Neutral Citation No. - 2024:AHC:100224

A.F.R.

Court No. - 78

Case :- CRIMINAL APPEAL No. - 10230 of 2023

Appellant :- Smt. Usha
Respondent :- State of U.P. and Another
Counsel for Appellant :- Ashutosh Sharma
Counsel for Respondent :- G.A.,Subedar Mishra

With

Case :- CRIMINAL APPEAL No. - 146 of 2024

Appellant :- Raj Kumar
Respondent :- State of U.P. and Another
Counsel for Appellant :- Ashutosh Sharma
Counsel for Respondent :- G.A.,Subedar Mishra

With

Case :- CRIMINAL APPEAL No. - 622 of 2024

Appellant :- Lakkhi Singh And 8 Others
Respondent :- State of U.P. and Another
Counsel for Appellant :- Ashutosh Sharma,G.A.

Hon'ble Manoj Bajaj,J.

1. Appellants-Accused have filed the above separate appeals under Section 14-A(1) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to challenge the impugned order dated 17.8.2023 passed by Special Judge (SC/ST Act), Mathura in Case Crime No. 321 of 2022, under Sections 147, 148, 323, 504, 506 I.P.C. and Sections 3(1)(r), 3(1)(s) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereby while taking cognizance of the offences contained in final report under Section 173(2) Cr.P.C. dated 2.1.2023, additionally cognizance in respect of the offences punishable under Section 325, 307 I.P.C. has also been taken, by allowing the application filed by respondent no.2-complainant.

2. Briefly, the facts leading to the appeals are that complainant-Lekhi S/o Lachchi got lodged F.I.R. dated 24.10.2022 bearing Case Crime No.

321 of 2022 (Annexure No.6), wherein it is alleged that on 24.10.2022 at around 4:00 p.m., he reached on his tractor at his land comprised in Khasra No. 71 measuring 0.405 hectare for ploughing, which was taken by him on lease from Mohan Singh S/o Ratiram. When the complainant started the work, suddenly Badani, Lakhkhi S/o Nandram, Kanhiya S/o Raggo, Usha W/o Keshav, Parwati W/o Lakhkhi, Pooran Devi W/o Badani, Rajkumar S/o Laxman, Vishnu S/o Lakhkhi, Keshav S/o Lakhkhi, Lalaram S/o Gyasi, Tejpal S/o Gyasi, all residents of Gazipur armed with sticks, sharp edged weapon *(Farsa)* and rods arrived there and attacked the complainant. The assault resulted in head injury and fractures to the complainant, who fell down and turned unconscious. When complainant gained consciousness, the accused persons abused him in the name of his caste and also threatened him. On these broad allegations, the F.I.R. was registered for alleged commission of offences punishable under Section 147, 148, 323, 504, 506 I.P.C. and Section 3(1)(r), 3(1)(s) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'Atrocities Act, 1989').

3. After registration of the F.I.R., the investigation in the case was conducted and upon conclusion of the same, a final report dated 2.1.2023, under Section 173(2) Cr.P.C. was filed against the accused-appellants, wherein during investigation, in addition to the offences contained in F.I.R., the offence punishable under Section 324 I.P.C. was also incorporated.

4. Thereafter, the complainant moved an application dated 7.8.2023 (Annexure No.11) before the Special Court, Mathura and prayed that cognizance in respect of the offences punishable under Sections 325, 307 I.P.C. be also taken, and the Special Court, Mathura vide impugned order dated 17.10.2023 allowed the application moved by the complainant and proceeded to take cognizance of offences contained in the final report dated 2.1.2023, under Section 173(2) Cr.P.C. as well as

for the offences punishable under Sections 325, 307 I.P.C. Hence, these appeals.

5. Pursuant to the notice issued in these appeals, the opposite parties were served and complainant filed his counter affidavit in Criminal Appeal No. 10230 of 2023, wherein he refuted the grounds raised by the appellants. It is pleaded that the record of the case, including the medical examination report of the injured-complainant clearly a case for alleged commission of offences punishable under Sections 147, 148, 307, 323, 324, 325, 504, 506 I.P.C. and Section 3(1)(r), 3(1)(s) of “Atrocities Act, 1989” is made out, therefore, Special Court, Mathura has rightly accepted the application of the complainant while passing the cognizance order dated 17.8.2023. In the end, it is prayed that appeals be dismissed.

