-obstante clause. The intention of the legislation is reflected from the aforesaid fact that Section 14A provides the exclusive remedy of filing appeal notwithstanding the provision of appeal prescribed under the Code of Criminal Procedure. Thus, any appeal against any sentence, judgement or order, not being an interlocutory order, passed by a Special Court or an exclusive Special Court to the High Court, both on facts as well as on law can only be entertained under Section 14A of the Act. The use of the terms judgement, sentence or order, not being an interlocutory order, fortifies the fact that against the order conviction and/or acquittal, the remedy of appeal is made available under Section 14A of the Atrocities Act. The only order, which is

excluded under the aforesaid provision is the interlocutory order passed by the Court below.

12. Upon bare comparison of the aforesaid provisions prior to and after the amendment goes to indicate that the legislation did not confine to the constitution of Special Court and exclusive Special Court for the purpose of providing of speedy trial but also directed the State Government to establish adequate numbers of Courts to ensure that the case under this Act are disposed of within a period of 02 months as far as possible. The special provision was made to conduct the proceedings on a day-to-day basis unless for reasons recorded in writing by the Special Court or the exclusive Court for granting adjournment. The proviso to Section 14 Sub-section 1 directed the State Government after having concurrence of the Hon'ble Chief Justice of the High Court to notify the Court of Sessions under the District to be a Special Court to try the offence under this Act. The second proviso prescribed that the Courts

established or specified under the Act have been conferred jurisdiction to directly take cognizance of the offences under this Act. Thus, the Special Courts and the exclusive Special Courts have been constituted to take cognizance and to undertake the trial of the offences under this Act. As rightly pointed out by the learned PP, even the relevant terms appearing in the aforesaid Section 14A and Section 15A have been attributed precise meaning under Section 2 of the aforesaid Act. The term “victim” as appearing under Section 2(d) of the Code has been comparatively given wider meaning under Section 2(e)(c) of Section 2 of the Atrocities Act. Thus, on overall appreciation of the amending Act, the object which has emerged of the legislation is to aim at putting in place a comprehensive as well as inclusive machinery for the inquiry, investigation and trial of offences against the member of this class, ultimately, to meet with the object with which the Act is enacted. It is a settled legal position that while determining the question whether a statute is a general or

a special one, focus must be on the principal subject matter coupled with a particular perspective with reference to the intent of the Act. With this basic principle in mind, it would be required to look into the relevant provisions to find out whether it is possible to construe both the provisions harmoniously.

13. In juxtaposition, if one examines the relevant provisions of the Code of Criminal Procedure, Section 372 of the Code provides for appeal at the instance of the victim. Section 372 reads as under:

“372. No appeal to lie, unless otherwise provided. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or any other law for the time being in force.”

14. On plain reading of the aforesaid provision, at the outset, it clarifies that the Court shall not entertain an appeal from any judgement and order of a criminal Court except provided under the Code or by any other law for the time being in force. The

proviso appearing under Section 372 further confers the statutory right of appeal to the victim against any order passed by the Court acquitting the accused or convicted for a lesser offence or imposing inadequate compensation. It further provides that the appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court. Thus, the reference to the phrase "*except as provided for by this code or by any other law for the time being in force*" goes to clearly indicate that if the statutory right of appeal is conferred under any other law, the recourse of appeal under Section 372 of the Code is not available to the victim. If one goes to compare the provision of Section 378 of the Code to examine the term "*except as provided for by this Court*" appearing in Section 372, such statutory right of appeal is provided to the State in the form of Section 378(1), Sub-section 1 and Sub-section 3 of Section 378 the Code. Section 378 of the Code reads as under:

"378. Appeal in case of acquittal.

(1) Save as otherwise provided in sub- section (2) and subject to the provisions of sub- sections (3) and (5), the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court 2 or an order of acquittal passed by the Court of Session in revision.]

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, the Central Government may also direct the Public Prosecutor to present an appeal, subject to the provisions of sub- section (3), to the High Court from the order of acquittal.

(3) No appeal under sub- section (1) or sub- section (2) shall be entertained except with the leave of the High Court.

(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(5) No application under sub- section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date

of that order of acquittal.

(6) If in any case, the application under sub- section (4) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under sub- section (1) or under sub- section (2)."

