

**AFR****Court No. - 67**

**Case :- APPLICATION U/S 482 No. - 11043 of 2023**

**Applicant :- Devendra Yadav And 7 Others**

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

**Counsel for Applicant :- Mohit Singh**

**Counsel for Opposite Party :- G.A.**

**Hon'ble Rahul Chaturvedi,J.**

Heard Sri Mohit Singh, learned counsel for the applicants, learned AGA for the State and perused the material on record.

Since in the instant 482 application, on admitted facts, purely question of law has to be adjudicated, thus without inviting counter affidavit, the present 482 Cr.P.C. application is being decided with the aid and help of learned AGA at the admission stage itself.

The question of sustainability of the present 482 Cr.P.C. application against the impugned order of summoning under Sections 147, 148, 323, 354Kha, 452, 504 IPC and Section 3(1)(X) SC/ST Act, P.S. Bilhaur, District Kanpur Nagar pending in the court of Additional District & Sessions Judge, Court No.2/Special Judge, SC/ST Act, Kanpur Dehat and impugned summoning order dated 19.11.2022 passed by the same court.

The extra ordinary powers of this Court has been invoked by the applicants challenging the entire

proceeding of SST No. 77 of 2019 (Geeta Devi Vs. Devendra Yadav & others) under the aforesaid sections of the IPC pending in the court of Additional District & Sessions Judge, Court No.2/Special Judge, SC/ST Act, Kanpur Dehat including the impugned summoning order dated 19.11.2022.

As the matter relates to the "maintainability of the present 482 Cr.P.C. application" in the light of the full Bench decision of this Court in the case of **Gulam Rasool Khan and others Vs. State of U.P. and others** in Crl. Appeal No. 1000 of 2018 decided on 28.07.2022, whereby learned Single Judge vide order dated 03.08.2018 has referred the matter to the larger bench and has framed the following question, which are quoted herein below:-

*(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?*

Learned AGA has further drawn the attention of the Court to the Section 14A(1), which speaks about the appeal in SC/ST Act, 1989, which reads thus:-

***"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."***

While referring above mentioned legal questions, responding to the query no.3, whether an aggrieved person who has without availing of the remedy of an appeal under the provisions of Section 14A(1) of the Act, 1989, could be allowed to approach the High Court by preferring an application under the provisions of Section 482 of the Cr.P.C. is justified ?

The full bench in paragraph 13 and 14 of its judgment negated its reply by making a mention that :-

***13. The answer to the aforesaid was in the negative. It was held that against the judgments or orders, for which remedy has been provided under Section 14A(1) of the 1989 Act, invoking the jurisdiction of this Court by filing petition under Articles 226 or 227 of the Constitution of India, a revision under Section 397 Cr.P.C. or an application under Section 482 Cr.P.C., will not be maintainable.***

***14. Hence, the answer to Question No.(III) will be in negative namely, that the aggrieved person having remedy of appeal under Section 14A(1) of the 1989 Act, cannot be allowed to invoke inherent jurisdiction of this Court under Section 482 Cr.P.C..***

Learned AGA has strenuously hammered his submissions that present 482 Cr.P.C. application is not maintainable in the light of the aforementioned observations made by full Bench of this Court in the case of ***Gulam Rasool Khan (supra)***.

Responding to the aforesaid preliminary objection, Sri Mohit Singh, learned counsel for the applicants refuted the submissions by making a mention that there are catena of decisions of Hon'ble Apex Court with regard to the maintainability of the 482 Cr.P.C. application, even though the provisions of SC/ST Act is present.

Sri Mohit Singh, learned counsel for the applicant has cited a judgment of Hon'ble Apex Court in the case of ***Ramawatar Vs. State of Madhya Pradesh*** reported in **2021 SCC Online SC 966** decided on 25.10.2021 in Crl. Appeal No. 1393 of 2011, whereby the full Bench of Hon'ble Apex Court decided the issue in most lucid terms. The relevant paragraph nos. 9 and 16, which are quoted herein below:-

***“9. Having heard learned Counsel for the parties at some length, we are of the opinion that two questions fall for our consideration in the present appeal. First, whether the jurisdiction of this Court under Article 142 of the Constitution can be invoked for quashing of criminal proceedings arising out of a ‘noncompoundable offence? If yes, then whether the power to quash proceedings can be extended to offences arising out of special statutes such as the SC/ST Act?***

***16. On the other hand, 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."***

Since the case of Gulam Rasool Khan was decided in the year 2022\*28.07.2022) whereas Ramawtar case was decided in 2021, thus, it has been contended by the counsel that 482 Cr.P.C. application is maintainable even it relates to SC/ST Act.