6. Learned counsel for appellants has argued that the land comprised in Khata No. 29, Khasra No. 2 measuring 2.651 hectare and land comprised in Khasra No. 71 measuring 1.554 hectare situated at Mauja Ghazipur, Tehsil Gowardhan, District Mathura is a subject matter of civil dispute between the parties and in this regard, a civil suit bearing O.S. No. 192 of 2022 (Annexure No.1), titled *Nandram Vs. Mohan Singh,* is pending adjudication before Civil Judge (J.D.), Chhata, Mathura, wherein the gift deed dated 8.4.2022 relied upon by Mohan Singh has been challenged. Learned counsel submits that after filing of the suit, defendant-Mohan Singh also filed a civil suit bearing O.S. No. 234 of 2022 (Annexure No.2), titled *Mohan Singh Vs. Kushagra Gupta and others,* seeking permanent injunction. Learned counsel refers to the report dated 15.7.2022 by Ameen (Annexure No. 3) to contend that the appellants were found in possession of the suit property.

7. Learned counsel for appellants has further pointed out that on 24.10.2022 Tara and Sunil along with other unknown persons were

consuming liquor in the agriculture field of appellants and when Usha Devi confronted them, they molested her and her mother-in-law. According to the learned counsel, Tara is maternal uncle of defendant-Mohan Singh, and in this regard, a case F.I.R. dated 24.10.2022 bearing Case Crime No. 320 of 2022 (Annexure No.5) was registered against accused persons for alleged commission of offences punishable under Sections 354, 323, 504, 506 I.P.C. Learned counsel for appellants has vehemently argued that in retaliation to the civil litigation and criminal case, opposite party no.2-complainant has falsely implicated the appellants through Case Crime No. 321 of 2022, wherein investigation was not conduced properly, as while filing the charge sheet, the offence punishable under Section 324 I.P.C. was also added.

8. Learned counsel for appellants submits that Special Court, Mathura while considering the final report under Section 173(2) Cr.P.C. for the purposes of taking cognizance of the offences has erroneously allowed the claim of the complainant and has also taken the cognizance in respect of the offences punishable under Sections 325 and 307 I.P.C. Learned counsel submits that Special Court, Mathura has not examined the facts and circumstances of the case carefully and has wrongly passed the impugned order dated 17.8.2023, whereas no offence as alleged would be made out against the accused, as the necessary ingredients to constitute the alleged offences are missing. In support of his arguments, learned counsel has placed reliance upon the decision of Hon'ble Supreme Court ***State of Haryana Vs. Bhajan Lal 1992 SCC(Cr.) 426.*** Learned counsel submits that if, the allegations contained in the prosecution case are taken to be true on its face value, no offence would be made out, therefore, he prayed that impugned order dated 17.8.2023 be set aside and the criminal proceedings against the appellants be dropped.

9. The prayer is opposed by learned A.G.A., who is assisted by learned counsel for complainant-respondent no.2. Learned counsel for

respondent no.2 has argued that merely because a civil dispute between the parties is pending, that alone would not be a ground to disbelieve the case of the prosecution, as the evidence regarding injuries suffered by the injured are supported with documentary evidence. Learned counsel for opposite party no.2 submits that since the investigation in the case was not conducted properly and the charge sheet was not filed in respect of the serious offences committed by the accused, therefore, the complainant-respondent no.2 rightly availed his right to seek indulgence of the Special Court, Mathura for redressal of his grievance. According to learned counsel, while passing the cognizance order dated 17.8.2023, the Special Court, Mathura has given valid reasons and no interference is warranted by this Court. He prays that appeals be dismissed.