15. At this stage, it would be relevant to also take into consideration the appeal to be filed against the order of conviction, which is provided under Section 374 of the Code. The same reads as under:

"374. Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years² has been passed against him or against any other person convicted at the same trial], may appeal to the High Court.

(3) Save as otherwise provided in sub- section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class, or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a

sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.”

16. The aforesaid provision is made subject to the provisions, more particularly, Section 375 and 376 of the Code which prescribes that no appeal shall be entertained in certain cases where an accused pleads guilty or where it involves petty cases. Thus, reading aforesaid provisions, there shall be no appeal by a convicted person in such cases. The appeal at the instance of State Government against the sentence is prescribed under Section 377 of the Code. Noticing the aforesaid provisions of the Code, which are included under Chapter 29 under the subject of “Appeals”. It would be appropriate to look into Section 20 of the Atrocities Act, which provides and reads as under:

“Save as otherwise provided under this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.”

As rightly pointed out by the learned advocate on record for the respondent-original accused in Cr. Appeal No. 1057 of 2023, special provision of appeal prescribed under Section 14A of the Act would have an overriding effect over the relevant general provisions of Appeal provided under the Code of Criminal Procedure, more particularly, in light of the non-obstante clause provided therein. The nature and object of the non obstante clause has also been explained by the Hon'ble Supreme Court in the matter of ***Union of India and another v. G.M. Kokil and others, AIR 1984 SC 1022*** in which it has been held that a non obstante clause is a legislative device employed to give overriding effect to certain provisions over some contrary provisions that may be found either in the same enactment or some other enactment to avoid the operation and effect of all contrary provisions.

17. Similar issue had arisen for consideration with regard to maintainability of application of

anticipatory bail in light of Sub-section 2 of Section 14A of the Atrocities Act vis-à-vis Section 438 of the Code of Criminal Procedure. This Court in the case of **Anilaben W/o Vineshbhai Asari D/o Jivabhai Kharadi V/s. State of Gujarat** (Neutral citation 2018 GUJ HC 11608) has exhaustively considered the various provisions and also the objects and scope of the amendment brought in the Atrocities Act with effect from 26.01.2016, on close analysis has held as under:

“ Thus, in the light of the ratio laid down by the Supreme Court in the decisions discussed hereinabove, the first and foremost question which would arise in the mind is what is the intention of the legislature for incorporating clauses (1) and (2) in Section 14A of the Amendment Act, 2015. It is well settled principle of law that the intention of the legislature must be found by reading the statute as a whole. Every clause of a statute should be construed with reference to the constraints and other explanations of the Act as far as possible to make a statute meaningful. It is also the duty of the Court to find out the true intention of the legislature and to ascertain the purpose of the statute and give full meaning to the same. The different provisions in the statute should not be interpreted in abstract but should be construed keeping in mind the whole enactment and

the dominant purpose that it may express. A few subsections of a Section cannot be separated from the other subsections and read to convey something altogether different from the theme underlying the entire Section.

In A.R. Antulay v. Ramdas Srinivas Nayak & Another, reported in (1984)2 SCC 500, the scope of the Special Act making the provision for creation of Special Court for dealing with the offences thereunder and application of the Code in such circumstances has been considered and it has been held that the procedure in the Code can be modified by reason of a special provision in special enactment. The Bench held that it is a well established cannon of construction that the court should read the Section as it is and should not rewrite it to suit its convenience nor should read it in such manner as to render it to some extent otiose.

It is well established that the interpretation must depend on the text and the context. If the text is the texture, context is what gives the colour. Neither can be ignored. That interpretation is considered to be the best which makes the textual interpretation match the contextual. In this context when one looks at Section 14A(1) of the Amendment Act, 2015, it would be evident that it starts with a non-obstante clause and states that notwithstanding anything contained in the Code 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. The non obstante clause would mean that the provision would have an overriding effect over the

Code. It prescribes a forum of appeal for all judgments, sentence or order, which is not interlocutory in nature, to the High Court both on facts and in law.”

18. The Full Bench of Allahabad High Court in PIL **Re: Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015**, had taken suo motu cognizance of the validity of Section 14A of the Act, in view of divergent opinions of two Single Benches of the court. The Court had framed four questions of law for consideration. The relevant issue as considered by the Court posed was :

“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 (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 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 ?