Sri Singh, learned counsel for the applicant submitted that while deciding the case of ***Gulam Rasool Khan (supra)***, learned Division Bench of this Court has never relied upon or even considered the ratio laid down in the judgment of ***Ramawatar Vs. State of M.P.*** and thus could be safely be termed as *per incuriam*.

There is yet another judgment of Hon'ble Apex Court cited by learned counsel for the applicants in the case of **B.Venkateswaran and others Vs. P. Bakthavatchalam** reported in ***2023 SC Online SC 14*** decided on 05.01.2023 in Criminal Appeal No. 1555 of 2022. In so many words the, 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.”**

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.

Now coming to the main issue whereby the application under Section 156(3) Cr.P.C. converted into a

complaint case vide order dated 08.05.2019 passed by Additional District & Sessions Judge, Court No.2/Special Judge, SC/ST Act, Kanpur Dehat.

The Sepcial Judge, SC/ST Act vide summoning order dated 19.11.2022 has summoned the applicants, namely, Devendra Yadav, Babulal Yadav, Laloo Yadav, Lakan Raidas, Naresh, Amar Singh, Sonu and Arvind under Sections 147, 148, 323, 354Kha, 452 and 504 IPC and Sections 3(1)(X) SC/ST Act to face the prosecution.

The genesis of the case starts from filing of the 156(3) Cr.P.C. application by opposite party no.2 on 27.09.2018 for the incident said to have been taken place on 05.04.2018. The said application was registered as Misc. Case No. 443/12/2018 (Geeta Devi Vs. Devendra Yadav and others). After filing of 156(3) Cr.P.C. application, the court concerned has called for the report from the concerned police station, whereby the concerned police station has submitted the detailed report, which is annexed as Annexure No.2 to the affidavit accompanying the application. The said report indicates that :-

**“आवेदिका श्रीमती गीता द्वारा अपने प्रार्थना पत्र धरा 156(3) सी.आर.पी.सी. में दिनांकित 27.09.2018 में अंकित घटना के सम्बन्ध में श्रीमती गंगाजली पत्नी राजाराम निवासी बावनझाला थाना बिल्हौर कानपुर नगर में मु.अ.स. 159/18 धरा 147, 452, 504, 380 आई.पी.सी. की एफ.आई.आर. पंजीकृत करायी जा चुकी है। जो सभी सजातीय व्यक्तियों के विरुद्ध है। इसी अभियोग की घटना में**

आवेदिका श्रीमती गीता घायल हुयी थी जिसका अभियोग पंजीकृत हो चुका है। किन्तु आवेदिका श्रीमती गीता देवी ग्राम प्रधान देवेंद्र यादव एवं उसी परिवार के बाबूलाल यादव व लालू यादव के विरुद्ध एस.सी./एस.टी. एकट का अभियोग लिखवाना चाहती है। और पूर्व में भी प्रयास कर चुकी है। किन्तु सफल नहीं हुयी आवेदिका द्वारा अपने प्रार्थना पत्र में अंकित तथ्यों के सम्बन्ध में पूर्व में ही दिनांक 10.04.18 को सु.अ.स. 159/18 धारा 147, 452, 504, 380 आई.पी.सी. पंजीकृत हो चुका है। जिसमें आवेदिका श्रीमती गीता चश्मदीद साक्षी है।"

Vide order dated 08.05.2019, the Special Judge has treated the application under Section 156(3) Cr.P.C as complaint case and proceed the said application case like complaint case adhering the procedure of Chapter XV of Cr.P.C.. In addition to this on 02.09.2019, the opposite party no.2 has recorded her statement and supported the version of the complaint, thereafter the statements of complainant's witnesses, namely, Bandana and Smt. Gangajali were recorded on 10.10.2019 and 25.11.2019.

Learned counsel for the applicant have accused that learned Trial Judge that he has passed the impugned summoning order with pre-meditated mind on 19.11.2022.