10. Learned counsel for the parties have been heard and with their assistance case file has been perused carefully.

11. Amid growing confusion on choice of availing the remedy by a litigant, against an order taking cognizance of the offence(s) based upon police report under Section 173(2) Cr.P.C., passed by Special Court constituted under “Atrocities Act, 1989” i.e. either to file a statutory appeal under Section 14-A of “Atrocities Act 1989” or by invoking inherent powers under Section 482 Code of Criminal Procedure, this Court deems it appropriate to analyse this question before adjudicating the appeal on its merits. Previously, twice this question has been examined by two full benches of this Court in ***In re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015 Vs. Nil, 2018 SCC OnLine All 2087 and Ghulam Rassol Khan and others Vs. State of U.P. And others, passed in Criminal Appeal No. 1000 of 2018,*** but, the conflicting views by the co-ordinate Benches of this Court are still continuing.

12. Full Bench of this Court in the case of ***re Provision of Section 14A of SC/ST (Prevention of Atrocities) Amendment Act, 2015, (Supra)*** had formulated five questions for consideration and question 'B' related to the exercise of powers under Section 482 Cr.P.C. by the High Court and the same reads as under:-

> ***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 ? "*

13. Upon considering the various decisions of the Hon'ble Supreme Court and the High Courts, the Full Bench answered the said question in the following manner:-

> *"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."*

14. The subsequent decision by Full Bench of this Court in ***Gulam Rasool Khan's case (Supra),*** also echoes the voice of the decision by the earlier Full Bench, wherein it is held that in view of Section 14-A of "Atrocities Act, 1989" aggrieved person cannot be allowed to invoke the inherent powers under Section 482 Cr.P.C.

15. Frequently, the petitions originally filed under Section 482 Cr.P.C. challenging such an order taking cognizance of offences based on police report have been received for adjudication, after those were converted as appeals under Section 14-A of “Atrocities Act, 1989”. Recently, to solve the puzzle, another co-ordinate Bench of this Court has again referred this issue before the larger Bench vide order dated 20.9.2023 passed in Application U/S 482 No. 8635 of 2023, which is pending consideration.

16. The Code of Criminal Procedure, 1973 provides for two modes of criminal prosecution, one based upon police investigation report, whereas other is founded on directly instituted private complaint before the Magistrate and these procedures are contained in Chapter XII and XV, respectively. The prosecution in a complaint case begins with the filing of the complaint directly before the court of competent jurisdiction and in the said procedure, the police has no role, except to hold an inquiry under Section 202 Cr.P.C., if, directed by the court. The said inquiry is also for an extremely limited purpose of ascertaining the truth in the allegations contained in the complaint. The procedure meant for a complaint case contemplates that Magistrate shall record the statements of complainant and other witnesses under Section 200 Cr.P.C. and upon considering the same the Magistrate may either dismiss the complaint under Section 203 Cr.P.C. or may issue process against accused. After appearance of the accused, the trial would progress further based upon the classification of the offences i.e. either before the court of Sessions or the Magistrate.

17. Unlike the complaint case, the prosecution based upon police report consists of two stages; First- upon an information to the police, a First Information Report is registered, regarding alleged commission of cognizable offence(s) followed by submission of special report to the concerned court as envisaged under Section 157 Cr.P.C. and thereafter a thorough investigation in the alleged crime is conducted. After

completion of investigation, the final report is prepared as contemplated under Section 173(2) Cr.P.C. for submission before the court of competent jurisdiction for consideration. Second- The trial court examines the final report, and, if, a prima facie case is made out against the accused, the cognizance of offence(s) is taken and then comes the stage of framing of charges against the accused. After commencement of trial, the prosecution witnesses are examined and after discharge of onus by prosecution, the accused is called upon for explanation, if, so required and thereafter, the defence evidence, if any, is recorded. Lastly, the trial court delivers the final judgment of conviction or acquittal.

18. Ordinarily, the trial before the court of sessions commences after committal of the case by the Magistrate as the cognizance of offences directly by Sessions Court is prohibited by Section 193 Cr.P.C., but Section 14 of "Atrocities Act, 1989" contains an exception to Section 193 Cr.P.C. in respect of offences punishable under "Atrocities Act, 1989", as it provides that the courts established or specified under the "Atrocities Act of 1989" shall have power to directly take cognizance of the offences. Section 14 reads 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:*
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> *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 every 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.

