IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD
SITTING AT LUCKNOW

Neutral Citation No. - 2024:AHC-LKO:13846

A.F.R.

RESERVED

Judgment reserved on 06.02.2024
Judgment delivered on 16.02.2024

Court No. - 27

Case :- APPLICATION U/S 482 No. - 730 of 2024

Applicant :- Pawan Kumar Alias Pawan Yadav
Opposite Party :- State Of U.P. Thru. Addl. Chief Secy. Home Govt. Civil Sectt. Lko And Another
Counsel for Applicant :- Rakesh Kumar Agarwal,Saksham Agarwal
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi,J.

1. Heard Sri Saksham Agarwal, the learned counsel for the applicant and Sri Anurag Verma, the learned A.G.A-I appearing on behalf of the State.

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has sought quashing of the charge sheet dated 10.01.2024 submitted in furtherance of F.I.R. No. 0797 of 2023, dated 26.11.2023, Police Station P.G.I., Lucknow under Sections 376, 504 I.P.C. and 3 (2) (v) of the Schedule Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989 and also the order dated 20.01.2023 passed by the learned Special Judge (SC/ST Act), Lucknow in Sessions Trial No. 87 of 2024, whereby the Court has taken cognizance of the aforesaid offences and has summoned the applicant to face trial for the offences.

3. Sri. Anurag Verma, the learned A.G.A.-I has raised a preliminary objection that the applicant has a statutory remedy of filing an appeal under Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (which will hereinafter be referred to as 'the Act of 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, Sri. Saksham Agarwal, the learned Counsel for the applicant has submitted that the powers under Section 482 Cr.P.C. are inherent powers and there can be no fetters on the exercise of this power. He has submitted that the applicant has been charged for commission of offences under Sections 376, 504 I.P.C. and 3 (2) (v) of the Act of 1989. Section 3 (2) (v) of the Act of 1989 provides that whoever, not being a member of a Scheduled Caste or a Scheduled Tribe commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine. The learned Counsel for the applicant has submitted that there is no substantive offence defined by Section 3 (2) (v) of the Act of 1989 and this provision merely makes a provision for imposing an enhanced punishment for certain offences under the I.P.C. under certain conditions. He has made some more submissions to impress upon the Court that the offences alleged are not made out against the applicant even as per the prosecution case, but those arguments need to be gone into only if the objection against maintainability of the application is overcome.

5. In support of his submissions, Sri. Agarwal has placed reliance upon the judgments in the cases of ***State of Harayana versus Bhajan Lal*** : (1992) Supp 1 SCC 335, ***Deepak Gulati versus State of Haryana*** : (2013) 7 SCC 675, ***Arnab Manoranjan Goswami v. State of Maharashtra*** : (2021) 2 SCC 427, ***Shueb Mahmood Kidwai @ Bobby versus State of U.P.***, 2021(4)ADJ 244: 2021(4) ALJ 28.

6. Section 482 Cr.P.C. provides as follows: -

> ***"482. Saving of inherent powers of High Court***.— *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

7. Article 215 of the Constitution of India provides that the High Courts shall be Court of records and shall have all the powers of such courts. A court of record is undoubtedly a superior court which is itself competent to determine the scope of its jurisdiction. Section 482 Cr.P.C. does not confer any new powers on the High Court. It merely clarifies that nothing contained in the Cr.P.C. will limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

8. In ***Amar Nath v. State of Haryana***, (1977) 4 SCC 137, the Hon'ble Supreme Court held that: -

> ***"3.*** *... **It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers**."*

9. In ***Madhu Limaye v. State of Maharashtra***, (1977) 4 SCC 551, again it was reiterated that: -

> ***"8.*** *... We may read the language of Section 482 (corresponding to Section 561-A of the old Code) of the 1973 Code. It says:*
>
> *"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*
>
> *At the outset the following principles may be noticed in relation to the exercise of the inherent power of the High Court which have been followed ordinarily and generally, almost invariably, barring a few exceptions:*
>
> *"(1) That **the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party**;*
>
> *(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;*
>
> *(3) That **it should not be exercised as against the express bar of law engrafted in any other provision of the Code**."*

10. Section 14-A of the Act of 1989 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."*

11. When the applicant has a statutory remedy of appeal under Section 14-A of the 1989 Act available to him as a matter of right, and that appeal would also lie before this High Court, albeit before another Bench, there cannot be justification in bypassing the statutory remedy of appeal and invoking the inherent powers of this Court, which are meant to be exercised in exceptional circumstances only.

