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Reserved

Chief Justice's Court

Case :- CRIMINAL WRIT-PUBLIC INTEREST LITIGATION No. - 8 of 2018

Petitioner :- In Re Provision Of Section 14a Of Sc/St(Prevention Of Atrocities) Amendment Act,2015
Respondent :- Nil
Counsel for Petitioner :- Suo Motto

With

Case :- CRIMINAL MISC. BAIL APPLICATION No. - 38755 of 2017

Applicant :- Satyendra & Another
Opposite Party :- State Of U.P.
Counsel for Applicant :- Sujan Singh,Kamlesh Kumar Dwivedi
Counsel for Opposite Party :- G.A.,Brijesh Kumar Pandey

With

Case :- CRIMINAL WRIT-PUBLIC INTEREST LITIGATION No. - 11 of 2018

Petitioner :- Vishnu Behari Tiwari
Respondent :- Union Of India And 2 Others
Counsel for Petitioner :- Vishnu Bihari Tewari
Counsel for Respondent :- ,A.S.G.I.,G.A.,Jai Shanker Audichya

Hon'ble Dilip B. Bhosale, Chief Justice
Hon’ble Ramesh Sinha, J.
Hon'ble Yashwant Varma,J.

Per [Dilip B Bhosale, CJ]

The order of reference dated 21 December 2017 in **Satyendra & Another Vs. State of Uttar Pradesh [**Criminal Misc. Bail Application No. 38755 of 2017], passed by a learned

Single Judge, while dealing with three Criminal Misc. Bail Applications and a Criminal Appeal (Defective), takes a divergent view from the one expressed by another learned Single Judge in **Janardan Pandey vs State of Uttar Pradesh** (Criminal Appeal No.2943 of 2017) and **Rohit vs State of Uttar Pradesh** (Criminal Appeal Defective No.523 of 2017). In all these cases, the provisions of Section 14A of the **Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015** (for short **"the Amending Act"**) fell for consideration. Apart from the divergent opinions expressed in the above cases, on the questions centering around Section 14A of the Amending Act, we have also taken *suo moto* cognizance of the issues arising therefrom in Criminal PIL No. 8 of 2018. We had accordingly clubbed the aforementioned two matters together.

In the meanwhile Sri Vishnu Bihari Tiwari, a practicing Advocate of this Court preferred **Criminal Writ-Public Interest Litigation No. - 11 of 2018** challenging the provisions contained in sub-section (2) of Section 14A. By way of an amendment an additional challenge was raised in respect of the second proviso to Section 14A (3) of the Amending Act Both these provisions were challenged on the ground of being unjust, unreasonable,

arbitrary and violative of Articles 14 and 21 of the Constitution. This petition was tagged with the present reference and notices were duly issued to the Attorney General of India. The learned ASG has appeared on his behalf as well as the Union of India in these proceedings.

It would be advantageous to firstly reproduce the questions that are framed in the reference order which occasioned constitution of a Larger Bench initially. The questions framed in the reference order dated 21 December 2017, read thus:

> "(i) Whether in matters of offences committed before 26.1.2016, from which date amending Act no.1 of 2016 inserting/adding provisions of appeal against orders allowing or refusing an application for bail by the Special or Exclusive Special Judge under S.C./S.T. Act has been enforced, the filing of appeal will be incompetent on the ground of offence having been committed prior to enforcement of above provisions of section 14-A and an application for bail under general provisions of law section 439 Cr.P.C. before this Court, would be competent as held in the case of **Janardan Pandey** (supra) ?
>
> (ii) Whether the provisions of newly added section 14-A (3) and its proviso prescribing the limitation period of 90 days from the date of order, further providing for the condonation of delay by the High Court in appeals preferred beyond the period of 90 days and again providing a maximum period of 180 days, after which no appeal shall be entertained, puts absolute bar on the right of appeal and renders the

aggrieved persons remediless or it only suspends the general provisions of seeking bail from the High Court under the provisions of section 439 Cr.P.C. for a limited period of 180 days after which the provisions of section 14-A becomes obsolete and ineffective for ever and the right to seek bail before the High Court under general provisions of law section 439 Cr.P.C. stands revived as held in the case of **Rohit** (supra) or the accused may move fresh application for bail before Special or Exclusive Special Court and in case of its rejection may have fresh right of appeal under section 14-A of the Act ?

(1.i) Whether an appeal filed under section 14-A of S.C./S.T. Act may be converted into an application for bail under section 439 Cr.P.C. in exercise of inherent powers under section 482 Cr.P.C. on account of offence having been committed prior to 26.1.2016, the date of enforcement of Act No.1 of 2016 or on account of expiry of more than 180 days from the date of impugned order of Special or Exclusive Special Court?"

The questions formulated for the consideration of this Full Bench on the suo moto petition read thus:-

"A. Whether by virtue of the provisions of the Scheduled Castes and the Scheduled Tribes (Amendment) Act, 2015 the powers of the High Court under Articles 226/227 or its revisional powers or the powers under Section 482 Cr.P.C. shall stand ousted?

B. Whether the amended provisions of Section 14 A would apply to offenses or proceedings initiated or pending prior to 26 January 2016?

> C. Whether upon the expiry of the period of limitation for filing of an appeal as specified in the second proviso to Section 14 (A) (3), Section 439 Cr.P.C. and the powers conferred on the High Court in terms thereof would stand revived.
>
> D. Whether the power to directly take cognizance of offenses shall be exercisable by the existing Special Courts other than the Exclusive Special Courts or Special Courts to be specified under the amended Section 14?"

We have not only heard counsels appearing for the parties in the petitions and connected bail applications, but had also invited members of the Bar, by publication of a notice in the cause list of the Court, to address us on the questions bearing in mind that they raised questions of general importance. Accordingly, a large number of lawyers came forward to address the Court and we have heard them. Mr Sushil Shukla, made the leading arguments. We have also heard Mr Ravi Kiran Jain, learned Senior Advocate and few other Advocates. Mr Rajiv Lochan Shukla, as Amicus Curiae, also addressed the Court on all the questions noticed above. We have also heard Mr Manish Goyal, learned Additional Advocate General for the State and Mr S P Singh, learned Additional Solicitor General, appearing on instructions of the Attorney General of India and on behalf of the

Union of India on the validity of Section 14A. Learned ASG also addressed submissions on the questions, formulated for our consideration.

After hearing counsels at considerable length and with their assistance, we have re-framed/re-formulated the questions, as follows:

> "A. Whether provisions of sub-section (2) of Section 14-A and the second proviso to sub-section (3) of Section 14-A of the Amending Act, are violative of Articles 14 and 21 of the Constitution, being unjust, unreasonable and arbitrary?
>
> 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 ?
>
> C. Whether the amended provisions of Section 14-A would apply to offences or

proceedings initiated or pending prior to 26 January 2016?

D. Whether upon the expiry of the period of limitation for filing of an appeal as specified in the second proviso to Section 14-A (3), Section 439 Cr.P.C. and the powers conferred on the High Court in terms thereof would stand revived ?

E. Whether the power to directly take cognizance of offences shall be exercisable by the existing Special Courts other than the Exclusive Special Courts or Special Courts to be specified under the amended Section 14?"

Before we deal with the questions that arise for our consideration, it would be relevant to make a brief reference to the background facts against which the reference came to be made by the learned Single Judge in **Satyendra** (supra). In **Janardan Pandey** (supra), the learned Judge relying upon the judgment of the Supreme Court in **Garikapati Veeraya vs N. Subbiah Choudhry and others**[1], observed that since the newly added provisions of the Amending Act have not been given retrospective effect, the Criminal Appeal, which relates to a crime alleged to have been committed on 24.11.2000, i.e. before enforcement of the Amending Act, is not maintainable, and on rejection of the bail application by the Court below, the proper

1 Air 1957 SC 540

remedy available to the accused-appellant was to move an application for bail under the general provisions of Section 439 Cr.P.C. Consequently, to secure the ends of justice exercising powers under Section 482 Cr.P.C., the appeal was converted into an application for bail under Section 439 Cr.P.C. and on consideration of the matter on merits, the prayer for bail was refused. In short, it was held that since the provisions of Section 14A have not been given retrospective effect, in matters relating to offences committed before 26.01.2016, (i.e. the date on which the Amending Act was brought into force) an appeal would not be maintainable and an application for bail under the Section 439 Cr.P.C. would be maintainable. In **Satyendra** (supra) the learned Single Judge, after noticing the facts in **Garikapati Veeraya vs N. Subbiah Choudhry and others** (supra) which arose from the substantive civil law in respect of a vested right of appeal, held that the the reliance placed on the said judgment was wrong, and expressed total disagreement with the view reflected in **Janardan Pandey** (supra).

In **Rohit** (supra) the very same learned Judge, who dealt with **Janardan Pandey's** case, observed that the insertion/addition of Section 14A of the Amending Act is a legislative device to bypass the remedy of moving a bail

application under Section 439 Cr.P.C. before this Court and in view thereof, against the order granting or refusing bail by the Special Court or Exclusive Special Court, a remedy of appeal has been provided for a limited period of 180 days and in view of Section 5 Cr.P.C., after expiry of the said period, the provisions of Section 14A shall remain no longer law for the time being in force and the accused-appellant would be entitled to invoke the provisions of Section 439 of Cr.P.C., as for him this legal remedy revives as soon as his right to file an appeal stands extinguished by virtue of the provisions of limitation placed therein. In that case (**Rohit**), where the appeal filed under Section 14A (2) of the Amending Act was reported by the office of the Stamp Reporter to have been filed beyond 357 days from the prescribed period of limitation, the learned Single Judge held that since after the expiry of 180 days no appeal could be entertained in view of the provisions of Section 14A (3) of the Amending Act, the general provisions of Section 439 of Cr.P.C. will stand revived and consequently, the accused will have a right to move an application for bail under Section 439 of Cr.P.C. In the reference order, the learned Single Judge, after making a detailed reference to the orders passed in **Janardan Pandey** (supra) and **Rohit** (supra), framed the questions extracted above for the consideration of a larger Bench.

At the outset, we would like to consider the validity of Section 14A (2) and the second proviso to Section 14A (3) of the Amending Act. Before we deal with the challenge, we find it relevant to reproduce the provisions contained in Section 14A as a whole, to understand not only the challenge to sub-section (2) and the second proviso to sub-section (3) of Section 14A, but also to address the other questions, which also centered around the said provision. Section 14A of the Amending Act, 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.
>
> (1.1) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973 (2 of 1974), an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.
>
> (3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of 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."

From a plain reading of this provision, which commences with a *non obstante clause,* it appears to us that an appeal, notwithstanding anything contained in the Cr.P.C., shall lie from any judgment, sentence or order, not being an interlocutory order, passed by a Special Court or an Exclusive Special Court to the High Court, both on facts and on law. Sub-section (2) makes provision for an appeal, though an order granting or refusing bail, is fundamentally interlocutory in nature. In other words, although an order granting or refusing bail is an interlocutory order, notwithstanding anything contained in sub-section (3) of Section 378 Cr.P.C., an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail. Thus, this is the only specie of interlocutory orders (i.e. granting or refusing bail) which is made appealable, and no other interlocutory order is appealable, in light of the express language of sub-section (1) of Section 14A of the Amending Act. In other words, sub-section (1) of Section 14A of the Amending Act, provided that an appeal shall lie to the

High Court from any judgment, sentence or order, not being an interlocutory order, of an exclusive Special Court/Special Court. At the cost of repetition, we observe that an appeal is not maintainable against other interlocutory orders. This is perhaps, in view of the scheme of the Amending Act, which provides for proceedings of trial on a day to day basis and to conclude the same not only expeditiously but within the time frame stipulated. That seems to be the underlying intent of the Legislature, while drafting the Amending Act and in not providing a remedy of appeal against any other interlocutory order passed by the Special or Exclusive Special Court. We, at this stage, make it clear that we are dealing only with the provisions contained in Section 14A of the Amending Act. In other words, we are dealing with the questions that fall for our consideration in the light of the provisions of Section 14A of the Amending Act. Insofar as Section 14 is concerned, we will deal with the same independently while addressing the last question framed by us. In short, we observe that insofar as sub-section (1) and sub-section (2) of Section 14A are concerned, no appeal is provided against any interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under sub-section (2) of Section 14A of the Amending Act. This conscious and

explicit exception appears to have been made bearing in mind that an order granting or refusing bail is directly concerning the liberty of the accused and, therefore, although other interlocutory orders are not made appealable, an appeal is provided against an order granting or refusing bail. Thus, sub-section (2) carves out an exception to the general exclusion of an appeal against interlocutory orders which are not appealable under Section (1) of Section 14A.

Insofar as sub-section (3) of Section 14A is concerned, it provides for the limitation for filing an appeal against a judgment, sentence or order, not being an interlocutory order. Under this provision, every appeal before the High Court shall be preferred within a period of ninety days from the date of the judgment, sentence or order appealed from. The first proviso confers a power on the High Court to 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 that period. The second proviso, which, *prima facie*, in our opinion, is mandatory in nature, provides that no appeal shall be entertained after expiry of the period of 180 days. In other words, the second proviso mandates that no appeal shall be entertained by this Court after expiry of the period of 180 days.

Sub-section (4) provides for disposal of every appeal preferred under sub-section (1), as far as possible, within a period of three months from the date of admission of the appeal.