19. Thus, by virtue of this statutory provision, the powers vested with the Magistrate to either direct registration of case for investigation contained in Section 156(3) Cr.P.C. or cognizance of offences contemplated by Section 190 Cr.P.C. can also be exercised by the Special Court constituted under Atrocities Act, 1989. This issue has already been dealt with by the Hon'ble Supreme Court in the case of ***Shantaben Burabhai Bhuriya vs. Anand Athabhai Chaudhari, (2021) SCC Online SC 974,*** which has been followed by this Court in ***Gyanendra Maurya @ Gullu Vs. Union of India and others, passed in Criminal Misc. Writ Petition No. 7522 of 2022.*** In this regard, the relevant observations contained in ***Gyanendra's case (Supra)*** read as under:-

*"**34.** We have already held that Section 156(3) of Code 1973 will apply to investigation of an offence under the Act 1989 and as per Section 156(3) of Code 1973 a Magistrate empowered under Section 190 of Code 1973 can order such investigation and as, in view of proviso to Section 14 of the Act 1989 read with Section 190 of Code 1973, it is the Courts established or specified under the Act 1989 which can take cognizance directly in respect of an offence under the Act 1989, therefore, the Magistrate can not and should not take cognizance of an offence under the Act 1989 as such power when specifically vested with the*

Special Courts under the Act 1989 should be exercised by the latter as held in Shantaben Burabhai Bhuriya vs. Anand Athabhai Chaudhari1, therefore, this power under Section 156(3) of Code 1973 has to be exercised by such Exclusive or Special Courts and not the Magistrate.

20. The expression *"cognizance"* as contained in Section 190 Cr.P.C. has not been defined in the Code of Criminal Procedure, but the same has been analyzed by the Hon'ble Supreme Court as well as various High Courts, and consistently it has been held that whenever a court of competent jurisdiction applies its judicial mind to the complaint or the police report, as the case may be, the cognizance of offences is said to be taken. Here it becomes relevant to examine Section 14-A of "Atrocities Act, 1989", which provides for a remedy of appeal in respect of judgment and other decisions passed by Special Court. The Section 14-A reads as under:-

"14-A. (1) Notwithstanding anything contained in the Code of Criminal Procedure,1973, 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, 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.".

21. At this juncture, it would be apt to note that many orders like refusing or granting bail to an accused, discharge of accused or framing charges against an accused are not appealable as per the provisions of Cr.P.C., but by virtue of Section 14-A of "Atrocities Act, 1989" even an appeal lies against such orders. Of course, the remedy of appeal is provided by the "Atrocities Act, 1989", but such appeals are to be adjudicated by following the procedure of adjudication of appeals enshrined under Chapter XXIX Cr.P.C., particularly the Section 386 Cr.P.C., which defines the powers of appellate court. The said Section 386 Cr.P.C. reads as under:-

> ***386. Powers of the Appellate Court.***
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> *- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in the case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -*
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> *(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;*
>
> *(b) in an appeal from a conviction -(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or(ii)alter the finding, maintaining the sentence, or(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;*
>
> *(c) in an appeal for enhancement of sentence -(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court competent to try the offence, or(ii)alter the finding maintaining the sentence, or(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;*
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> *(d) in an appeal from any other order, alter or reverse such order;*

(e) make any amendment or any consequential or incidental order that may be just or proper :

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement :

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal.

22. A reading of the above section would show that Clauses (a), (b) and (c) of the above section are only relating to the appeals against acquittal, conviction and enhancement of sentence, respectively, therefore, an appeal challenging the order taking cognizance of offences would fall with the ambit of Clause (d). The above Section also indicates that appellate jurisdiction can be effectively exercised, if, an appeal is founded on substance, coupled with reasoning, whereupon the impugned decision of the trial court is based. Of course, trial proceedings may carry more procedural aspects, but the appellate court is not supposed to pay much importance to the procedural aspect over and above the material substance. In criminal law there is only one remedy of criminal appeal, therefore, it is incumbent for the appellate court to examine the substance threadbare to test the correctness and validity of an order under challenge in an appeal.