12. In this regard, it is to be kept in mind that in ***State of Haryana v. Bhajan Lal***, 1992 Supp (1) SCC 335, the Hon'ble Supreme Court has cautioned that: -

> ***"103.** We also give a note of caution to the effect that **the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases**; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*
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> (Emphasis supplied)

13. In *"**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 cognisance 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."

14. 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?*

15. 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.*

16. 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?""

17. 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****..."*
>
> (Emphasis supplied)

18. Therefore, the mere reference of the aforesaid questions would not dilute the binding nature of the law laid down in **Ghulam Rasool Khan** (Supra).

19. The learned Counsel for the applicant has placed reliance upon the judgment in the case of ***Devendra Yadav v. State of U.P.***, 2023 SCC OnLine All 164, wherein a coordinate Bench of this Court noted the contention that **Ghulam Rasool** (Supra) does not take into consideration the judgment in the case of ***Ramawatar v. State of Madhya Pradesh:*** 2021 SCC OnLine SC 966 decided on 25.10.2021, wherein the Hon'ble Supreme Court held that:—

> *"where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily private or civil in nature, or where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."*

20. The coordinate Bench merely noted the contention of the learned Counsel for the applicant that **Gulam Rasool Khan** (supra) has been decided without taking into consideration the ratio laid down in the judgment of **Ramawatar v. State of M.P.** and thus could be safely be termed as *per incurim*. Without expressing its view on this Submission, the Coordinate Bench took into consideration another judgment of the Hon'ble Supreme Court in the case of ***B. Venkateswaran v. P. Bakthavatchalam*** : 2023 SCC OnLine SC 14, in which the Hon'ble Apex Court has opined that:—

> *"From the aforesaid, it seems that the private civil dispute between the parties is converted into criminal proceedings. Initiation of the criminal proceedings for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, therefore, is nothing but an abuse of process of law and Court. From the material on record, we are*

> *satisfied that no case for the offences under Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out, even prima facie. None of the ingredients of Sections 3(1)(v) and (va) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 are made out and/or satisfied. Therefore, we are of the firm opinion and view that in the facts and circumstances of the case, the High Court ought to have quashed the criminal proceedings in exercise of powers under Section 482 of the Code of Criminal Procedure. The impugned judgment and order passed by the High Court, therefore, is unsustainable and the same deserves to be quashed and set aside and the criminal proceedings initiated against the appellants deserves to be quashed and set aside."*

The coordinate Bench concluded in **Devendra Yadav** (Supra) that: -

> ***"15.** Thus from the aforesaid discussions, it is clear that Hon'ble Apex Court has clearly and time and again have opined that elaborating the aforesaid provision of full bench of this Court as well as Hon'ble Apex Court and taking the help of the aforesaid judgments, the Court is of the considered opinion that 482 Cr. P.C. application could be filed assailing the summoning order.*

21. While deciding the **Devendra Yadav** (Supra), this point appears to have escaped consideration of the coordinate Bench that in none of the judgments in the case of **Ramawatar v. State of M.P.** and **B. Venkateswaran v. P. Bakthavatchalam** , the question of effect of Section 14-A of the 1989 Act on maintainability of an application under Section 482 Cr.P.C. was neither raised, nor decided.

22. It is settled law that a judgment is an authority for what it actually decides and not for what can be deduced from it. In a Constitution Bench judgment in the case of **P. S. S*athappan v. Andhra Bank Ltd.***, (2004) 11 SCC 672, it was held that: -

> ***"118.** ...It is well known that a judgment is an authority for what it decides and not what may even logically be deduced therefrom.*
>
> * * *
>
> ***144.** While analysing different decisions rendered by this Court, an attempt has been made to read the judgments as should be read under the rule of precedents. A decision, it is trite, should not be read as a statute.*