Thus, it is clear from Section 14A that it brings out certain radical changes in the challenge procedure as originally envisaged under the **Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989** [hereinafter referred to as **"the 1989 Act"**]. It principally creates an appellate forum at the level of the High Court to challenge any judgment, sentence or order, not being an interlocutory order, including an order refusing or granting bail. In this sense, Section 14A makes a significant departure from the original 1989 Act inasmuch as while, prior to promulgation of the Amending Act, the concurrent power of the High Court under Section 439 Cr.P.C. was preserved, the said powers have now been substituted by creation of an appellate forum at the level of the High Court to consider all challenges relating to any judgment, sentence or order passed by the trial Judges dealing with offences committed under the 1989 Act as well as the power to hear appeals against orders granting or refusing bail. The primary question, which is required to be addressed by this Full Bench, is with respect to the impact that the introduction of Section 14A would have on the

powers of the High Court conferred by Articles 226/227 of the Constitution of India, revisional powers conferred by Section 397 Cr.P.C. as well as its inherent powers as recognized and enshrined in Section 482 Cr.P.C. While we shall deal with this issue in the latter part of this judgment, we propose to firstly deal with the challenge raised to Section 14A of the Amending Act. The question which arises for our consideration is this:-

> **"A. Whether provisions of sub-section (2) of Section 14-A and the second proviso to sub-section (3) of Section 14-A of the Amending Act, are violative of Articles 14 and 21 of the Constitution, being unjust, unreasonable and arbitrary?"**

The challenge to sub-section (2) was essentially raised on the following grounds. Sri Tiwari contended that the issue of bail is essentially one of liberty and public safety which must be addressed in the backdrop of a developed jurisprudence of bail. It was submitted that bail is an integral element of a socially sensitized judicial process. It was contended that the concurrent power to grant bail as recognised by Section 439 Cr.P.C. has clearly been taken away thus rendering sub-section (2) being liable to be declared *ultra vires* on the ground of manifest arbitrariness. Sri Tiwari has contended that a careful reading of

the Sixth[th] Report submitted by the Standing Committee on Social Justice and Empowerment clearly establishes that no recommendation was made for the powers of the High Court as conferred by Section 439 Cr.P.C. being taken away. He sought to highlight the fact that the report of the Standing Committee had been tendered to the Lok Sabha in respect of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Bill 2014 itself which later stood passed as the Amending Act. In view of the above, Sri Tiwari submits that Section 14A is clearly a case of *"excessive legislation"*. Elaborating on his submissions with respect to the validity of sub-section (2) Sri Tiwari has placed strong reliance upon the decision of the Supreme Court in **Nikesh Tarachand Shah v. Union of India**[2] to submit that any onerous condition which stands attached to the powers of a Court to consider the issue of bail must necessarily be held to be violative of Articles 14 and 21 of the Constitution. According to Sri Tiwari, the decision of the Supreme Court in **Nikesh Tarachand Shah** clearly applies to the facts of the present case since it is evident that the valuable rights of an accused to apply to the High Court for grant of bail under Section 439 Cr.P.C. stands fundamentally erased and fettered by the provisions of Section 14A. Sri Tiwari therefore,

2 (2017 SCC Online SC 1355)

submits that the salutary power conferred upon the High Court has been expressly taken away by Section 14A which on its plain language is mandated to operate notwithstanding anything to the contrary contained in the Cr.P.C. The challenge to sub-section (2) was also addressed in the backdrop of the revisional and inherent powers as conferred on the High Court to deal with judgments, sentence or orders passed by the Courts constituted under the Act.

The challenge to the second proviso to sub-section (3) was raised principally on the anvil of Article 21 of the Constitution. Sri Tiwari contended that the right of an accused to at least one opportunity of a substantive appeal stands foreclosed on the expiry of 180 days. This according to Sri Tiwari is clearly violative of Article 21 of the Constitution since the right of appeal flows directly from the said Article. The provision, according to Sri Tiwari, also denudes the High Court of the power to consider condoning the delay caused in preferment of an appeal even though sufficient cause may have existed and is shown or established. According to Sri Tiwari the right of an accused to prefer an appeal on the expiry of 180 days stands lost forever in light of the provisions of the second proviso.

Countering the submissions advanced on behalf of the

petitioner, the learned ASG submitted that sub-section (2) cannot be said to have placed any unreasonable restrictions on the right of an aggrieved person to assail any judgment, sentence or order passed in proceedings initiated under the 1989 Act. According to the learned ASG Section 14A only creates a substantive and exclusive forum for consideration of all challenges emanating from proceedings taken under the 1989 Act. The learned ASG would submit that though the powers of the High Court as enshrined in Section 439 and 482 Cr.P.C. stand impliedly taken away, the aggrieved person is provided a wholesome avenue of an appeal to the High Court. The learned ASG further laid stress upon the fact that an appeal under Section 14A would lie both on facts and on law. The creation of the appellate forum, according to the learned ASG, was an adequate and sufficient safeguard of the rights of an aggrieved person to question any judgment, sentence or order and that it could not, therefore, be said that he is left remediless. The learned ASG then submitted that though the concurrent powers of the High Court under Section 439 Cr.P.C. are taken away, adequate and wholesome measures have been made and placed in terms of sub-section (2) by providing the aggrieved person a right of an appeal both against an order either granting or refusing bail.

Addressing the challenge raised to the second proviso to sub-section (3), the learned ASG contended that the remedy of an appeal which is liable to be preferred within 180 days is an adequate and substantive remedy provided under the statute. The learned ASG submitted that the discretion of the High Court to condone delay is preserved up to a period of 180 days. He further contended that the period of limitation for preferring an appeal cannot therefore be said to be manifestly arbitrary since it is incumbent upon an aggrieved person to exercise his rights within reasonable time. The learned ASG then submitted that even after the expiry of a period of 180 days, it would be open to the High Court to condone delay by exercising its jurisdiction either under Articles 226/227 of the Constitution or in exercise of its inherent powers under Section 482 Cr.P.C. Lest we be misunderstood, we deem it apposite to extract the proposition of law as submitted by the learned ASG dealing with this issue which reads thus:

> "7. However, in the exceptional and compelling circumstances in order to do substantial Justice hands of this Hon'ble Court are not tied under the inherent powers as enshrined under the Constitution.
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> That in a given case, even after 180 days, the person aggrieved is not remedyless.
>
> That the person aggrieved after 180 days may take

> recourse of Sec. 482 Cr.P.C. to seek condonation of delay."

Sri Manish Goyal, learned Additional Advocate General appearing for the State has submitted that the provisions of Section 14A cannot be viewed or tested without bearing in mind the ethos of the Amending Act. Taking us through the provisions of the Amending Act, Sri Goyal has submitted that the same was essentially aimed at a speedy trial of offences and closure of proceedings. Referring to Articles 17 and 35 of the Constitution, Sri Goyal sought to highlight the regrettable and yet undisputed fact of continued persecution of members of the Scheduled Castes and Scheduled Tribes despite more than 70 years having passed since the independence of the Nation. Sri Goyal submitted that the creation of Special and Exclusive Special Courts and the time frames for each stage of proceedings as placed and introduced in the Amending Act were all indicative of the underlying legislative objective of a speedy trial of offences committed against members of the Scheduled Castes and Scheduled Tribes. In the submission of Sri Goyal, Section 14A is nothing but an extension of this underlying legislative objective. Sri Goyal laying stress on the non obstante clause appearing in the three sub-sections of Section 14A submitted that the Amending Act in unequivocal terms was designed to override the

general provisions contained in the Cr.P.C. According to Sri Goyal, the enactment in question was a special statute dealing with a particular class of offences committed against members of a historically disadvantaged class of citizens. In view thereof, he submitted that the mandate of the legislature to override the challenge procedure as contained in the Cr.P.C be it Sections 397, 439 or 482 cannot be introduced by a side wind. This position according to the learned Additional Advocate General is further buttressed by section 20 of the 1989 Act which gives the statute overriding effect over all other statutes and contrarian provisions contained therein. Sri Goyal highlighted the fact that Section 14A makes an express provisions for an appeal to be preferred to the High Court both on facts and on law. This according to Sri Goyal was a sufficient safeguard placed by the legislature and clearly preserved the rights of an aggrieved person. Sri Goyal submitted that the provisions of sub-section (2) place no onerous burden upon an aggrieved person to approach the High Court if he be aggrieved by any judgment, sentence or order passed by a Special or Exclusive Special Courts. Turning then to the challenge to the second proviso, Sri Goyal submitted that since Section 14A makes a special provision prescribing a definitive period of limitation, the general provisions of the Limitation Act, 1963 would not apply. The submissions of Sri

Goyal essentially rested on Section 29 of the said Act with the aid of which it was submitted that where a statute prescribes a special period of limitation departing from the general provisions of the Limitation Act, 1963 it is that provision made in the said statute alone which would apply and override the general provisions. Sri Goyal in support of his submissions placed reliance upon the decisions of the Full Bench of the Court in **Commissioner of Income Tax Vs. Mohammad Farooq**[3] as well as on **Assam Urban Water Supply and Sewerage Board Vs. Subhash Projects and Marketing Ltd.**[4] to drive home his point that where a special provision of limitation is placed in a statute, the general provisions of the Limitation Act would not apply. Sri Goyal has then referred us to the decision of the Privy Council in **Nagendra Nath Dey v. Suresh Chandra Dey**,[5] as well as to a decision of the Court of Appeals in **Lucy Vs. WT Henleys Telegraph Works Co. Ltd.**[6] to submit that the prescription of a period of limitation is essential to ensure that stale claims are not raised before a Court and that a party exercises his rights within reasonable time. Sri Goyal has referred to the observations of the Privy Council to the effect that although the fixation of the period of limitation may always to some extent be arbitrary and

3 2009 (8) ADJ 39
4 (2012) 2 SCC 624
5 AIR 1932 PC 165
6 1969 (3) WLR 588

frequently result in hardship, in construing such provisions equitable considerations cannot have any place. According to Sri Goyal there is no element of arbitrariness that may automatically stand attracted to the prescription of a period of limitation. Sri Goyal submitted that bearing in mind the essential theme of the Amending Act to be a speedy trial of offences, the prescription of 180 days for the preferment of an appeal is a reasonable period and cannot be viewed as being arbitrary. Sri Goyal on our pointed query submitted that he did not agree with the contention of the learned ASG that an appeal can be preferred even after the expiry of the period of 180 days with the High Court reverting to its powers conferred either by Articles 226/227 of the Constitution or Section 482 Cr.P.C. According to Sri Goyal, the discretion of the High Court has been correctly restricted to be available only up to a period of 180 days where after the judgment, sentence or order would attain finality and all rights of the aggrieved person would stand foreclosed. It is in the backdrop of the above submissions that we now proceed to consider the merits of the challenge raised.

The questions which stand posited would in our considered view, merit consideration and resolution bearing in mind the historical backdrop which led to the promulgation of the 1989

Act of 1989 and the amendments introduced subsequently which directly arise for our consideration. This aspect was emphasised by the Supreme Court while dealing with a challenge to the provisions of the 1989 Act insofar as they excluded the provisions of section 438 Cr.P.C. In **State of M.P. v. Ram Kishna Balothia**[7]**,** it was observed:-

> "**6.** It is undoubtedly true that Section 438 of the Code of Criminal Procedure, which is available to an accused in respect of offences under the Penal Code, is not available in respect of offences under the said Act. But can this be considered as violative of Article 14? The offences enumerated under the said Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of 'untouchability' and forbids its practice in any form. It also provides that enforcement of any disability arising out of 'untouchability' shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) arise out of the practice of 'untouchability'. It is in this context that certain special provisions have been made in the said Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code of Criminal Procedure in connection with offences under the said Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail

7 (1995) 3 SCC 221

> of anticipatory bail. In this connection we may refer to the Statement of Objects and Reasons accompanying the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Bill, 1989, when it was introduced in Parliament. It sets out the circumstances surrounding the enactment of the said Act and points to the evil which the statute sought to remedy. In the Statement of Objects and Reasons it is stated:
>
> The above statement graphically describes the social conditions which motivated the said legislation. It is pointed out in the above Statement of Objects and Reasons that when members of the Scheduled Castes and Scheduled Tribes assert their rights and demand statutory protection, vested interests try to cow them down and terrorise them. In these circumstances, if anticipatory bail is not made available to persons who commit such offences, such a denial cannot be considered as unreasonable or violative of Article 14, as these offences form a distinct class by themselves and cannot be compared with other offences."
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> (emphasis supplied)

Article 17 stood originally numbered as Article 11 in the Draft Constitution. This Article fell for discussion before the Constituent Assembly on 29 November 1948. The basic principle and objective underlying this Article was lucidly recognised and explained by Dr. Manmohan Das, a member of the Constituent Assembly in the following words:

> "**CONSTITUENT ASSEMBLY DEBATES [VOLUME 7]**
>
> **MONDAY THE 29TH NOVEMBER 1948**

Mr. Vice-President: We now come to article 11. The motion before the House is that article 11 form part of the Constitution. We shall now take up the amendments one by one. No. 370 is out of order. Amendments Nos. 371, 372, 373 and also 375 and 378 are of a similar character. I suggest that amendment No. 375 be moved.

.....

Dr. Monomohon Das(West Bengal : General) : Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jot of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables, I hear distinctly the words of Mahatma Gandhi, the father of our nation, words that came

> out from an agonized heart, full of love and full of sympathy for these down-trodden masses. Gandhiji said : "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a life-long struggle against the oppressions and indignities that have been heaped upon these classes of people." The word Swaraj will be meaningless to us if one-fifth of India's population is kept under perpetual subjugation. Mahatma Gandhi is no more among us in the land of the living. Had he been alive today, no mortal on earth would be more pleased, more happy, more satisfied than him. Not only Mahatma Gandhi, but also the other great men and philosophers of this ancient land, Swami Vivekananda, Raja Ram Mohan Roy, Rabindranath Tagore and others who led a relentless struggle against this heinous custom, would also be very much pleased today to see that independent India, Free India has at last finally done away with this malignant sore on the body of Indian society. As a Hindu, I believe in the immortality of the soul. The souls of these great men, but for whose devotion and life-long service India would not have been what she is today, would be smiling upon us at this hour at our courage and boldness in doing away with this heinous custom of untouchability."