23. Most importantly, at the stage of considering the final report under Section 173(2) Cr.P.C. for the purposes of taking cognizance, neither the complainant is heard nor any opportunity of hearing is provided to the accused, and this exercise only consists of examining the police report carefully to find out, if, the same is complete in all respects and contains the relevant material such as statements of witnesses recorded under Sections 161 and 164 Cr.P.C., other documentary evidence collected during investigation etc. and makes out a case for further proceedings. Thus, assuming the conclusion of

Investigating Officer to be correct, the court passes the cognizance order only to indicate the initiation of criminal proceedings in respect of the alleged commission of offences.

24. Time and again it has been held that at the stage of passing the cognizance order detail reasons are not required to be given by the court and in this regard reference can be made to the decision of Hon'ble Supreme Court in the case of ***Ajay Kumar Parmar Vs. State of Rajasthan, (2012) 12 SCC 406,*** wherein the following observation have been made:-

> *"**19.** The Magistrate, in exercise of its power under Section 190 CrPC, can refuse to take cognizance if the material on record warrants so. The Magistrate must, in such a case, be satisfied that the complaint, case diary, statements of the witnesses recorded under Sections 161 and 164 CrPC, if any, do not make out any offence. At this stage, the Magistrate performs a judicial function. However, he cannot appreciate the evidence on record and reach a conclusion as to which evidence is acceptable, or can be relied upon. Thus, at this stage appreciation of evidence is impermissible. The Magistrate is not competent to weigh the evidence and the balance of probability in the case."*

25. Besides, by now it is also a settled law that while examining the final report under Section 173(2) Cr.P.C., even at the stage of framing of charges against the accused, the trial court is not required to examine the proposed defence of the accused. Since, the examination is confined to the material collected during investigation, therefore, appeal against the order taking cognizance filed on the strength of the proposed defence by the accused would otherwise contain a material, which was neither before the trial court nor was examined while passing the order taking cognizance of offences. But, strangely the appellate jurisdiction is frequently invoked by the accused persons under Section 14-A of "Atrocities Act, 1989" by relying upon the proposed defence or other relevant material, whereas the same cannot be analyzed for the first time, that too by the appellate court in exercise of appellate powers.

26. Comparatively, as far as the trial proceedings based upon a complaint case is concerned, the same is different in nature as in the said procedure, the evidence of complainant and other witnesses is recorded by the trial court itself, whereupon it forms an opinion to find out, if, a prima facie case for alleged commission of offences is made out for issuance of the process against the accused, or the complaint is dismissed under Section 203 Cr.P.C. Thus, any order passed by Special Court in a complaint case can be effectively assailed in an appeal provided under Section 14-A of "Atrocities Act, 1989". In other words, the appellate court would be examining the evidence on record and the reasons given by the Special Court while passing the order under challenge in appeal.

27. Doubtlessly, the nature of the order taking cognizance of offences on a police report cannot be construed as an interlocutory order to hold that in terms of Section 14-A of "Atrocities Act, 1989", no appeal against such an order would lie, but in essence the remedy of appeal may not be effective, particularly when the order under challenge does not contain elaborate reasoning. Examining this issue from another angle, it is noticed that in many cases under other penal laws, the challenge to such orders taking cognizance of offences by the court of competent jurisdiction, are made by filing a petition under Section 482 Cr.P.C., and not by availing the alternative statutory remedy of revision.

28. Now, here the question arises that even if, the remedy of appeal is available to the litigant in terms of Section 14-A of "Atrocities Act, 1989" against an order of taking cognizance of offences, whether inherent powers of this Court envisaged under Section 482 Cr.P.C. can be invoked to challenge such an appealable order as well as the entire criminal proceedings? The inherent powers vested with the High Court under Section 482 Cr.P.C. is extraordinary in nature and the same has been examined by the Hon'ble Supreme Court on numerous occasions

and in the various decisions it has been invariably held that these powers can be exercised irrespective of the availability of the alternative remedy, if, the case falls within the guidelines and parameters laid down by the Hon'ble Supreme Court. As far as the maintainability of a petition under Section 482 Cr.P.C. is concerned, there is no bar to exercise the said inherent powers. The Hon'ble Supreme Court in ***Raj Kapoor and others Vs. State and others, AIR 1980 SC 258,*** while discussing the inherent powers of the High Court vested under Section 482 Cr.P.C., made the following observations:-

