

Court No. - 49

Case :- APPLICATION U/S 482 No. - 12850 of 2021

Applicant :- Sher Ali

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- A Kumar Srivastava, Anand Kumar Upadhyay, Husnaara Khatoon

Counsel for Opposite Party :- G.A.

Hon'ble Anil Kumar Ojha, J.

Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

This Application U/s 482 Cr.P.C. has been filed with a prayer to quash the entire criminal proceeding of Special S.T. No. 187 of 2020 U/s 323, 504 and 506 I.P.C. and Section 3(1)(D), Dha SC/ST Act, P.S. Naini, District Prayagraj pending before learned Special Judge SC/ST Act, Allahabad (Prayagraj) arising out of Case Crime No. 0223 of 2020 U/s 323, 504, 506 I.P.C. and Section 3(1)(D), Dha SC/ST Act, P.S. Naini, District Prayagraj alongwith charge-sheet dated 09.07.2020 submitted by the police against the applicant for the offence as well as cognizance order dated 2.12.2020 passed by learned Special Judge SC/ST Act, Allahabad (Prayagraj).

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 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 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 applicant, it is clear that applicant has prayed to quash the cognizance order dated 2.12.2020 passed by learned Special Judge SC/ST Act, Allahabad (Prayagraj) which reads as follows:

"02.12.2019-

आज विवेचक क्षेत्राधिकारी करछन: प्रयागराज अपराध संख्या-223/2020, धारा-323, 504 व 506 भारतीय दण्ड संहिता एवं धारा- 8(1) D, Dh अनु० जाति/अनु० जन० अत्याचार नि० अधि०, थाना नैनी से सम्बन्धित समस्त प्रपत्र एवं आरोपपत्र के साथ न्यायालय में उपस्थित हैं। उनके द्वारा अभियुक्त शेर अली के विरुद्ध धारा-323, 504 व 506 भारतीय दण्ड संहिता एवं धारा-3(2) D, Dh अनु० जाति/अनु० जन० अत्याचार नि० अधि० में आरोपपत्र दाखिल किया गया है।

अभियुक्त की गिरफ्तारी विवेचना के दौरान नहीं की गयी है। विवेचक द्वारा संकलित किये गये साक्ष्यों का सम्यक परिशीलन किया और संकलित साक्ष्यों के आधार पर अभियुक्त के विरुद्ध प्रसंज्ञान लिया जाता है। दर्ज रजिस्टर हो। अभियुक्त शेर अली के विरुद्ध सम्मन जारी हो। पत्रावली दिनांक 05.01.2021 को पेश हो। "

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. 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."

Perusal of the record reveals that applicant has also prayed to quash cognizance order dated 2.12.2020 passed by Special Judge SC/ST Act, Allahabad (Prayagraj) by which learned Special Judge SC/ST Act has summoned the applicant to face the trial U/s 323, 504 and 506 I.P.C. and Section 3(1)(D), Dha SC/ST Act to face the trial.

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 cognizance order dated 2.12.2020 is an intermediate order.

Now it is to be seen whether Application U/s 482 Cr.P.C. lies against the impugned cognizance order dated 2.12.2020 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 cognizance order dated 2.12.2020 passed by learned Special Judge, S.C./S.T. Act, Allahabad (Prayagraj).

This Application U/s 482 Cr.P.C. is disposed of with the observation that revisionist is permitted to file fresh petition before the appropriate forum.

Order Date :- 5.10.2021

A. Mandhani