As is evident from the speech of Dr. Das, the incorporation of Article 11 was an acknowledgment of the historical persecution of members belonging to the Scheduled Castes and Scheduled Tribes. It was a recognition of not just the atrocities meted out against them in the past but the state of perpetual humiliation, disgrace and subjugation, which they were forced to suffer, survive and yet eke out their living. It is a sad but

admitted reality that even 68 years after we gave to ourselves and adopted the Constitution, the position of this disadvantaged class had improved only marginally since they continue to be subjected to heinous crimes merely by virtue of being members of this section of society. It is these facts which led to the promulgation of the 1989 Act. The backdrop of the promulgation of the 1989 Act is eloquently evidenced from a reading of its SOR which read thus:

> "Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable. The are denied number of civil rights. They are subjected to various offences, indignities, humiliations and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons... When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour, the vested interests try to cow them down and terrorise them. When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honour of their women, they become irritants for dominant and the mighty. Occupation and cultivation of even the government allotted land by the Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the

> Scheduled Castes persons eat inedible substances like human excreta and attacks on and mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes... A special legislation to check and deter crimes against them committed by non-Scheduled Castes and non-Scheduled Tribes has, therefore, become necessary."

The Standing Committee on Social Justice and Empowerment in its Sixth Report tabled before the Lok Sabha on 19 December 2014 was constrained to note that despite the promulgation of the 1989 Act crimes against the members of this disadvantaged class had continued unabated and the atrocities committed against its member continued to remain at a disturbing level. It also noted that prosecution had been weak and that the existing provisions had resulted in very few convictions. It was found that while atrocities against this class continued to be committed, the existing statutory regimen had not only failed to tackle the commission of crimes, it had also woefully failed to ensure convictions in respect of crimes committed against this class. It is in the aforesaid backdrop that it framed its various recommendations in favour of the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2014**. Before we proceed further, it would also be relevant to notice the SOR of the Amending Act

which accompanied the Bill which was tabled in Parliament. The relevant extract of the SOR reads thus:-

> "The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes and to establish Special Courts for the trial of such offences and for providing relief and rehabilitation of the victims of such offences.
>
> 2. Despite the deterrent provisions made in the Act, atrocities against the members of the Scheduled Castes and Scheduled Tribes continue at a disturbing level. Adequate justice also remains difficult for a majority of the victims and the witnesses, as they face hurdles virtually at every stage of the legal process. The implementation of the Act suffers due to (a) procedural hurdles such as non-registration of cases; (b) procedural delays in investigation, arrests and filing of charge-sheets; and (c) delays in trial and low conviction rate.
>
> 3. It is also observed that certain forms of atrocities, known to be occurring in recent years, are not covered by the Act. Several offences under the Indian Penal Code, other than those already covered under section 3(2) (v) of the Act, are also committed frequently against the members of the Scheduled Castes and the Scheduled Tribes on the ground that the victim was a member of a Scheduled Caste and Scheduled Tribe. It is also felt that the public accountability provisions under the Act need to be outlined in greater detail and strengthened.
>
> 4. In view of the above, it became necessary to make a comprehensive review of the relevant provisions

> of the Act after due consultation with the State Governments, Union territory Administrations, concerned Central Ministries, National Commission for the Scheduled Castes, National Commission for the Scheduled Tribes, certain Non-Governmental Organisations and Activists."

As is evident from the SOR, the Amending Act recognising the undisputed fact that atrocities had continued to be committed against the members of this class. It essentially attempts to streamline and strengthen the processes for enquiry, investigation and trial of offences under the Act. It also amplifies the nature of acts which would constitute an offence committed against members of the concerned class.

As noticed above, Section 14 as originally placed in the Act has been substituted and now envisages the creation and designation of Exclusive and Special Courts for the purposes of trial of offences. The provisions of the Amending Act also significantly put in place specific time-frames for the purposes of enquiry, investigation and trial of offences. The trial is to be completed, as far as possible, within a period of 2 months from the date of filing of a charge sheet. Section 14A also enjoins the appellate forum to endeavour to dispose of appeals within a period of three months from the date of its admission. Chapter IV-A then proceeds to enumerate the various rights which are

recognised to inhere in victims and witnesses. These include the obligation of the State to make arrangements for the protection of victims and witnesses, their treatment with respect and dignity, a right to reasonable, accurate and timely notice of all proceedings as well as the right to legal aid. Significant amendments have also been introduced by virtue of the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Rules, 2016** amending the provisions with regard to payment of compensation at different stages of proceedings, periodical review of the status of this class district wise, creation of a panel of senior lawyers who may prosecute matters before the courts, the filing of charge sheets within 60 days which is to include the period spent in investigation. The Amending Act, therefore, on a fundamental plane appears to be aimed at putting in place a comprehensive and all inclusive machinery for the enquiry, investigation and trial of offences against members of this class, strengthening of institutional mechanisms, adoption of measures aimed at empowering the members of this class to effectively pursue prosecution of crimes and a speedy trial of offenses. In essence the legislative measure recognising the imperative need to safeguard the interests of this historically disadvantaged class has found it expedient to insulate them from continued perpetration of crimes against

their members, to wipe out the historical stain placed upon them and to ultimately erase the disadvantages attached to their status as members of this class. These appear to be the primary aims of this legislation.

However and at the same time, we cannot disregard the fact that the enactment is fundamentally penal in character. It must, therefore, necessarily be viewed not just from the standpoint of the victim but also the accused. The enactment when tested on a constitutional plane must necessarily be interpreted in a manner that the rights and interests of both the victim as well as the accused are safeguarded and balanced.

Article 21 of the Constitution though framed in a negative tenor essentially comprises of two facets namely, (a) the right to life and (b) the constitutional prohibition against the deprivation of that right except in accordance with a procedure established by law. The right to life, right from the decision of the Supreme Court in **Maneka Gandhi** Vs. **Union of India**[8] has been accorded an expansive meaning. It has been interpreted to fundamentally comprise the right to live a dignified existence. It has been interpreted to include the right to medical aid, shelter, education and various other facets which would enable a citizen of this

8 1978 (1) SCC 248

nation enjoying all attributes of a humane and dignified existence to the fullest. Viewed in the context of criminal prosecution or detention it has been interpreted to include a whole gamut of rights as well as corresponding obligations of the State including the right to be freed from fetters, freedom from prolonged incarceration, speedy trial, freedom from torture and legal aid. The present opinion need not be burdened with the body of precedent which has evolved around Article 21 except to notice the following eloquent observations as appearing in the recent decision of the Constitution Bench in **Common Cause Vs. Union of India**[9]. Dealing with the content of the right conferred on an individual by Article 21 and whether it would include the right to terminate a meaningless survival, Dipak Mishra, CJI (as His Lordship then was) who was joined by Khanwilkar, J. explained the ambit of Article 21 as follows:

> "**142.** The word "liberty" is the sense and realisation of choice of the attributes associated with the said choice; and the term "life" is the aspiration to possess the same in a dignified manner. The two are intrinsically interlinked. Liberty impels an individual to change and life welcomes the change and the movement. Life does not intend to live sans liberty as it would be, in all possibility, a meaningless survival. There is no doubt that no fundamental right is absolute, but any restraint imposed on liberty has to be reasonable. Individual

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liberty aids in developing one's growth of mind and assert individuality. She/he may not be in a position to rule others but individually, she/he has the authority over the body and mind. The liberty of personal sovereignty over body and mind strengthens the faculties in a person. It helps in their cultivation. Roscoe Pound, in one of his lectures, has aptly said:

"… although we think socially, we must still think of individual interests, and of that greatest of all claims which a human being may make, the claim to assert his individuality, to exercise freely the will and the reason which God has given him. We must emphasize the social interest in the moral and social life of the individual, but we must remember that it is the life of a free-willing being."

143. Liberty allows freedom of speech, association and dissemination without which the society may face hurdles in attaining the requisite maturity. History is replete with narratives how the thoughts of individuals, though not accepted by the contemporaneous society, later on gained not only acceptance but also respect. One may not agree with Kantian rigorism, but one must appreciate that without the said doctrine, there could not have been dissemination of further humanistic principles. There is a danger in discouraging free thinking and curtailing the power of imagination. Holmes in *Adkins* v. *Children's Hospital of the District of Columbia* [*Adkins* v. *Children's Hospital of the District of Columbia*, 1923 SCC OnLine US SC 105 : 67 L Ed 785 : 261 US 525 at p. 568 (1923)] has observed: (SCC OnLine US SC para 66)

"*66*. … It is merely an example of doing what you want to do, embodied in the word "liberty"."

> **144.** The concept of liberty perceives a hazard when it feels it is likely to become hollow. This necessarily means that there would be liberty available to individuals subject to permissible legal restraint and it should be made clear that in that restraint, free ideas cannot be imprisoned by some kind of unknown terror. Liberty cannot be a slave because it constitutes the essential marrow of life and that is how we intend to understand the conception of liberty when we read it in association with the term "life" as used in Article 21 of the Constitution. The great American playwright Tennessee Williams has said:
>
> "To be free is to have achieved your life."
>
> **145.** Life as envisaged under Article 21 has been very broadly understood by this Court. In *Port of Bombay* v. *Dilipkumar Raghavendranath Nadkarni* [*Port of Bombay* v. *Dilipkumar Raghavendranath Nadkarni*, (1983) 1 SCC 124 : 1983 SCC (L&S) 61] , the Court has held that the expression "life" does not merely connote animal existence or a continued drudgery through life. The expression "life" has a much wider meaning and, therefore, where the outcome of a departmental enquiry is likely to adversely affect the reputation or livelihood of a person, some of the finer graces of human civilisation which make life worth living would be jeopardised and the same can be put in jeopardy only by law which inheres fair procedures."

Having noticed the historical and legal backdrop against which the submissions advanced before us would merit consideration, we proceed to deal with the challenge to sub-section (2) of Section 14A. In our considered view, on a

foundational level, sub-section (2) is merely an extension and reassertion of the underlying objective of the enactment to put in place a comprehensive machinery for the enquiry, investigation and trial of offences committed against Scheduled Castes and Scheduled Tribes. There appears to be a manifest and underlying intent to establish an all-encompassing legislation which would deal with the investigation and trial of offences under the 1989 Act. The substantive sub-sections of section 14A commence with a *non abstante* clause clearly establishing the legislative intent to override anything to the contrary that may be contained in the Cr.P.C. At the same time, Section 14A while overriding the general provisions of the Cr.P.C. does not leave an aggrieved person remediless. It puts in place and creates an appellate forum at the level of the High Court to entertain and decide appeals against any judgment, sentence or order passed by a Special or Exclusive Special Court both on facts and on law. Sub-section (2) invests a further substantial right on an aggrieved person to appeal against an order granting or refusing bail. On a plain construction of sub-section (2) it is evident that it safeguards and preserves the rights of both the victim as well as the accused to question an order of the Special or an Exclusive Special Court granting or refusing bail. It would therefore be incorrect to contend that an aggrieved person is left with no

remedy in case an application for bail is either granted or refused.

The sole issue which ultimately arises for consideration is whether the provisions of Section 439 Cr.P.C. stand overridden and in case the answer to this question be in the affirmative whether in such a situation sub-section (2) is rendered *ultra vires*. Having conferred our thoughtful consideration on the submissions advanced in this respect, we find ourselves unable to conclude that sub-section (2) is liable to be declared *ultra vires*. At the very outset, we cannot possibly loose sight of the fact that the 1989 Act is a special statute and would on basic principles of statutory construction, override any other general enactment which may govern the investigation, enquiry and trial of criminal offences. We also cannot possibly ignore the non obstante clauses employed by the Legislature in the substantive provisions of Section 14A. We must also necessarily bear in mind that Section 20 of the 1989 Act in unambiguous and unequivocal terms provides that it would have overriding effect over all other statutes that may contain or prescribe a procedure to the contrary.

The provisions of this special enactment would also clearly have overriding effect over other enactments including the

Cr.P.C. in light of Sections 4 and 5 thereof. While Section 4(2) of the Cr.P.C. provides that all offences under any other law are to be investigated, enquired into, tried and otherwise dealt with in accordance with its provisions, this statutory mandate is subject to the provisions in any other enactment which may regulate the manner of enquiring into, trying or dealing with offences. Section 5 only preserved those enactments which incorporated or embodied specific provisions contrary to the Code which were in force at the time when Cr.P.C. was promulgated. The provisions of the Cr.P.C. therefore would apply only in a situation where an enactment did not make any provision for investigation, enquiry or trial independently or where it was silent on these aspects. The 1989 Act however erects a comprehensive machinery for enquiry, investigation and trials of offences under the Act. It is therefore evident that it is the provisions of this special enactment which must prevail when it is found that its provisions prescribe a procedure inconsistent with those in the Cr.P.C. The answer to the first part of the question formulated by us, must necessarily be in the affirmative and we do therefore hold that the provisions of section 439 Cr.P.C. clearly stand eclipsed in light of the special procedure put in place by the 1989 Act. It is manifest that the concurrent powers recognised as existing in the High Courts by virtue of

Section 439 Cr.P.C. stand impliedly excluded and overridden.