> *The first question is as to whether the inherent power of the High Court under Section 482 stands repelled when the revisional power under Section 397 overlaps. The opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397 can affect the amplitude of the inherent power preserved in so many terms by the language of Section 482. Even so, a general principle pervades this branch of law when a specific provision is made; easy resort to inherent power is not right except under compelling circumstances. Not that there is absence of jurisdiction but that inherent power should not invade areas set apart for specific power under the same Code.*
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> *In Madhu Limaye's case this Court has exhaustively and, if I may say so with great respect, correctly discussed and delineated the law beyond mistake. While it is true that Section 482 is pervasive it should not subvert legal interdicts written into the same Code, such, for instance, in s. 397(2). Apparent conflict may arise in some situations between the two provisions and a happy solution:*
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> *"would be to say that the bar provided in sub- section (2) of section 397 operates only in exercise of the revisional power of the High Court meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Then in accordance with one or the other principle enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then if the assailed is purely on an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in*

case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction."

In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extra-ordinary situation excites the court's jurisdiction. The limitation is self-restraint, nothing more. The policy of the law is clear that interlocutory orders, pure and simple, should not be taken up to the High Court resulting in unnecessary litigation and delay. At the other extreme, final orders are clearly capable of being considered in exercise of inherent power, if glaring injustice stares the court in the face. In between is a tertium quid, as Untwalia, J. has pointed out as for example, where it is more than a purely interlocutory order and less than a final disposal. The present case falls under that category where the accused complain of harassment through the courts process. Can we state that in this third category the inherent power can be exercised ? In the words of Untwalia. J.:

"The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible."

29. Further, the Hon'ble Supreme Court in ***Bhajan Lal's case (Supra)*** laid down the guidelines for exercise of inherent powers under Section 482 Cr.P.C. The relevant observation reads as under:-

8.1. *In the exercise of the extra-ordinary power under* Article 226 *or the inherent powers under* Section 482 *of the Code of Criminal Procedure, the following categories of cases are given*

by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- ï7 myriad kinds of cases wherein such power should be exer- cised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investi- gation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institu- tion and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

30. As discussed in the preceding paragraphs that at the stage of framing charges, the trial court is required to look into the material relied upon by the prosecution alone, and the proposed defence of the accused cannot be analyzed, and while examining this issue, the Hon'ble Supreme Court in ***State of Orissa Vs. Debendra Nath Padhi, AIR 2005 SC 359,*** has observed that in exceptional cases, the High Court may consider unimpeachable evidence relied upon by accused while exercising jurisdiction under Section 482 Cr.P.C. The relevant observation reads as under:-

> ***16.*** *All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in State Anti-Corruption Bureau, Hyderabad and Another v. P. Suryaprakasam [1999 SCC (Crl.) 373] where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that (emphasis supplied). The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code.*
>
> *xx xx xx xx xx*
> *xx xx xx xx xx*

20. *Reliance placed on behalf of the accused on some observations made in* Minakshi Bala v. Sudhir Kumar and Others *[(1994) 4 SCC 142] to the effect that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence is misplaced for the purpose of considering the point in issue in these matters. If para 7 of the judgment where these observations have been made is read as a whole, it would be clear that the judgment instead of supporting the contention sought to be put forth on behalf of the accused, in fact, supports the prosecution. Para 7 of the aforesaid case reads as under:-*

"If charges are framed in accordance with Section 240 *CrPC on a finding that a prima case has been made out - as has been done in the instant case - the persons arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under* Section 173 *CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under* Sections 240 *CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in* Sections 239 *and* 240 *CrPC; nor would it be justified in invoking its inherent jurisdiction under* section 482 *CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence."*

21. *It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.*

(emphasis supplied)

31. Again in ***Amit Kapoor Vs. Ramesh Chander and others, (2012) 9 SCC 460,*** the Hon'ble Supreme Court after discussing the scope of inherent powers under Section 482 Cr.P.C. laid down the principles to be considered for proper exercise of jurisdiction under Section 482 Cr.P.C. The relevant observations are as under:-

> ***19.*** *Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be :*
>
> *1) Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*
>
> *2) The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*
>
> *3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*
>
> *4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to*

interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was

possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.