18.1 The said PIL was tagged along with

another PIL, which was numbered as Criminal Writ-PIL No. 11 of 2018, challenging the validity of Sections 14A (2) and 14A (3) of the Act for being violative of Articles 14 and 21 of the Constitution of India. The Full Bench after exhaustively examining the provisions relevant to the matter held that Section 14A had an overriding effect over provisions of the Code of Criminal Procedure . The court noted that Section 14A primarily created an appellate forum at the level of the High Court to challenge any judgment, sentence or order, not being an interlocutory order, including an order refusing or granting bail. It was noted that though an appeal is not maintainable against interlocutory orders since an interlocutory order refusing or granting bail pertains to the liberty of the accused, an exception had been carved against the said general exclusion. The challenge to Section 14A(2) was also examined on the grounds that Section 14A (2) ousted the concurrent jurisdiction of the High Court under Section 439 CrPC in matters pertaining to grant of bail.

The said challenge was dismissed holding that Atrocities Act is a special statute and as per the general principles of statutory construction, its non-obstante clauses had to be given overriding effect over a general enactment such as Code of Criminal Procedure.

19. Again, similar issue of ousting of revisional jurisdiction under Section 397 of the Code of Criminal Procedure, in light of Section 14A of the Atrocity Act, was examined by the Hon'ble Co-ordinate Bench of the Allahabad High Court in the case of **Anujkumar Alias Sanjay And Ors. V/s. State of U.P. and Ors.** (Neutral Citation No.:2022:AHC-LKO:28359). It was a case where an application was moved under Section 482 of the Code praying for quashing of charge-sheet and the order of summoning, which was issued against the petitioners therein in pursuance of the offences under the Atrocities Act. Additionally, inter-alia, prayers were made to quash the entire criminal proceedings against the petitioners therein. In

the said matter, the aforesaid judgement of Full Bench of the Hon'ble Allahabad High Court in the case of *Re: Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015* was cited while deciding the aforesaid application under Section 482 of the Code. The relevant observations are reproduced as under:

*"HIGH COURT OF JUDICATURE AT ALLAHABAD,
LUCKNOW BENCH*

A.F.R.

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) ?, ? 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) ?, ? 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 contra distinguishing 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:

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. Thus, 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"*

20. Also, on bare reading of Section 5 of the Code of Criminal Procedure with Section 4 of the Code of Criminal Procedure shows that the principle of prevalence and overriding effect of a special statute in question over and above the provisions of the Code is enshrined in said Section 5 of the Code. Moreover, if one goes by Section 4 and 5 of the Code of the Code Criminal Procedure, by applying the rule of the harmonious construction of the aforesaid provisions of the Atrocities Act as well as the Code of Criminal Procedure goes to establish that the special enactment in the form of Atrocities Act has been enacted by the legislation conferring special jurisdiction or power with special form of procedure being prescribed, which in the present case is in the form of appeals prescribed under Section 14A including the appeals against the order of conviction /acquittal /lesser sentence/ compensation. As rightly pointed out by the learned advocate for the respondent-original

accused after Section 14A of the Atrocities Act being inserted with effect from 26.01.2016 will have an overriding effect on the provisions of the Code of Criminal Procedure.

21. In light of the aforesaid legal position, it is held that the non-obstante clause appearing in Sub-section 1 of Section 14A of the Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 shall have an overriding effect on the general provisions of appeal as provided under the Code of Criminal Procedure, 1908 in case of filing appeal against any judgement, sentence or order arising out of the said Act. Hence, all these appeals arising out of offence alleged under the provisions of Atrocities Act, filed at the instance of the State or at the instance of the original-complainant are treated as appeals filed under Section 14A of the Atrocities Act.

22. It has been noticed that the application seeking condonation of delay has been preferred by the original complainant as well

as by the State while moving these appeals under Section 372 and under Section 378(3) of the Code respectively. The period of limitation has been computed accordingly as compared to 90 days, which is prescribed under the Atrocities Act. Since, these appeals are now treated to have been filed under Section 14A of the Atrocities Act, registry is requested to reexamine these applications seeking condonation of delay and place all these matters for consideration before the Coordinate Bench taking up matters under Section 14A of the Atrocities Act as per the present roster notified by the Hon'ble Chief Justice on the administrative side. It is clarified that this Court has, otherwise, not gone into the merits of the appeal or the application seeking condonation of delay. With these observations, registry is requested to do the needful.

SSVohra

(NISHA M. THAKORE,J)