Dealing with a similar argument relating to the provisions of POTA, the Supreme Court in **State of Gujarat v. Salimbhai Abdulgaffar Shaikh**[10],observed thus:

> "**12.** Shri Amarendera Sharan, learned Senior Counsel for the respondents has submitted that the power of the High Court to grant bail under Section 439 Cr.P.C. has not been taken away by POTA and consequently, the learned Single Judge had the jurisdiction to grant bail to the respondents in exercise of the power conferred by the aforesaid provision. The learned counsel has laid great emphasis upon Section 49 of POTA, especially sub-section (5) thereof and has submitted that in view of the language used in this section, the power conferred upon the Court of Session and the High Court under Section 439 will remain intact. It has been urged that if the intention of the legislature was to make the provisions of Section 439 of the Code inapplicable in relation to offences under POTA, it would have made a provision similar to sub-section (5) of Section 49 which expressly excludes the applicability of Section 438 Cr.P.C. We are unable to accept the contention raised by the learned counsel for the respondents. It is a well-settled principle that the intention of the legislature must be found by reading the statute as a whole. Every clause of a statute should be construed with reference to the context and other clauses of the Act, so as, as far as possible, to make a consistent enactment of the whole statute. It is also the duty of the court to find out the true intention of the legislature and to ascertain the purpose of the statute and give full meaning to the same. **The different**

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provisions in the statute should not be interpreted in the abstract but should be construed keeping in mind the whole enactment and the dominant purpose that it may express. Section 49 cannot be read in isolation, but must be read keeping in mind the scope of Section 34 whereunder an accused can obtain bail from the High Court by preferring an appeal against the order of the Special Court refusing bail. In view of this specific provision, it will not be proper to interpret Section 49 in the manner suggested by the learned counsel for the respondents. In *A.R. Antulay* v. *Ramdas Sriniwas Nayak*[(1984) 2 SCC 500 : 1984 SCC (Cri) 277] the scope of special Act making provision for creation of a Special Court for dealing with offences thereunder and the application of the Code of Criminal Procedure in such circumstances has been considered and it has been held that the procedure in CrPC gets modified by reason of a special provision in a special enactment.

13. Section 20 of TADA contained an identical provision which expressly excluded the applicability of Section 438 of the Code but said nothing about Section 439 and a similar argument that the power of the High Court to grant bail under the aforesaid provision consequently remained intact was repelled in *Usmanbhai Dawoodbhai Menon* v. *State of Gujarat* [(1988) 2 SCC 271: 1988 SCC (Cri) 318] . Having regard to the scheme of TADA, it was held that there was complete exclusion of the jurisdiction of the High Court to entertain a bail application under Section 439 of the Code. This view was reiterated in *State of Punjab* v. *Kewal Singh* [1990 Supp SCC 147 : 1990 SCC (Cri) 640] .

14. That apart, if the argument of the learned counsel for the respondents is accepted, it would mean that a person whose bail under POTA has been rejected by the Special Court will have two remedies and he can avail any one of them at his sweet will. He may move a bail application before the High Court under Section 439 Cr.P.C. in the original or concurrent jurisdiction which may be heard by a Single Judge or may prefer an appeal under sub-section (4) of Section 34 of POTA which would be heard by a Bench of two Judges. To interpret a statutory provision in such a manner that a court can exercise both appellate and original jurisdiction in respect of the same matter will lead to an incongruous situation. The contention is therefore fallacious.

16. The High Court has also invoked powers under Section 482 Cr.P.C. while granting bail to the respondents. Section 482 Cr.P.C. saves the inherent power of the High Court. The High Court possesses the inherent powers to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. The power has to be exercised to prevent abuse of the process of the court or to otherwise secure the ends of justice. But this power cannot be resorted to if there is a specific provision in the Code for the redressal of the grievance of the aggrieved party. (See *Madhu Limaye* v. *State of Maharashtra* [(1977) 4 SCC 551 : 1978 SCC (Cri) 10 : AIR 1978 SC 47] .) **There being a specific provision for grant of bail, the High Court clearly erred in taking recourse to Section 482 CrPC while enlarging the respondents on bail."**

(emphasis supplied)

Repelling a similar contention, the Supreme Court in **State of A.P. v. Mohd. Hussain**[11], held:

> "**27.2.** And, secondly as far as Prayer (*b*) of the petition for clarification is concerned, **it is made clear that inasmuch as the applicant is being prosecuted for the offences under the MCOC Act, 1999, as well as the Unlawful Activities (Prevention) Act, 1967, such offences are triable only by the Special Court, and therefore application for bail in such matters will have to be made before the Special Court under the NIA Act, 2008, and shall not lie before the High Court either under Section 439 or under Section 482 of the Code.** The application for bail filed by the applicant in the present case is not maintainable before the High Court."
>
> (emphasis supplied)

The decision of the Supreme Court in **Salimbhai** is thus in our considered opinion a clear and complete answer on the exclusion of the powers of the High Court under sections 439 and 482 Cr.P.C. insofar as the issue of bail is concerned.

The stage is now set to proceed to consider whether the implied exclusion of the said powers conferred under the Cr.P.C., renders sub section (2) liable to be struck down on grounds as urged by the petitioner. While the legislature has impliedly excluded the powers of the High Court under Section 439 Cr.P.C. it has provided to an aggrieved person a substantive right of an

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appeal both on facts and on law in terms of sub-section (2). The legislative exercise cannot be said to suffer from any spectre of *"manifest arbitrariness"* so as to compel us to strike it down. That the doctrine of manifest arbitrariness would apply even to plenary legislation is no longer in doubt in view of the decision of the Constitution Bench in **Shayara Bano Vs. Union of India**[12]. Justices Joseph, Nariman and Lalit expressly held that this principle would apply to primary legislation also. Kurien Joseph J. in this respect observed:-

> **"5.** In that view of the matter, I wholly agree with the learned Chief Justice that the 1937 Act is not a legislation regulating talaq. Consequently, I respectfully disagree with the stand taken by Nariman, J. that the 1937 Act is a legislation regulating Triple Talaq and hence, the same can be tested on the anvil of Article 14. However, on the pure question of law that a legislation, be it plenary or subordinate, can be challenged on the ground of arbitrariness, I agree with the illuminating exposition of law by Nariman, J. I am also of the strong view that the constitutional democracy of India cannot conceive of a legislation which is arbitrary."

Justice Nariman who was joined by Lalit J. in this respect held:-

> **"70. That the arbitrariness doctrine contained in Article 14 would apply to negate legislation, subordinate legislation and executive action is clear from a celebrated passage in Ajay *Hasia* v. *Khalid Mujib Sehravardi* [*Ajay Hasia* v. *Khalid Mujib***

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Sehravardi, (1981) 1 SCC 722 : 1981 SCC (L&S) 258] : (SCC pp. 740-41, para 16)

"*16*. … The true scope and ambit of Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. **It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification.** Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfills two conditions, namely, (*i*) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (*ii*) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa* v. *State of T.N.* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] that this Court laid bare a new dimension of Article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said: (SCC p. 38, para 85)

'*85*. … The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any

attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.'

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in *Royappa case* [*E.P. Royappa* v. *State of T.N.*, (1974) 4 SCC 3 : 1974 SCC (L&S) 165] and it was reaffirmed and elaborated by this Court in *Maneka Gandhi* v. *Union of India* [*Maneka Gandhi* v. *Union of India*, (1978) 1 SCC 248] where this Court again speaking through one of us (Bhagwati, J.) observed: (SCC pp. 283-84, para 7)

'*7*. Now the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made

to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. … **Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.…'**

This was again reiterated by this Court in *International Airport Authority case*[*Ramana Dayaram Shetty* v. *International Airport Authority of India*, (1979) 3 SCC 489 : (1979) 3 SCR 1014] , SCR at p. 1042 (SCC p. 511) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any action that is arbitrary, must necessarily involve negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. *Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an "authority" under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs*

through the whole of the fabric of the Constitution." (emphasis supplied)

71. In this view of the law, a three-Judge Bench of this Court in *K.R. Lakshmanan*v. *State of T.N.* [*K.R. Lakshmanan* v. *State of T.N.*, (1996) 2 SCC 226] struck down a 1986 Tamil Nadu Act on the ground that it was arbitrary and, therefore, violative of Article 14. …….

49. We, therefore, hold that the provisions of the 1986 Act are discriminatory *and arbitrary* and as such violate and infract the right to equality enshrined under Article 14 of the Constitution.

50. Since we have struck down the 1986 Act on the ground that it violates Article 14 of the Constitution, it is not necessary for us to go into the question of its validity on the ground of Article 19 of the Constitution."

101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd.* v. *Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. **This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such**

> **legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."**
>
> (emphasis supplied)

A legislation in order to be struck down on the ground of manifest arbitrariness, therefore, must be shown to have been framed *"capriciously, irrationally and/or without adequate determining principle"*. It may also be declared invalid if it is excessive and disproportionate. Before us, sub section (2) far from falling within the ambit of the vices noticed above, in fact confers a right on the aggrieved person to challenge any judgment, sentence or order in appeal before the High Court. An order either granting or refusing bail is also appealable. It is thus evident that an exhaustive statutory mechanism has been created to safeguard the rights of an aggrieved person. The mere fact that the concurrent jurisdiction of the High Court under section 439 Cr.P.C. stands impliedly excluded is clearly not determinative of the issue since a comprehensive and substituted remedy of appeal before the High Court itself is provisioned for.

The provisions of sub-section (2) are also not shown to place upon an aggrieved person any condition which may be far more onerous than those required by Section 439. The

Legislature has taken care to ensure that the appeal which may be preferred under sub-section (2) is not subjected to any pre-conditions which may render the exercise of this right to be more cumbersome. Viewed in this light, it is more than evident that the decision of the Supreme Court in **Nikesh Tarachand Shah** can have no application. In the said decision the Supreme Court was constrained to strike down Section 45 of the **Prevention of Money Laundering Act, 2002** since it found that the conditions imposed for release on bail were violative of Articles 14 and 21 of the Constitution. As noticed hereinabove, the impugned provision neither places any restriction on the exercise of the right to seek bail nor does it place or require the aggrieved person to overcome any arbitrary pre-conditions to assail an order refusing bail. In fact and to the contrary it preserves the right of an aggrieved person to question before the High Court even an order granting bail. It is therefore evident that quite far from an annihilation of any right flowing to an aggrieved person under Section 439 Cr.P.C. there is in fact a preservation of such a right albeit by way of a statutory appeal before the High Court.

The submission of Sri Tiwari with respect to *"excessive legislation"* is noticed only to be rejected since section 14A as it stands is identical in its language as that employed in the Bill

which was originally tabled in Parliament. The mere fact that the Standing Committee did not dwell on this issue or frame any recommendation cannot possibly be countenanced as a ground to invalidate sub section (2). Ultimately it is not for this Court to delve into the motive of legislation. The review by the Court must be confined to testing its validity on settled constitutional principles. This observation is entered notwithstanding our conclusion that the legislative intent appears to be the construction of an all-embracing statute which would deal with all possible issues that may arise out of an investigation, enquiry or trial of offenses under the 1989 Act.

Turning then to the second proviso to sub-section (3) however we find substance in the challenge laid to this provision. However before we proceed further it would be fruitful to pause and contemplate.

Our attention was specifically drawn to the following pari materia provisions in different penal statutes. Under the **Prevention of Terrorism Act,** 2002 as it stood, the provision of an appeal was structured thus:-

> "**34. Appeal.--** (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts

and on law.

Explanation.—For the purposes of this section, "High Court" means a High Court within whose jurisdiction, a Special Court which passed the judgment, sentence or order, is situated.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty 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 thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.

(emphasis supplied)

Under the **National Investigation Agency Act, 2008**, the appellate provision is framed as follows:-

"21. Appeals.-- (1) Notwithstanding anything contained in the Code, an appeal shall lie from any judgment, sentence or order, not being an interlocutory order, of a Special Court to the High Court both on facts and on law.

(2) Every appeal under sub-section (1) shall be heard by a bench of two Judges of the High Court and shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal.

(3) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, sentence or order including an interlocutory order of a Special Court.

(4) Notwithstanding anything contained in sub-section (3) of section 378 of the Code, an appeal shall lie to the High Court against an order of the Special Court granting or refusing bail.

(5) Every appeal under this section shall be preferred within a period of thirty days from the date of die judgment, sentence or order appealed from:

Provided that the High Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days:

Provided further that no appeal shall be entertained after the expiry of period of ninety days."

(emphasis supplied)

The **Terrorists and Disruptive Activities (Prevention) Act, 1987** as it existed provided for a right of appeal in the following terms:-

"**19. Appeal--** (1) Notwithstanding anything contained in the Code, an appeal shall lie as a matter of right from any judgment, sentence or order, not being an interlocutory order, of a Designated Court to the Supreme Court both on facts and on law.

(2) Except as aforesaid, no appeal or revision shall lie

> to any court from any judgment, sentence or order including an interlocutory order of a Designated Court.
>
> (3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment; sentence or order appealed from:
>
> **Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days**."
>
> (emphasis supplied)

Section 14A principally employs language similar to that used in the aforementioned provisions. From a plain reading of the aforesaid provisions, it is evident that under the **NIA** alone is the right of an appeal completely effaced on the expiry of the statutory period of limitation. A similar provision, however, was not made under **TADA** or **POTA**. In fact and to the contrary, the discretion of the Court to condone the delay if sufficient cause is established is preserved both under **TADA** and **POTA**.

