

(2024) 10 JH CK 0033

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 847 Of 2023

Sanjit Kumar @ Sanjit Jaiswal

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 28-10-2024

Acts Referred:

Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 14A

Citation : (2024) 10 JH CK 0033

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Birendra Burman, Achinto Sen

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. In Cr. Appeal (SJ) No.847 of 2023 the respondent State has filed counter affidavit saying that respondent no.2 has left for his heavenly abode.
2. Learned counsel for the appellants submits that this matter is arising out of complaint case and he is not knowing whether substitution is made before the learned trial court or not.
3. Heard learned counsel for the appellants as well as the learned counsel appearing for the respondent State.
4. I.A. No.59 of 2024 has been filed for condonation of delay of 180 days in filing the present criminal appeal.
5. Mr. Burman, learned counsel appearing for the appellants submits that earlier the appellants have moved in Cr.M.P. No.581 of 2021, however, the same was dismissed as withdrawn by order dated 02.11.2023 with liberty to avail remedy under section 14(A) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

6. He submits that the appellants had earlier preferred Cr.M.P. challenging the order taking cognizance as well as the entire criminal proceeding, however, the said Cr.M.P. was dismissed by the Coordinate Bench saying that the said Cr.M.P. is not maintainable in light of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as there is provision of appeal. He submits that thereafter the present criminal appeal has been preferred and in view of that, such delay has occurred. He further submits that proviso of Section 14-A has been struck down by the Full Bench of the Hon'ble Allahabad High Court in the case of Ghulam Rasool Khan and others v. State of U.P. and others, reported in 2022 SCC OnLine All 975 and in this background, the delay may kindly be condoned as for civil wrong, if any, the complaint case has been registered. In this background, he submits that the limitation petition may kindly be allowed.

7. Learned counsel for the State submits that the delay is there, however, he is not disputing that the appellants had earlier moved before this Court in the said Cr.M.P., which was dismissed as not maintainable in light of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He is further not disputing with regard to the submission of the learned senior counsel appearing for the appellants that the provision of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been struck down by the Full Bench of the Hon'ble Allahabad High Court.

8. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that it is an admitted position that the Full Bench of the Hon'ble Allahabad High Court has struck down the proviso of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Ghulam Rasool Khan (supra).

9. The High Court is required to decide the case on the existing law even if the matter is referred to the larger Bench, as has been held by the Hon'ble Supreme Court in the case of Union Territory of India and others v. Jammu and Kashmir National Conference and others, reported in 2023 SCC OnLine SC 1140. Till the order of the Full Bench of the Hon'ble Allahabad High Court is reversed, that order is existing today.

10. It is further well settled that the order of any Full Bench of any constitutional Court is binding upon other High Courts, as has been held by the Hon'ble Supreme Court in the case of Central Board of Dawoodi Bohra Community v. State of Maharashtra, reported in (2005) 2 SCC 673. Thus, the objection of the learned counsel for respondent no.2 with regard to dismissal of the limitation petition is not being accepted by this Court.

11. It is also an admitted position that the appellants had earlier moved before this Court in Cr.M.P., which was dismissed holding that the said Cr.M.P. is not maintainable in light of the Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

12. It is further well known that if a wrong forum is chosen by any of the party, the period of that can be condoned and no litigant can be deprived of remedyless. A reference in this regard may be made to the judgment passed by the Hon'ble Supreme Court in the case of Kusum Ingots & Alloys Ltd. v. Union of India and another, reported in (2004) 6 SCC 254. Paragraph 22 of the said judgment reads as under:

"22. The Court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause (2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act."

13. In view of the above background, this Court finds that sufficient cause is made out to condone the delay and, as such, the delay of 180 days in filing the present criminal appeal is, hereby, condoned.

14. Accordingly, I.A. No.59 of 2024 is disposed of.

15. Let this appeal be placed after Deepawali vacation.

16. Office will proceed further as per the procedure.