> ***145. A decision is an authority for the questions of law determined by it****. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. [See Haryana Financial Corpn. v. Jagdamba Oil Mills (2002) 3 SCC 496, Union of India v. Dhanwanti Devi (1996) 6 SCC 44, Nalini Mahajan (Dr.) v. Director of Income Tax (Investigation) (2002) 257 ITR 123 (Del) State of U.P. v. Synthetics and Chemicals Ltd. (1991)4 SCC 139, A-One Granites v. State of U.P. (2001) 3 SCC 537, and Bhavnagar University v. Palitana Sugar Mill (P) Ltd. (2003) 2 SCC 111],*
>
> ***146.*** *Although decisions are galore on this point, we may refer to a recent one in State of Gujarat v. Akhil Gujarat Pravasi V.S. Mahamandal (2004) 5 SCC 155, wherein this Court held:*
>
> *"It is trite that any observation made during the course of reasoning in a judgment should not be read divorced from the context in which it was used."*
>
> ***147.*** *It is further well settled that a decision is not an authority for the proposition which did not fall for its consideration."*

23. Again, in ***Amrendra Pratap Singh v. Tej Bahadur Prajapati***, (2004) 10 SCC 65, the Hon'ble Supreme Court reiterated that: -

> *"A judicial decision is an authority for what it actually decides and not for what can be read into it by implication or by assigning an assumed intention to the judges, and inferring from it a proposition of law which the judges have not specifically laid down in the pronouncement."*

24. Since the question of effect of Section 14-A of the 1989 Act upon maintainability of an application under Section 482 Cr.P.C. was neither raised nor decided in **Ramawatar** and **B. Venkateswaran** (Supra), the aforesaid judgments are not binding precedents on the aforesaid point. Therefore, these judgments would not affect the binding nature of the Full Bench judgment in the case of **Ghulam Rasool Khan** (Supra).

25. The learned Counsel for the applicant has placed reliance upon the following passage from the judgment in the case of ***Arnab Manoranjan Goswami v. State of Maharashtra***, (2021) 2 SCC 427 but the question of maintainability of an application under Section 482 Cr.P.C. where the applicant has a statutory remedy available under

Section 14-A of the Act, was not involved in **Arnab Manoranjan Goswami** (Supra) and, therefore, the aforesaid case would be of no avail for decision of the question of maintainability raised by the learned A.G.A.-I.

26. The learned Counsel for the applicant has also relied upon the judgment in the case of ***Prithvi Raj Chauhan versus Union of India*** : (2020) 4 SCC 727 wherein the petitioners had questioned the provisions inserted by way of carving out Section 18-A of the Act of 1989, which provide that nothing in Section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act. The Hon'ble Supreme Court held that: -

> ***"11.*** *Concerning the applicability of provisions of Section 438 CrPC, it shall not apply to the cases under the 1989 Act. However, if the complaint does not make out a prima facie case for applicability of the provisions of the 1989 Act, the bar created by Sections 18 and 18-A(i) shall not apply."*

However, while deciding the aforesaid question, the Hon'ble Supreme Court also observed that: -

> ***"12.*** *The Court can,* ***in exceptional cases****, exercise power under Section 482 CrPC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised."*

27. While making the aforesaid observation, the Hon'ble Supreme Court did not take into consideration the provision contained in Section 14-A of the Act of 1989. Therefore, the case of **Prithvi Raj Chauhan** (Supra) is also not relevant for deciding maintainability of an application under Section 482 Cr.P.C. where the applicant has a statutory remedy of filing an appeal under Section 14-A of the Act of 1989.

28. In ***Union of India v. Cipla Ltd.***, (2017) 5 SCC 262, the Hon'ble Supreme Court held that the Court is required to adopt a functional test vis-à-vis the litigation and the litigant. What has to be seen is whether there is any functional similarity in the proceedings between one court and another or whether there is some sort of subterfuge on

the part of a litigant. It is this functional test that will determine whether a litigant is indulging in forum shopping or not.

29. In the present case, the applicant has a statutory remedy of filing an appeal under Section 14-A of the 1989 Act, which remedy is available to him as a matter of right, and that appeal would also lie before this High Court, albeit before a different Bench. The scope of enquiry in the appeal will obviously be larger than the scope of enquiry while deciding an application under Section 482 Cr.P.C., where disputed questions of facts cannot be entertained. Thus the appeal would appear to be more beneficial to the applicant. The only reason for filing an application under Section 482 Cr.P.C. instead of filing an appeal appears to be avoiding a particular Bench of this Court itself. The facts stated above clearly establish that it is a typical example of forum shopping, which practice has always been deprecated by the Courts.

30. In view of the foregoing discussions, the application under Section 482 Cr.P.C. is ***dismissed*** leaving it open for 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 :- 16.02.2024
Ram.