We are conscious of the underlying principles which inform a statute of limitation. As has been aptly explained in various judgments it is essentially a *"statue of repose"* designed to ensure that stale claims are not brought before a judicial forum and to ensure that parties exercise their rights within reasonable time. In **Popat And Kotecha Property vs. State Bank Of India Staff**

Assn.[13], the Supreme Court observed:-

> "**7.** The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been termed a statute of repose, peace and justice. **The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal.** (Also See: *France B. Martins v. Mafalda Maria* (1996 (6) SCC 627).
>
> **8.** Bar of limitation does not obstruct the execution. It bars the remedy. (See V. Subba Rao and Ors. v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P. and Ors. (1996 (7) SCC 626.)
>
> 1. **Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time,**

13 [(2005) 7 SCC 510]

> **newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy.** The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See N. Balakrishanan v. M. Krishna Murthy (1998 (7) SCC 123)."
>
> (emphasis supplied)

Again in **Prem Singh & Ors vs Birbal & Ors**[14], **the Supreme Court held:**

> "**11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right.** The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.
>
> An extinction of right, as contemplated by the provisions of the Limitation Act, *prima facie* would be attracted in all types of suits. The Schedule appended to the Limitation Act, as prescribed by the Articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out is raised by the defendant or not, in

14 (2006) 5 SCC 353

> the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed."
>
> (emphasis supplied)

Dealing with the issue of extinguishment of a right the Supreme Court in **State Of Karnataka vs Laxuman**[15] held:-

> "**19. Extinguishment of a right can be expressly provided for or it can arise by the implication from the statute.** Section 18 of the Act as in Karnataka sets out a scheme. Having made an application for reference within time before the Deputy Commissioner, the claimant may lose his right by not enforcing the right available to him within the time prescribed by law. Section 18(3)(a) and **Section 18(3)(b) read in harmony, casts an obligation on the claimant to enforce his claim within the period available for it. The scheme brings about a repose. It is based on a public policy that a right should not be allowed to remain a right indefinitely to be used against another at the will and pleasure of the holder of the right by approaching the court whenever he chooses to do so.** When the right of the Deputy Commissioner to make the reference on the application of the claimant under Section 18(1) of the Act stands extinguished on the expiry of 3 years and 90 days from the date of application for reference, and the right of the claimant to move the Court for compelling a reference also stands extinguished, the right itself looses its enforceability and thus comes to an end as a result. This is the scheme of Section 18 of the Act as adopted in the State of Karnataka. The High Court is, therefore, not correct in

15 (2005) 8 SCC 709

> searching for a specific provision bringing about an extinguishment of the right to have a reference and on not finding it, postulating that the right would survive for ever."
>
> (emphasis supplied)

There cannot possibly be a dispute with regard to the general proposition of law as enunciated in the decisions aforementioned. Equally true is the submission of Sri Goyal that where a statute provides a special period of limitation, then the general provisions of the Limitation Act, 1963 would not apply. To this extent learned counsel appears to be correct in his submission that the second proviso to sub section (3) in view of its explicit terms ousts the applicability of the general provisions of the Limitation Act, 1963. It would therefore not be correct to import the provisions of sections 5-24 of the said Act to an appeal which is preferred under section 14A.

However we cannot possibly loose sight of the fact that these principles are quintessentially formulated to subserve the dominant rationale of there being an end to litigation, finality being accorded to a lis between parties and courts of law not being flooded with worn out disputes. The issue which falls for our determination, however, would not merit an answer on these general principles alone. We are after all called upon to

consider an issue of life and liberty. We are obliged to consider the ambit of a right of an accused as well as a victim on the touchstone of Article 21. We are in this sense not dealing with litigation per se but are called upon to decide a more fundamental question-namely the rights of aggrieved parties in respect of criminal prosecution. The issues which arise therefrom are not a mere lis between two individuals. It is primarily an issue of evaluation of the rights of parties in respect of crime and the consequential impact on the effacement and impairment of the right to challenge proceedings or orders which may lead to conviction, imposition of a sentence of incarceration or for that matter even a wrongful acquittal and a failure to punish a crime.

Proceeding further we note that on a plain construct of the second proviso it is manifestly clear that the right of a first appeal against any judgment, sentence or order passed under the Act stands extinguished on the expiry of 180 days. The seminal question which therefore arises is whether the extinguishment of this right can pass the test of Article 21 of the Constitution.

That the right of a first appeal against orders passed in criminal proceedings is an essential element of Article 21 can no longer be disputed. This issue stands duly concluded in light of the decisions of the Supreme Court in **M.H. Hoskot v. State of**

Maharashtra[16] and **Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd.**[17]. In **Hoskot** a constitutional right of a first appeal was explained by Krishna Iyer, J. as follows:

> "**10.** Freedom is what freedom does, and here we go straight to Article 21 of the Constitution, where the guarantee of personal liberty is phrased with superb amplitude:
>
> "Article 21. *Protection of life and personal liberty*.—No person shall be deprived of his life or personal liberty *except according to procedure established by law*."
>
> "Procedure established by law" are words of deep meaning for all lovers of liberty and judicial sentinels. Amplified, activist fashion "procedure" means "fair and reasonable procedure" which comports with civilised norms like natural justice rooted firm in community consciousness — not primitive processual barbarity nor legislated normative mockery. In a landmark case, *Maneka Gandhi* [(1978) 1 SCC 248, 277 at 281 and 284] Bhagwati, J. (on this point the court was unanimous) explained: (paras 4, 5, 7 & 8)
>
> "Does Article 21 merely require that there must be some semblance of procedure, howsoever arbitrary or fanciful, prescribed by law before a person can be deprived of his personal liberty or that the procedure must satisfy certain requisites in the sense that it must be fair and reasonable? Article 21 occurs in Part III of the Constitution which confers certain fundamental rights.
>
> Is the prescription of some sort of procedure enough or must the procedure comply with any particular requirements? Obviously, the procedure cannot be

16 (1978) 3 SCC 544
17 (2007) 6 SCC 528

arbitrary, unfair or unreasonable. This indeed was conceded by the learned Attorney-General who with his usual candour frankly stated that it was not possible for him to contend that any procedure howsoever arbitrary, oppressive or unjust may be prescribed by the law.

The principle of reasonableness which legally, as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21 would not be satisfied.

Any procedure which permits impairment of the constitutional right to go abroad without giving reasonable opportunity to show-cause cannot but be condemned as unfair and unjust and hence, there is in the present case clear infringement of the requirement of Article 21."

One of us in this separate opinion there observed [Krishna Iyer, J., 337, 338] :

(Paras 81, 82, 84 and 85)

" 'Procedure established by law', with its lethal potentiality, will reduce life and liberty to a precarious plaything if we do not *ex necessitate* import into those weighty words an adjectival rule of law, civilised in its soul, fair in its heart and fixing those imperatives of procedural protection absent which the processual tail will wag the substantive head. Can the sacred essence of the human right to secure which the struggle for liberation, with 'do or die' patriotism, was launched be sapped by formalistic and pharisaic

prescriptions, regardless of essential standards? An enacted apparition is a constitutional illusion. Processual justice is writ patently on Article 21.

Procedure which deals with the modalities of regulating, restricting or even rejecting a fundamental right falling within Article 21 has to be fair, not foolish, carefully designed to effectuate, not to subvert, the substantive right itself. Thus understood, 'procedure' must rule out anything arbitrary, freakish or bizarre. A valuable constitutional right can be canalised only by civilised processes.... What is fundamental is life and liberty. What is procedural is the manner of its exercise. This quality of fairness in the process is emphasised by the strong word 'established' which means 'settled firmly' not wantonly or whimsically. If it is rooted in the legal consciousness of the community it becomes 'established' procedure. And 'law' leaves little doubt that it is normae regarded as just since law is the means and justice is the end.

Procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics.

To sum up, 'procedure' in Article 21 means fair, not formal procedure. 'Law' is reasonable law, not any enacted piece."

"**11.** One component of fair procedure is natural

> justice. **Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to *fair* procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis. In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Article 21.**
>
> **12.** What follows from this appellate imperative? **Every step that makes the right of appeal fruitful is obligatory and every action or inaction which stultifies it is unfair and, ergo, unconstitutional.** (In a sense even Article 19 may join hands with Article 21, as the *Maneka Gandhi* reasoning discloses). Pertinent to the point before us are two requirements: (*i*) service of a copy of the judgment to the prisoner in time to file an appeal and (*ii*) provision of free legal services to a prisoner who is indigent or otherwise disabled from securing legal assistance where the ends of justice call for such service. Both these are State responsibilities under Article 21. Where the procedural law provides for further appeals what we have said regarding first appeals will similarly apply."

In a decision rendered a decade thereafter the position was reiterated by the Supreme Court in **Dhanukar** in the following terms:

> "**12.** An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the

right of appeal which is provided for under Section 374 of the Code. **Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.**

14. In *Garikapati Veeraya* v. *N. Subbiah Choudhry* [AIR 1957 SC 540] this Court opined: (AIR p. 553, para 23)

"*23*. (*i*) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

(*ii*) The right of appeal is not a mere matter of procedure but is a substantive right.

(*iii*) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(*iv*) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(*v*) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise."

> This Court in *Babu Rajirao Shinde* v. *State of Maharashtra* [(1971) 3 SCC 337 : 1971 SCC (Cri) 616] observed that a convicted person must be held to be at least entitled to one appeal as a substantial right."
>
> (emphasis supplied)

Hoscot principally held that any procedure which regulates, restricts or rejects a fundamental right flowing from Article 21 has to be primarily fair and designed to effectuate rather than subvert the substantive right itself. It explained the ambit of the expression "procedure" occurring in Article 21 to mean a procedure which is fair and reasonable. It went on to thereafter conclude that every step that makes the right of appeal *"fruitful"* is obligatory and every action which *"impairs or extinguishes"* that right must necessarily be held to be unfair and consequently unconstitutional. **Dhanukar** reiterated the legal position of a right of a first appeal being one which must be recognised to flow directly from Article 21 of the Constitution. It thereafter proceeded to significantly observe that this right of appeal can neither be *"interfered"*, *"impaired"* or *"subjected to any condition"*. Bearing the aforesaid principles in mind, it is evident that the second proviso to sub-section (3) unquestionably impairs, subverts and stultifies the right of appeal which must be recognized to inhere in an aggrieved person in the context of criminal/penal proceedings. On the expiry of 180 days, the right

of appeal stands unequivocally extinguished and erased. The judgment, sentence or order of the Court passed in proceedings under the 1989 Act would consequently attain finality. The serious, nay, pernicious consequences which would necessarily follow on account of the second proviso can be clearly envisaged in the following situations.

Viewed from the point of the victim an order of discharge or acquittal would attain finality. The victim is rendered remediless to call in question any order or decision of the Court discharging an accused or acquitting him from the charge of offences committed against any member of the Scheduled Castes and Scheduled Tribes. The position is equally stark when viewed from the angle of an accused. An order of conviction would attain finality. Any challenge laid to the invocation of the provisions of the Act or proceedings initiated on a fundamental or jurisdictional ground would also stand completely lost. The deleterious consequences which are likely to occur and follow are further highlighted when we take into consideration the punishment and sentence which is likely to be imposed in case of conviction. As would be evident from the provisions of section 3 the maximum punishment under the 1989 Act is that of imprisonment for life and in the case of certain offences even

death. **Hoscot** bids us to bear in mind that the right of an appeal in cases where the attainment of finality would result in loss of life itself and prolonged incarceration also has a *"human rights ring"*. We also cannot shut our eyes or refuse to take judicial notice of the persistent and still existing hurdles relating to access to justice. On an overall consideration of the aforesaid, we are of the firm view that the second proviso is clearly violative of Article 21 of the Constitution.