(emphasis supplied)

32. Recently, the Hon'ble Supreme Court in ***Ramawatar Vs. State of Madhya Pradesh, (2022) 13 SCC 635,*** again examined the inherent powers of the High Court contained in Section 482 Cr.P.C., specifically in the context of the "Atrocities Act, 1989" and held that where the proceedings are attended with mala fide intentions and would be abuse of the process of law, the High Court can exercise its powers to quash the proceedings. The relevant observations read as under:-

15. *Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The Act is also a recognition of the depressing reality that despite undertaking several measures, the Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of uppercastes. The Courts have to be mindful of the fact that the Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these*

vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

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.*

33. The above view of the Hon'ble Supreme court is again reiterated in ***Gulam Mustafa Vs. The State of Karnataka and Others, AIR 2023 SC 2999,*** wherein the offences including the offence under "Atrocities Act, 1989" were quashed. Relevant part is reproduced:-

36. *What is evincible from the extant case-law is that this Court has been consistent in interfering in such matters where purely civil disputes, more often than not, relating to land and/or money are given the colour of criminality, only for the purposes of exerting extra-judicial pressure on the party concerned, which, we reiterate, is nothing but abuse of the process of the court. In the present case, there is a huge, and quite frankly, unexplained delay of over 60 years in initiating dispute with regard to the ownership of the land in question, and the criminal case has been lodged only after failure to obtain relief in the civil suits, coupled with denial of relief in the interim therein to the respondent no.2/her family members. It is evident that resort was now being had to criminal proceedings which, in the considered opinion of this Court, is with ulterior motives, for oblique reasons and is a clear case of vengeance.*

37. *The Court would also note that even if the allegations are taken to be true on their face value, it is not discernible that any offence can be said to have been made out under the SC/ST Act against the appellant. The complaint and FIR are frivolous, vexatious and oppressive.*

> ***38.*** *This Court would indicate that the officers, who institute an FIR, based on any complaint, are duty- bound to be vigilant before invoking any provision of a very stringent statute, like the SC/ST Act, which imposes serious penal consequences on the concerned accused. The officer has to be satisfied that the provisions he seeks to invoke prima facie apply to the case at hand. We clarify that our remarks, in no manner, are to dilute the applicability of special/stringent statutes, but only to remind the police not to mechanically apply the law, dehors reference to the factual position.*
>
> ***39.*** *For the reasons aforesaid, the Court finds that the High Court fell in error in not invoking its wholesome power under Section 482 of the Code to quash the FIR. Accordingly, the Impugned Judgment, being untenable in law, is set aside. Consequent thereupon, the FIR, as also any proceedings emanating therefrom, insofar as they relate to the appellant, are quashed and set aside.*

34. Also, in many cases where during pendency of the cases, if, the parties arrive at a compromise, even then the appeals are filed before this Court under Section 14-A of “Atrocities Act, 1989” for setting aside the entire criminal proceedings including the order taking cognizance of the offences on the strength of the said compromise. But, in the considered opinion of this Court, such an appeal cannot be construed as an appropriate remedy, particularly when the said compromise between the parties is not a part of the record of the case pending before the Special Court. The Hon’ble Supreme Court has injected some elasticity in laying down the principles for quashing of the criminal proceedings even in non compoundable offences on the basis of compromise, but all such decisions relate to the exercise of inherent powers vested with High Courts under Section 482 Cr.P.C. In ***Gian Singh Vs. State of Punjab and another, 2012 (4) RCR (Criminal) 543,*** the Hon'ble Supreme Court has also discussed the powers of High Court under Section 482 Cr.P.C. and the relevant portion reads as under :-

> *"The position that emerges from the above discussion can be summarised thus: the power of the High Court in quashing a*

criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding."