The Court has occasioned to to peruse the summoning order in which Special Judge, SC/ST Act have narrated the statements and have jumped into the conclusion that prima facie case is made out against the applicant under Section 147, 148, 323, 354Kha, 452, 504 IPC and Section 3(1)(X) SC/ST Act. It is contended by the

counsel that there is no application of any judicial mind or judicial satisfaction of the court concerned, which is sine-quo-non and pre-requisite of summoning the accused as contemplated in the case of Lallan Kumar Singh and others Vs. State of Maharashtra reported in **2022 LiveLaw (SC) 833**, paragraph 28 is quoted herein below:-

*"28. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation9, which reads thus:*

*"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate 9 (2015) 4 SCC 609 taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for*

*proceeding in respect of an offence, he shall issue process against the accused.*

*52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.*

*53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."*

In addition to this, it is argued by learned counsel that the court below has passed an impugned order dated 08.05.2021 observing therein that the police have submitted a report that there is no FIR is registered at the police station. The aforesaid observation is nothing but a tissue of utter falsehood for the reasons best known to the concerned Special Judge. The aforesaid police report as mentioned in earlier paragraphs, which clearly indicates that there is a FIR lodged by Smt. Gangajali wife of

Rajaram as case crime no. 159 of 2018, under Sections 147, 452, 504, 380 IPC. In the present case, opposite party no.2 Geeta also sustained injuries but she was adment to get the criminal case registered under the SC/ST Act, she is playing all the tricks and gimmicks with the court process and learned Special Judge, SC/ST Act is supporting her calls and therefore, the present proceeding would safely be termed as second complaint on the same facts, though its complainant is a different lady.

In addition to above, learned counsel for the applicant submits that the court below has not complied with the directions of Hon'ble Apex Court in the case of **Priyanka Srivastava and others Vs. State of Uttar Pradesh and others** reported in **(2015) 6 SCC 287**, in which it is stated that no inquiry was conducted as contemplated in Section 202(1) Cr.P.C., which reads thus:-

**"Section 202(1) Cr.P.C.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--**

**(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or**

**(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.”**

In the instant case, where the contesting parties are resident of Kanpur Nagar. The Court wonders as to what circumstances, Special Judge, SC/ST Act, Kanpur Dehat has passed the impugned summoning order without holding the requisite mandatory inquiry as contemplated in Section 202(1) Cr.P.C. and therefore, the impugned summoning order is well short of aforesaid legal issues, which cannot be sustained in the eye of law.

The Court has occasion to peruse the observation of Hon'ble Apex Court in the case of **Priyanka Srivastava (supra)** and the relevant paragraphs which are useful for the present controversy are quoted herein below:-

**“The instant case exemplifies in enormous magnitude to take recourse to Section 156(3) Cr.P.C., as if, it is a routine procedure. The Judicial Magistrate in the present case while exercising the power under Section 156(3) Cr.P.C. has narrated the allegation made in the application and, thereafter, without any application of mind, has passed an order to register an FIR for the offences mentioned in the application.**

**The duty cast on the Magistrate while exercising power under Section 156(3)**

*Cr.P.C. cannot be marginalised. The power under Section 156(3) Cr.P.C. warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of Section 154 Cr.P.C.. The Magistrate exercising power under Section 156(3) Cr.P.C. has to remain vigilant with regard to the allegation made and the nature of allegation and not to issue directions without proper application of mind. He has to bear in mind that sending the matter for investigation would be conducive to justice and then he may pass the requisite order. There has to be prior applications under Sections 154(1) and 154(3) Cr.P.C. while filing a petition under Section 156(3) Cr.P.C. Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. A litigant at this own whim cannot invoke the authority of the Magistrate under Section 156(3) Cr.P.C.. A principled and really aggrieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when perverted litigants take this route to harass their fellow citizens, efforts must be made to scuttle and curb the same. A number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, are being filed. Consequently, in an appropriate case, the truth and veracity of the allegations made can be verified by the Magistrate, regard being had to the nature thereof.”*

Thus taking into account the totality of the circumstances and the observation made by the Hon'ble Apex Court in this regard, I have got no hesitation to **quash** the impugned summoning order dated 19.11.2022 passed by Additional District & Sessions Judge, Court No.2/Special Judge, SC/ST Act, Kanpur Dehat. Since parallel proceeding by way of FIR is already progressing and the present controversy is nothing but an arm twisting of the applicants by levelling more serious and grim allegation in it and therefore, it cannot be sustained and the present application stands **ALLOWED**.

**Order Date :- 10.4.2023**

Abhishek Sri.