We also find ourselves unable to either appreciate or sustain the contention of the learned ASG that on the expiry of 180 days, it would be open for this Court to condone the delay in preferment of an appeal by recourse to its powers conferred by Article 226/227 of the Constitution or by invocation of its inherent powers under section 482 Cr.P.C. The learned ASG would have been well advised to have borne in mind the principles governing the exercise of powers under Articles 226/227 of the Constitution as enunciated by the Supreme Court. The scope of this Court's powers under the two constitutional provisions was explained by the Supreme Court **in Girish Kumar Suneja v. CBI**[18], as under:-

> "**38.** The Criminal Procedure Code is undoubtedly a complete code in itself. As has already been discussed by

18 (2017) 14 SCC 809

us, the discretionary jurisdiction under Section 397(2) Cr.P.C. is to be exercised only in respect of final orders and intermediate orders. The power under Section 482 Cr.P.C. is to be exercised only in respect of interlocutory orders to give effect to an order passed under the Criminal Procedure Code or to prevent abuse of the process of any court or otherwise to serve the ends of justice. **As indicated above, this power has to be exercised only in the rarest of rare cases and not otherwise. If that is the position, and we are of the view that it is so, resort to Articles 226 and 227 of the Constitution would be permissible perhaps only in the most extraordinary case. To invoke the constitutional jurisdiction of the High Court when the Criminal Procedure Code restricts it in the interest of a fair and expeditious trial for the benefit of the accused person, we find it difficult to accept the proposition that since Articles 226 and 227 of the Constitution are available to an accused person, these provisions should be resorted to in cases that are not the rarest of rare but for trifling issues.**

40. While there can be no doubt that the jurisdiction of a High Court under Articles 226 and 227 cannot be curtailed, yet extraordinary situations could arise where it would be advisable for a High Court to decline to interfere. In *Kartar Singh* v. *State of Punjab* [*Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] this Court considered the "nagging question" whether an accused could approach the High Court for the grant of bail under Article 226 of the Constitution in a case arising out of an offence under the Terrorist and Disruptive Activities (Prevention) Acts of 1985 and 1987 or the TADA Act. In that context, this Court took the view that given the special nature of the statute, if a High Court entertains a bail application invoking its

extraordinary jurisdiction under Article 226 and passes orders, the very scheme and object of the TADA Act and the intendment of Parliament would be completely defeated and frustrated. It was held that a High Court would interfere, if at all, only in extreme and rare cases and additionally, judicial discipline and comity of courts require that High Courts should refrain from exercising their jurisdiction in entertaining bail applications, more particularly since this Court could grant relief in an appropriate case under Article 136 of the Constitution. It was held: (SCC p. 710, para 359)

"*359*. Though the High Courts have very wide powers under Article 226, the very vastness of the powers imposes on it the responsibility to use them with circumspection and in accordance with the judicial consideration and well-established principles. The legislative history and the object of TADA Act indicate that the special Act has been enacted to meet challenges arising out of terrorism and disruption. Special provisions are enacted in the Act with regard to the grant of bail and appeals arising from any judgment, sentence or order (not being an interlocutory order) of a Designated Court, etc. The overriding effect of the provisions of the Act (i.e. Section 25 of TADA Act) and the Rules made thereunder and the non obstante clause in Section 20(7) reading, "Notwithstanding anything contained in the Code…." clearly postulate that in granting of bail, the special provisions alone should be made applicable. If any party is aggrieved by the order, the only remedy under the Act is to approach the Supreme Court by way of an appeal. If the High Courts entertain bail applications invoking their extraordinary jurisdiction under Article 226 and pass orders, then the very scheme and object of the Act

and the intendment of Parliament would be completely defeated and frustrated. But at the same time it cannot be said that the High Courts have no jurisdiction. **Therefore, we totally agree with the view taken by this Court in *Abdul Hamid Haji Mohammed* [*State of Maharashtra* v. *Abdul Hamid Haji Mohammed*, (1994) 2 SCC 664 : 1994 SCC (Cri) 595] that if the High Court is inclined to entertain any application under Article 226, that power should be exercised most sparingly and only in rare and appropriate cases in extreme circumstances. What those rare cases are and what would be the circumstances that would justify the entertaining of applications under Article 226 cannot be put in straitjacket. However, we would like to emphasise and re-emphasise that the judicial discipline and comity of courts require that the High Courts should refrain from exercising their jurisdiction in entertaining bail applications in respect of an accused indicted under the special Act** since this Court has jurisdiction to interfere and correct the orders of the High Courts under Article 136 of the Constitution."

This was reaffirmed subsequently in the decision in the following words: (SCC p. 714, para 368)

"*368*. … (*17*) Though it cannot be said that the High Court has no jurisdiction to entertain an application for bail under Article 226 of the Constitution and pass orders either way, relating to the cases under the 1987 Act, **that power should be exercised sparingly, that too only in rare and appropriate cases in extreme circumstances.** But the judicial discipline and comity of courts require

> that the High Courts should refrain from exercising the extraordinary jurisdiction in such matters."
>
> (emphasis supplied)

Proceeding to notice the ambit of section 482 Cr.P.C. in the same context, the Supreme Court in **Girish Kumar Suneja** observed:-

> **29.** This leads us to another facet of the submission made by the learned counsel that even the avenue of proceeding under Section 482 Cr.P.C. is barred as far as the appellants are concerned. **As held in *Amar Nath* [*Amar Nath* v. *State of Haryana*, (1977) 4 SCC 137 : 1977 SCC (Cri) 585] and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397(2) Cr.P.C. that cannot be circumvented by resort to Section 482 Cr.P.C. There can hardly be any serious dispute on this proposition.**
>
> **30.** What then is the utility of Section 482 Cr.P.C.? This was considered and explained in *Madhu Limaye* [*Madhu Limaye* v. *State of Maharashtra*, (1977) 4 SCC 551 : 1978 SCC (Cri) 10] which noticed the prohibition in Section 397(2) Cr.P.C. and at the same time the expansive text of Section 482 Cr.P.C. and posed the question: In such a situation, what is the harmonious way out? This Court then proceeded to answer the question in the following manner: (SCC pp. 555-56, para 10)
>
> > "*10*. … In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem 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 of the other principles 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 order assailed is purely of 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."**
>
> (emphasis supplied)

It is therefore manifest from the above stated principles that neither the inherent jurisdiction nor the constitutional powers of the Court are to be invoked except in rare and exceptional situations or where it is found that their invocation is imperative for the purposes of securing the ends of justice. These powers cannot be held to be generally available to be exercised for the purposes of condonation of delay. The submission of the

learned ASG in this respect is wholly unsustainable and we reject the same.

We are also for reasons which follow convinced that the provision is liable to be struck down even on the ground of manifest arbitrariness. There appears to be no legal justification for denuding the aggrieved person of the right of establishing before a superior court that there existed sufficient cause which constrained him from being able to exercise his right of preferring an appeal within the period of limitation prescribed under the 1989 Act. The objective of a "speedy trial" also would not justify the imposition of this fetter. We bear in mind that the right of appeal is not available against interlocutory orders. From the language employed in sub section (2) it is evident that it would cover only judgments, sentences and orders albeit those which can be recognised as *"intermediate"* in character. The only exception in the case of interlocutory orders which the legislation carves out are orders granting or refusing bail. The submission, therefore, that a provision for condonation of delay would negate the principal legislative intent is clearly devoid of substance. The submission that the second proviso to sub section (3) is in furtherance of the primary legislative objective of a speedy trial though attractive at first blush, clearly pales in

comparison when we weigh in the balance the chilling consequences which are bound to follow on the curtains falling upon the expiry of 180 days against the avowed legislative policy of a speedy conclusion of proceedings under the 1989 Act. Bearing in mind the principles enunciated in **Shayara Bano**, we are constrained to hold that in failing to preserve the right to seek condonation of delay that too at the stage of a first appeal, the legislature has clearly acted capriciously and irrationally. It has left an aggrieved person without a remedy of even a first appeal against any judgment, sentence or order passed under the 1989 Act on the expiry of 180 days. As we contemplate the fatal consequences which would visit an aggrieved person on the expiry of 180 days, we shudder at the deleterious impact that it would have and find ourselves unable to sustain the second proviso which must necessarily be struck down, as we do, being in violation of Article 14 and 21 of the Constitution.

We then lastly take up for consideration the submission of the learned ASG that the word “shall” as occurring in the second proviso be read as “may” and therefore be held to be directory. According to the learned ASG, construed in this manner it would be apparent that the second proviso would not shut the doors on an aggrieved person leaving it open to him to invoke the

extraordinary powers vesting in the High Court to condone the delay in preferment of the appeal. We have for reasons recorded earlier rejected the submission of the learned ASG that the powers of this Court conferred either by Articles 226/227 or its inherent powers recognised by section 482 Cr.P.C. would be available generally to condone delay after 180 days. We have already found that as a general proposition this contention is wholly untenable. Be that as it may, since the learned ASG has raised the issue of the provisions of the second proviso being liable to be viewed as directory we proceed to deal with the same.

In order to test the correctness of this submission we firstly bear in mind that a purposive interpretation is primarily warranted where the plain meaning of the statute is either in doubt or where the Courts come to conclude that a plain construction of the words employed would lead to an unjust, inconvenient or unintended result. However, before embarking upon an exercise of purposive interpretation we must principally be satisfied that the legislature did not intend an effacement of rights upon the expiry of 180 days. Bearing these basic precepts in mind we find ourselves unable to accede to the submission of the learned ASG for the following reasons.

On a holistic reading of the provisions of the Amending Act and sections 14 and 14A in particular we are unable to discern or recognise any intention of the legislature to confer a power on the High Court to condone delay after 180 days. Firstly sub section (3) puts in place a special period of limitation for filing of appeals. The period of limitation prescribed therein is a departure from the ordinary period of limitation otherwise fixed for criminal appeals under the Limitation Act. Secondly while the legislature has conferred a power to condone delay which may occur after the expiry of the initial period of limitation of 90 days, this power is hedged and made subject to the rigour of the second proviso. Thirdly, the second proviso is couched in negative and prohibitive words when it provides that "***no appeal shall be entertained*** after the expiry of the period of one hundred and eighty days". The language employed by the second proviso is in the nature of a statutory command and interdict. While we do not rest our conclusion solely on the use of the word "shall" we also cannot ignore of the fact that the said word is followed by a negative command and an embargo which clearly indicates that the intent of the legislature is peremptory and imperative.

Dealing with the power of the Court to condone delay in

deposit of rent the Supreme Court in **Nasiruddin Vs. Sita Ram Agarwal**[19] held:

> "37. **The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous.** It cannot add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. **It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.**
>
> **38. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified.** In Sutherland's Statutory Construction, 3rd

19 (2003) 2 SCC 577

> Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. **Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.**
>
> **Thus, on analysis of the aforesaid two decisions we find that wherever the special Act provides for extension of time or condonation of default, the court possesses the power therefor, but where the statute does not provide either for extension of time or to condone the default in depositing the rent within the stipulated period, the court does not have the power to do so."**
>
> (emphasis supplied)

Again in **Union of India Vs. A.K. Pandey**[20], the Supreme Court reiterated the above position in the following words:-

> "15. **The principle seems to be fairly well settled that prohibitive or negative words are ordinarily indicative of mandatory nature of the provision; although not conclusive.** The Court has to examine carefully the purpose of such provision and the consequences that may follow from non-observance thereof. If the context does not show nor demands otherwise, the text of a statutory provision couched in a negative form ordinarily has to be read in the form of command. **When the word "shall" is followed by**

20 (2009) 10 SCC 552

> **prohibitive or negative words, the legislative intention of making the provision absolute, peremptory and imperative becomes loud and clear and ordinarily has to be inferred as such.** There being nothing in the context otherwise, in our judgment, there has to be clear ninety-six hours' interval between the accused being charged for which he is to be tried and his arraignment and interval time in Rule 34 must be read as absolute. There is a purpose behind this provision: that purpose is that before the accused is called upon for trial, he must be given adequate time to give a cool thought to the charge or charges for which he is to be tried, decide about his defence and ask the authorities, if necessary, to take reasonable steps in procuring the attendance of his witnesses. He may even decide not to defend the charge(s) but before he decides his line of action, he must be given clear ninety-six hours."
>
> (emphasis supplied)

Interpreting the second proviso in the manner suggested by the learned ASG would not only be doing violence to the language and expressed intent of the legislature, it would clearly amount to altering the intrinsic texture of the provision itself. We therefore find ourselves unable to sustain this submission or to uphold the second proviso by reading it in the manner suggested.

While we reject the challenge to section 14A (2), we declare that the second proviso to Section 14A (3) is violative of Articles 14 and 21 of the Constitution and it is consequently

struck down.

Next we would like to consider **Question 'B'**:

> **"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 High Court under Article 226/227 of the Constitution or its revisional powers or the powers under Section 482 Cr.P.C. shall stand ousted?"**

At the outset, our answer to the first part of the question is in the negative. In other words, where an appeal under sub-section (1) and/or sub-section (2) of Section 14A of the Amending Act is maintainable against any judgment, sentence or order, not being interlocutory in nature, a petition under the provisions of Articles 226/227 of the Constitution of India or a revision under Section 397 Cr.P.C. or a petition under Section 482 Cr.P.C. would not be maintainable. We deal with this

question bearing in mind our opinion on the first question. In other words, we deal with this question conscious that the powers of this Court to entertain an appeal even after expiry of the period of 180 days from the date of the judgment, sentence or order appealed from, if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period are retained.

We have heard learned counsel for the parties at considerable length and as mentioned earlier, Mr Sushil Shukla, and Mr Rajiv Lochan Shukla, as Amicus Curiae, led arguments on this question. Mr Sushil Shukla, vehemently submitted that Section 14A of the Amending Act, does not oust the inherent powers of the High Court under Section 482 Cr.P.C. and this Court continues to retain and can invoke its inherent powers under this provision against any order, not being interlocutory in nature, passed by a Special Court/an Exclusive Special Court or in respect of any proceedings being held under the 1989 Act, if it is shown that such proceedings are likely to result in abuse of the process of the Court or for that matter, quashing will secure the ends of justice. With reference to several judgments of the Supreme Court, he submitted that Section 482 Cr.P.C. confers no new power on the High Court; it merely safeguards the existing

power which was already possessed by or inhered in the High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. In support of this contention, he placed heavy reliance upon the judgment of the Supreme Court in **Priya Vrat Singh v Shyam Ji Sahai**[21] and in **Gian Singh v State of Punjab**[22]. He then submitted that the words 'nothing in this Code' employed in Section 482 Cr.P.C. empowers the High Court to exercise its inherent powers even when there is a bar in a provision of the Code. He submitted that while exercising the power under Section 482 Cr.P.C., the High Court does not function as a Court of appeal or revision and, therefore, merely because an order, though not being interlocutory in nature, passed by a Special Court/an Exclusive Special Court, during the proceedings held under the 1989 Act has been made appealable, it cannot be said that such an order is beyond the reach of the inherent power of the High Court even when it is shown to have either resulted in the abuse of process of the Court or is manifestly unjust or illegal.