35. Consequently, in view of the above discussion, as well as in the light of the law laid down by the Hon’ble Supreme Court it is

abundantly clear that even if, Section 14A “Atrocities Act, 1989” provides for a remedy of appeal against an order taking cognizance of the offences, but in a given case, which falls within the guidelines and parameters laid down by the Hon’ble Supreme Court for exercise of powers under Section 482 Cr.P.C., the said remedy can be availed by the litigant, and availability of alternative statutory remedy cannot be a ground for refusal to exercise the inherent powers under Section 482 Cr.P.C., if the merits of the case makes out a case for exercise of inherent powers under Section 482 Cr.P.C.

36. Since, the jurisdiction of the appellate court is limited, therefore, at least in cases where the trial is either yet to commence or pending, the appellate powers cannot be exercised for setting aside the criminal proceedings on the basis of compromise between the parties. In such cases also the appropriate remedy would be to invoke inherent powers under Section 482 Cr.P.C.

37. Now, while turning back to the merits of these appeals, this Court finds that reliance placed upon by the appellants on the pendency of the civil dispute between the parties in the given set of facts and circumstances of the case is misplaced, as the offence contained in F.I.R. relates to the offences against human body. Further, the case of the prosecution is also supported by the medical evidence of the injured-Lekhi (Annexure No.5), which reveals that in all he suffered ten injuries on various parts of his body. The case of the prosecution is further supported by the statement of Dr. Sushil Kumar, Civil Hospital, Mathura, thus, it cannot be said that ingredients to constitute the offences are not made out against the accused, who are specifically named in the F.I.R.

38. However, as far as the addition of offences in the final report under Section 173(2) Cr.P.C. by Special Judge (SC/ST Act), Mathura is concerned, the same is apparently not sustainable in the eyes of law.

Again it is observed that at the stage of taking cognizance of offences on the basis of police report, hearing is not provided to the complainant or the accused and addition of the offences under Section 325 and 307 I.P.C. without hearing the accused would certainly result in prejudice to them. Apart from this, in-depth evaluation of the charge sheet under Section 173(2) Cr.P.C. is conducted at the stage of considering the prosecution case for the purposes of framing charges against the accused, and if, the material on record indicates that some other offence, which is not contained in the charge sheet is also prima facie made out against the accused, the trial court is well within its jurisdiction and powers to frame charges against the accused in respect of such offences. Consideration of the final report at the stage of taking cognizance of offences is for a limited purposes and while analyzing the similar issue, the Hon'ble Supreme Court in ***State of Gujarat Vs. Girish Radhakrishnan Varde, 2013 (0) Supreme (SC) 1070,*** held that the offences cannot be either added or subtracted in the police report at the stage of taking cognizance under Section 190 Cr.P.C. In this regard, the relevant observations made by Hon'ble Supreme Court are reproduced below:-

> ***14.*** *The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offence into the chargesheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the magistrate before whom the matter comes up for taking cognizance after submission of the chargesheet and as already stated, the magistrate in a case which is based on a police report cannot add or substract sections at the time of taking cognizance as the*

> *same would be permissible by the trial court only at the time of framing of charge under section 216, 218 or under* section 228 *of the Cr.P.C. as the case may be which means that after submission of the chargesheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.*

39. In view of above discussion, this Court has no hesitation in holding that only to the limited extent, whereby the claim of the complainant has been accepted by taking cognizance of the offences punishable under Sections 325 and 307 I.P.C. is not sustainable, thus, to that extent, the impugned order dated 17.8.2023 is set aside. However, it shall be open for the complainant/ prosecution as well as the accused to press their respective claims before the Special Court, Mathura at the stage of consideration of the final report under Section 173(2) Cr.P.C. for framing of charges.

40. Resultantly, without meaning any expression of opinion on the merits of the case, these appeals are partly allowed and while upholding the impugned order dated 17.8.2023 only to the extent of taking cognizance of offences contained in police report under Section 173(2) Cr.P.C., the remaining part is hereby set aside.

(Manoj Bajaj, J.)

Order Date :- 8.5.2024
P.S.Parihar