Mr Sushil Shukla, also invited our attention to the provisions of Section 34 of the Prevention of Terrorism Act, 2002 (which now stands repealed) and Section 21 of the National

21 (2008) 8 SCC 232
22 (2012) 10 SCC 303

Investigation Agency Act, 2008 (for short 'NIA Act') and also to Section 19 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (which now stands repealed) and submitted that all special courts under the provisions noticed above, it was specifically provided that the power of revision shall not be exercised against any order, including an interlocutory passed under those special Acts. That means, he submitted, when it comes to the exclusion of revisional power of the High Court, the legislature expressly provided for such an exclusion. However, even while dealing with the scope of interference in cases arising out of the aforesaid Special Acts, either under the inherent power of the High Court under Section 482 Cr.P.C. or under the extraordinary power of the High Court as enshrined in Article 227 of the Constitution of India, it was found that in rare and deserving cases, such powers can be exercised by the High Court, particularly when such orders result in the abuse of process of Court or cause miscarriage of justice or are palpably illegal.

After inviting our attention to the word 'order' occurring in sub-section (1) of Section 14A in addition to the expression “judgment or sentence” of the Amending Act, Mr Sushil Shukla, submitted that it is clearly suggestive of the fact that an order, which is final in nature and/or is likely to put an end to the *lis*

before the Special Court under the 1989 Act would be subject to the appellate power of the High Court. He submitted that it is possible to foresee that during the course of trial proceedings, there will surely be or may arise occasions where the order so passed by such Special Courts may qualify what is now clearly and legally known as an 'intermediate order' which is an order of moment for any accused affecting his valuable rights, as has been interpreted by the Supreme Court in **Girish Kumar Sunja v CBI (supra).** Relying on this judgment, he vehemently submitted that the order taking cognizance or summoning the accused, order framing charge or order passed under Section 319 Cr.P.C. and affecting valuable rights of the accused/victim, shall be treated as an 'intermediate order', and the same would be amenable and liable to be corrected by the High Court exercising its inherent powers under Section 482 of Cr.P.C., in particular, when such orders are shown to have resulted or are likely to result in abuse of the process of Court or can be shown to cause a miscarriage of justice. In short, he submitted that the power of the High Court under Section 482 Cr.P.C. or Articles 226/227 of the Constitution of India continues to subsist even in relation to any criminal proceedings before the Special Court/Exclusive Special Court and in appropriate cases where the order passed by such Courts result in abuse of the process of Court or causes

manifest injustice to either of the party, be it the accused, the State or the victim, such an order, not being purely interlocutory in nature, can be interfered, quashed or corrected by the High Court in exercise of its inherent/extraordinary power under this provision.

In support of his contention, Mr Sushil Shukla, placed reliance upon the judgments of Supreme Court in **Gian Singh** (supra), **Madhu Limaye v The State of Maharashtra**,[23] **Prabhu Chawla v State of Rajasthan**,[24] **Satya Narayan Sharma v State of Rajasthan**,[25]**State Through Special Cell, New Delhi v Navjot Sandhu Alias Afshan Guru,**[26]**Punjab State Warehousing Corporation v Shree Durge Ji Traders**[27]and **Girish Kumar Suneja v CBI.**[28]

On the other hand, Mr Rajiv Lochan Shukla, learned Amicus Curiae, submitted that under Section 14A of the Amending Act a statutory appeal is provided against a judgment, sentence and order, not being an interlocutory order, passed by Special Court/Exclusive Special Court, hence it ousts the jurisdiction of the High Court under Section 482 Cr.P.C. and under Articles 226/227 of the Constitution of India, more

23 1977 (4) SCC 551
24 (2016) 16 SCC 30
25 (2001) 8 SCC 607
26 (2003) 6 SCC 641
27 (2011) 14 SCC 615
28 (2017) 14 SCC 809

particularly, in view of the language employed under Section 20 of the Amending Act and under Sections 4 and 5 Cr.P.C. He contended that simply because a person has not availed his right as has been provided under Section 14A by filing an appeal against the judgment, sentence and order, not being an interlocutory order, passed by a Special Court/Exclusive Special Court, would not entitle him to seek another remedy by way of Section 482 Cr.P.C. or under Articles 226/227 of the Constitution of India. Mr Shukla also placed reliance upon few judgments of the Supreme Court, to which we will make reference as and when necessary.

Mr Manish Goyal, learned Additional Advocate General submitted that the 1989 Act is referable to Article 17 read with Article 35 of the Constitution of India, which are contained in Part III of the Constitution of India, and essentially are fundamental rights. For enforcement of fundamental rights, a remedy by way of a writ petition is always available. There are several provisions under the Amending Act which place certain obligations upon the Government and the authorities. The non-performance of such obligations has not been made appealable and except for penal consequences, remedy for enforcement of such rights has not been provided. Under the circumstances, the

right being a fundamental right by virtue of Article 17 besides being a legal right under the Act, the remedy under Article 226 of the Constitution of India will be available for the enforcement of not only the fundamental right but also for the enforcement of such legal rights. He submitted that no citizen can be deprived of the constitutional remedies even though statutory remedies are available. Under the circumstances, the constitutional remedy of filing a writ petition for seeking a remedy to enforce a legal right will be available to every citizen who alleges a breach of such legal or constitutional rights. He submitted that criminal misc. writ petitions are maintainable before this Court and this is evident from the provisions contained in Chapter XVIII Rule 8 (2) (h) of the Rules of the Court.

He then submitted that the Supreme Court, time and again, has pointed out the distinction between the remedy available under Articles 226 and 227 of the Constitution of India. The remedy under Article 227 is available not for enforcement of a fundamental right, but for keeping the subordinate Courts within their bounds. The power under Article 227 of the Constitution of India can be exercised by this Court not only for the purposes of satisfying itself of the manner in which the proceedings are conducted but also to ensure that the

proceedings reach their logical end in accordance with law. The power under Article 227 of the Constitution of India is equally applicable upon the criminal courts as it is applicable upon the judgment and order of the Civil Courts. The distinction between civil proceedings and criminal proceedings is of no consequence, but so far as the power of the High Court under Article 227 of the Constitution of India is concerned, the same is equally applicable upon both kinds of proceedings. He submitted that the power under Section 482 Cr.P.C. is a recognition of the inherent power of the High Court by virtue of being the highest Court in the judicial hierarchy of the State. A perusal of the provisions contained in Section 482 Cr.P.C. establishes that it can be exercised to give effect to any order under the Code; to prevent abuse of the process of the Court and to secure the ends of justice. He, however, submitted that the power under Section 482 Cr.P.C. cannot be exercised where there is already a remedy provided for under the Code or any other legislation. He submitted that the power under Section 482 Cr.P.C. can be exercised only in the rarest of rare cases.

We once again make it clear that we are confining ourselves to the questions as framed. In other words, we make it clear that we are examining the submissions advanced by

learned counsel for the parties, only for the limited purpose of evaluating whether where an appeal under Section 14A of the Amending Act shall lie, from any judgment, sentence and order, not being an interlocutory order, passed by a Special Court/Exclusive Special Court to the High Court, both on facts and on law, a petition under Article 226/227 of the Constitution of India, or the revisional power of this Court under Section 397 Cr.P.C. or the inherent power under Section 482 Cr.P.C. would be maintainable.

In this connection, we would like to refer to a few judgments of the Supreme Court to which our attention was drawn by learned counsel for the parties. The Supreme Court recently in **Prabhu Chawla** (supra) considered the provisions of Section 482 and 397 Cr.P.C. and their scope. In this case, two criminal appeals were preferred, assailing a common judgment dated 2.4.2009, whereby the High Court of Judicature of Rajasthan at Jodhpur dismissed the petitions preferred by the appellants under Section 482 Cr.P.C., holding them to be not maintainable in view of the judgment of the very same High Court in **Sanjay Bhandari v State of Rajasthan,**[29]holding that the availability of a remedy under Section 397 Cr.P.C. would make a petition under Section 482 Cr.P.C. not maintainable. In

29 (2009) 1 Cri LR 282

this judgment, reference was made to the judgment of the Supreme Court in **Dhariwal Tobacco Products Ltd. v. State of Maharashtra**.[30] In that case, the Division Bench concurred with the proposition of law that availability of an alternative remedy of criminal revision under Section 397 Cr.P.C. by itself cannot be a good ground to dismiss an application under Section 482 Cr. P.C. While so observing, it was also noticed that a later Division Bench judgment of the Supreme Court in **Mohit v State of UP**[31] apparently held to the contrary that when an order under challenge is not interlocutory in nature and is amenable to the revisional jurisdiction of the High Court, then there should be a bar in invoking the inherent jurisdiction of the High Court. In view of such conflict, a reference was made to a Larger Bench. The Supreme Court, while answering the reference, after referring to **Dhariwal Tobacco Products Ltd.** (supra), **R P Kapur v State of Punjab**,[32] **Som Mittal v State of Karnataka**,[33] held that merely because a revision petition is maintainable, the same by itself would not constitute a bar for entertaining an application under Section 482 Cr.P.C. Reference was also made to **Raj Kapoor v State**[34] and **Madhu Limaye** (supra). The relevant portion of paragraph 10 from its judgment in **Raj**

30 (2009) 2 SCC 370
31 (2013) 7 SCC 789
32 AIR 1960 SC 866
33 (2008) 3 SCC 574
34 (1980) 1 SCC 43

Kapoor (supra) is quoted as under:

> "… … …
>
> **In short, there is no total ban on the exercise of inherent power where abuse of the process of the court or other extraordinary 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 court's process**. Can we state that in this third category the inherent power can be exercised? In the words of Untwalia, J.: (SCC p. 556, para 10)
>
> > '10. ... 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.'

> I am, therefore clear in my mind that the inherent power is not rebuffed in the case situation before us. Counsel on both sides, sensitively responding to our allergy for legalistics, rightly agreed that the fanatical insistence on the formal filing of a copy of the order under cessation need not take up this court's time. Our conclusion concurs with the concession of counsel on both sides that merely because a copy of the order has not been produced, despite its presence in the records in the court, it is not possible for me to hold that the entire revisory power stands frustrated and the inherent power stultified."
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> (*emphasis supplied*)

In the concluding paragraphs of the judgment in **Prabhu Chawla** (supra), the Supreme Court observed thus:

> "7. As a sequel, we are constrained to hold that the Division Bench, particularly in paragraph 28, in the case of **Mohit** (supra) in respect of inherent power of the High Court in Section 482 Cr.P.C. does not state the law correctly. We record our respectful disagreement.
>
> **In our considered opinion the learned Single Judge of the High Court should have followed the law laid down by this Court in the case of Dhariwal Tobacco Products Ltd. (supra) and other earlier cases which were cited but wrongly ignored them in preference to a judgment of that Court in the case of Sanjay Bhandari (supra) passed by another learned Single Judge on 05.02.2009** in SB Criminal Miscellaneous Petition No.289 of 2006 which is impugned in the connected Criminal Appeal arising out of Special Leave Petition No. 4744 of 2009. As a result, both the appeals, one

> preferred by Prabhu Chawla and the other by Jagdish Upasane & Others are allowed. The impugned common order dated 02.04.2009 passed by the High Court of Rajasthan is set aside and the matters are remitted back to the High Court for fresh hearing of the petitions under Section 482 Cr.P.C. in the light of law explained above and for disposal in accordance with law. Since the matters have remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months."

(emphasis supplied)

In **State (Through Special Cell, New Delhi)** (supra), the Supreme Court, while dealing with a case under the provisions of the Prevention of Terrorism Act, 2002, had an occasion to deal with the powers under Article 227 of the Constitution of India and under Section 482 Cr.P.C. The relevant paragraphs 28 and 29 of this judgment, read thus:

> "28. Thus the law is that Article 227 of the Constitution of India gives the High Court the power of superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. **This jurisdiction cannot be limited or fettered by any act of the State Legislature. The supervisory jurisdiction extends to keeping the subordinate Tribunal's within the limits of their authority and to seeing that they obey the law. The powers under Article 227 are wide and can be used, to meet the ends of justice. They can be used to interfere even with an interlocutory order.**

However the power under Article 227 is a discretionary power and it is difficult to attribute to an order of the High Court, such a source of power, when the High Court itself does not in terms purport to exercise any such discretionary power. It is settled law that this power of judicial superintendence, under Article 227, must be exercised sparingly and only to keep subordinate Courts and Tribunal's within the bounds of their authority and not to correct mere errors. Further, where the statute bans the exercise of revisional powers it would require very exceptional circumstances to warrant interference under Article 227 of the Constitution of India since the power of superintendence was not meant to circumvent statutory law. **It is settled law that the jurisdiction under Article 227 could not be exercised** "**as the cloak of an appeal in disguise**".

Section 482 of the Criminal Procedure Code starts with the words "Nothing in this Code". Thus the inherent jurisdiction of the High Court under Section 482 of the Criminal Procedure Code can be exercised even when there is a bar under Section 397 or some other provisions of the Criminal Procedure Code. However as is set out in Satya Narayanan Sharma's case (supra) this power cannot be exercised if there is a statutory bar in some other enactment. **If the order assailed is purely of an interlocutory character, which could be corrected in exercise of revisional powers or appellate powers the High Court must refuse to exercise its inherent power.** The inherent power is to be used only in cases where there is an abuse of the process of the Court or where interference is absolutely necessary for securing the ends of justice. The inherent power must be exercised very sparingly as cases which require interference would be few and far between. **The**

> **most common case where inherent jurisdiction is generally exercised is where criminal proceedings are required to be quashed because they are initiated illegally, vexatiously or without jurisdiction.** Most of the cases set out hereinabove fall in this category. It must be remembered that the inherent power is not to be resorted to if there is a specific provision in the Code or any other enactment for redress of the grievance of the aggrieved party. **This power should not be exercised against an express bar of law engrafted in any other provision of the Criminal Procedure Code. This power cannot be exercised as against an express bar in some other enactment**."
>
> (*emphasis supplied*)

In **Priya Vrat Singh** (supra), the Supreme Court, while dealing with a criminal appeal arising from the order passed by a learned Single Judge of this Court, dismissing the application filed in terms of Section 482 Cr.P.C., in paragraph 11, observed thus:

> "11. *19.* The section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. **It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice**. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly

arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. **All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle** "***quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest***" **(when the law gives a person anything it gives him that without which it cannot exist)**. While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. **In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice**.

As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide

> and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. **The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material**. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage." [Also see: *Gian Singh* (supra)]

In **Punjab State Warehousing Corporation** (supra), the Supreme Court dealt with a criminal appeal arising from the judgment rendered by a learned Single Judge of the High Court of Judicature of Punjab and Haryana. The learned Single Judge had dismissed the petition preferred by the appellant under Section 482 Cr.P.C., seeking quashing of orders dated 18.2.2003 by which, the criminal complaint filed against the respondents in this appeal, for having committed offences under Sections 406 and 409 of IPC had been dismissed in default by the Chief Judicial Magistrate and the order dated 9.11.2005 by which the application for restoration of the said complaint was dismissed.

The Supreme Court, while dealing with the appeal, considered the question whether in the fact situation the High Court was justified in declining to exercise its jurisdiction under Section 482 Cr.P.C. and in the concluding paragraph 12, while allowing the appeal, held thus:

> "We are convinced that in the instant case, rejection of the appellant's petition under Section 482 of the Code has resulted in miscarriage of justice. Availability of an alternative remedy of filing an appeal is not an absolute bar in entertaining a petition under Section 482 of the Code. As aforesaid, one of the circumstances envisaged in the said section, for exercise of jurisdiction by the High Court is to secure the ends of justice. **Undoubtedly, the trial court had dismissed the complaint on a technical ground and therefore, interests of justice required the High Court to exercise its jurisdiction to set aside such an order so that the trial court proceed with the trial on merits**."
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> (*emphasis supplied*)

In **Jeffrey J Diermeier v State of WB**,[35] a Division Bench of the Supreme Court explained the scope and impact of inherent powers of the High Court under Section 482 Cr.P.C. and observed thus:

> "20. … The section itself envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of Court;

35 (2010) 6 SCC 243

> and (iii) to otherwise secure the ends of justice. Nevertheless, it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction of the Court. Undoubtedly, the power possessed by the High Court under the said provision is very wide but it is not unlimited. It has to be exercised sparingly, carefully and cautiously, *ex debito justitiae* to do real and substantial justice for which alone the court exists. It needs little emphasis that the inherent jurisdiction does not confer an arbitrary power on the High Court to act according to whim or caprice. The power exists to prevent abuse of authority and not to produce injustice."

Similarly, in **Dinesh Dutt Joshi v State of Rajasthan**,[36] while dealing with the powers under Section 482 Cr.P.C., the Supreme Court, in paragraph 6, observed thus:

> "6. …The principle embodied in the section is based upon the maxim: *quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest* i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. **As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases**."

36 (2001) 8 SCC 570

(*emphasis supplied*)

In **Mohammad Yunus v Mohammad Mustaqim & Ors**,[37] the Supreme Court while dealing with Article 227, observed thus:

> "The supervisory jurisdiction conferred on the High Courts under Art. 227 of the Constitution is limited "to seeing that an inferior Court or Tribunal functions within the limits of its authority", and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. **There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Art. 227, the High Court does not act as an Appellate Court or Tribunal. It will not review or re-weigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision**."
>
> (*emphasis supplied*)

In the light of the law laid down by the Supreme Court, we would now like to consider the expression 'intermediate order' and its effect on the rights of the parties under Section 14A or the powers of this Court in entertaining the appeal against such orders. The word 'order' as it appears in sub-section (1) of

37 (1983) 4 SCC 566

Section 14A against which, an appeal would lie, is made subject to the condition of it 'not being an interlocutory order'. In short, the appeal would lie against an order(s), not being interlocutory in nature passed by a Special Court/Exclusive Special Court, to the High Court, both on facts and on law. Sub-section (2) also uses the word 'order' carving out a singular exception and allowing an appeal against an order of the Special Court/Exclusive Special Court, granting or refusing bail, which is ordinarily interlocutory in nature. Sub-section (3) also uses the word 'order', but the meaning of the word 'order' in sub-section (3) is confined to the order appealed from. In other words, sub-section (3) only provides for the limitation for preferring an appeal within the time stipulated in that provision, namely, from the date of the judgment, sentence or order 'appealed from'. Thus, from a plain reading of the provisions of Section 14A, it is clear to us that the word/expression 'order' though not ostensibly making a distinction between a 'final order' or an 'intermediate order' it must be interpreted to contemplate all orders which are either final in nature or which are likely to put an end to the lis before the Special Court. It is these specie of orders alone that would be appealable. In other words, the word/expression 'order' employed in this Section would mean those orders which are either final in nature or which if set aside would result in a

termination of proceedings before the Special or Exclusive Special Court. Such orders would always be subject to the appellate power of the High Court under Section 14A of the Amending Act.

It was submitted that even during the course of trial, an occasion may arise where various orders may qualify what is now clearly or legally known and understood as 'intermediate orders'. As noticed above, these are orders of a category which may affect the accused/victim and, if such orders are challenged by way of an appeal and if the appeal is allowed, it may put an end to the proceedings once and for all and, therefore, such orders being “intermediate” in nature, can also be challenged under Section 482 Cr.P.C.

We would like to examine this submission in the light of the judgment of the Supreme Court in **Girish Kumar Suneja** (supra). The Supreme Court in paragraphs 17, 18, 19, 20, 21, 23 and 24, which are relevant for our purpose, observed thus:

> “17. The concept of an intermediate order first found mention in Amar Nath v. State of Haryana, (1977) 4 SCC 137 in which case the interpretation and impact of Section 397 (2) Cr.P.C. came up for consideration. This decision is important for two reasons. Firstly it gives the historical reason for the enactment of Section 397 (2) Cr.P.C. and secondly considering that historical

background, it gives a justification for a restrictive meaning to Section 482 Cr.P.C.

18. As far as the historical background is concerned, it was pointed out that the Criminal Procedure Code of 1898 and the 1955 amendment gave wide powers to the High Court to interfere with orders passed in criminal cases by the subordinate courts. These wide powers were restricted by the High Court and this Court, as matter of prudence and not as a matter of law, to an order that "suffered from any error of law or any legal infirmity causing injustice or prejudice to the accused or was manifestly foolish or perverse." (Amar Nath case, SCC p.140 para 4). **This led to the courts being flooded with cases challenging all kinds of orders and thereby delaying prosecution of a case to the detriment of an accused person**.

19. The Statement of Objects and Reasons of the Criminal Procedure Code state that the Government kept in mind the following for the purposes of enacting the Criminal Procedure Code:

> "**3**. (i) an accused person should get a fair trial in accordance with the accepted principles of natural justice;
>
> (ii) every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and
>
> (iii) the procedure should not be complicated and should, to the utmost extent possible, ensure fair deal to the poorer sections of the community."
>
> As regards Section 397 (2) Cr.PC, paragraph 5 (d) of the Statement of Objects and Reasons

mentioned that:

"**5**. Some of the more important changes proposed to be made with a view to speeding up the disposal of criminal cases are –

* *
*

(*d*) **the powers of revision against interlocutory orders are being taken away, as it has been found to be one of the main contributing factors in the delay or disposal of criminal cases**; "

In reply to the debate on the subject, it was stated by Shri Ram Niwas Mirdha the Minister concerned that:

"It was stated before the Select Committee that a large number of appeals against interlocutory orders are filed with the result that the appeals got delayed considerably. Some of the more notorious cases concern big business persons. So, this new provision was also welcomed by most of the witnesses as well as the Select Committee. ... This was a well-thought out measure so we do not want to delete it."

20. As noted in *Amar Nath* the **purpose of introducing Section 397 (2) Cr.P.C was to curb delays in the decision of criminal cases and thereby to benefit the accused by giving him or her a fair and expeditious trial. Unfortunately, this legislative intendment is sought to be turned *topsy-turvy* by the appellants**.

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, (2000) 6 SCC 195, wherein a revision petition was filed challenging the taking of cognizance and issuance of a process. It was said: (*K K Patel case*, SCC p.201, para 11)

> "11. …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, 1980 Suppl. SCC 92 and Rajednra Kumar Sitaram Pande v. Uttam, (1999) 3 SCC 134. **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.

24. The second reason why Amar Nath is important is that it invokes the principle, in the context of criminal law, that what cannot be done directly cannot be done indirectly. Therefore, when Section 397 (2) Cr.P.C prohibits interference in respect of interlocutory orders, Section 482 Cr.P.C. cannot be availed of to achieve the same objective. **In other words, since Section 397 (2) CrPC prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482 Cr.P.C to set aside an interlocutory order**. This is what this Court held: (SCC p.140, para 3)

> "3. **While we fully agree with the view taken by the learned Judge that where a revision to the High Court against the order of the Subordinate Judge is expressly barred under sub-section (2) of Section 397 of the 1973 Code the inherent powers contained in**

> **Section 482 would not be available to defeat the bar contained in Section 397 (2)**. Section 482 of the 1973 Code contains the inherent powers of the Court and does not confer any new powers but preserves the powers which the High Court already possessed. **A harmonious construction of Sections 397and 482 would lead to the irresistible conclusion that where a particular order is expressly barred under Section 397 (2) and cannot be the subject of revision by the High Court, then to such a case the provisions of Section 482 would not apply. It is well settled that the inherent powers of the Court can ordinarily be exercised when there is no express provision on the subject-matter**. Where there is an express provision, barring a particular remedy, the Court cannot resort to the exercise of inherent powers."
>
> (*emphasis supplied*)

Similarly, in paragraphs 27, 29 and 30, the Supreme Court observed thus:

> "27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition – such a petition can be rejected at the threshold. **If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings**. As we see it, there appear to be only two

such eventualities of a revisable order and in any case only one such eventuality is before us. Consequently the result of paragraph 10 of the order passed by this Court is that the entitlement of the appellants to file a revision petition in the High Court is taken away and thereby the High Court is deprived of exercising its extraordinary discretionary power available under Section 397 Cr.P.C.

29. This leads us to another facet of the submission made by learned counsel that even the avenue of proceeding under Section 482 Cr.P.C. is barred as far as the appellants are concerned. **As held in *Amar Nath* and with which conclusion we agree, if an interlocutory order is not revisable due to the prohibition contained in Section 397 (2) Cr PC that cannot be circumvented by resort to Section 482 Cr PC**. There can hardly be any serious dispute on this proposition.

30. What then is the utility of Section 482 Cr.P.C.? This was considered and explained in *Madhu Limaye* which noticed the prohibition in Section 397 (2) Cr.P.C. and at the same time the expansive text of Section 482 Cr.P.C. and posed the question: In such a situation, what is the harmonious way out ? This Court then proceeded to answer the question in the following manner: (SCC pp. 555-56, para 10)

> "10. …In such a situation, what is the harmonious way out? In our opinion, a happy solution of this problem 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 of the other principles

> 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 order assailed is purely of 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."
>
> (*emphasis supplied*)

It is light of the above exposition of the law that the expression "order as occurring in Section 14A must be interpreted.

Reverting to the invocation of the inherent or revisional power even where an appeal would lie it would be apposite to bear in mind that though other interlocutory orders passed by the Special Court or the Exclusive Special Court, as the case may be, are not appealable at all in view of the provisions prescribed under Section 14-A(1) of the Amending Act, an order granting or

refusing bail is an order against which an appeal is permitted under the newly inserted Section 14-A(2) of the Act. This is so, because as provided under sub-section (3) of Section 14, every trial, under the Act, is to proceed on a day-to-day basis and has to be conducted expeditiously. Similarly we note that both the Amending Act as well as the rules framed thereunder prescribe a specific time frame for each stage of the proceedings. This appears to be the legislative intent underlying no appeal being provided against interlocutory orders other than those refusing or granting bail passed by the Special Court or the Exclusive Special Court. The reasoning behind the exception carved out is because those orders concern the liberty of the accused, as would appear from the interpretation accorded to the pari materia provisions of Section 21(1) and (4) of the National Investigation Agency Act, 2008 by the Supreme Court in **State of A.P. Vs. Mohd. Hussain alias Saleem**[38].

In the said decision before the Supreme Court the principal submission of the accused respondents was based on the premise that an order, granting or refusing bail, is an interlocutory order and therefore the order on a bail application would stand excluded from the coverage of Section 21(1) of the NIA Act, which provides for an appeal to the High Court from any

38 (2014) 1 SCC 258

judgment, sentence or order of Special Court both on facts and on law. It was argued, on behalf of the respondents, therein that it is only those appeals, which are covered under Section 21(1) that are to be heard by two Judges of the High Court, as laid down under Section 21(1) of the NIA Act. The appeal against refusal of bail lies to the High Court under Section 21(4) and not under Section 21(1) and, therefore, it need not be heard by a Bench of two Judges. It was also argued, on behalf of the respondents accused, that the bail application, which the accused had filed before the Bombay High Court, was one under Section 124 of the Maharashtra Control of Crimes Act read with Section 439 of the Code and was fully maintainable before a Single Judge.

After hearing the submission of the parties, the Supreme Court discussed and interpreted the provisions prescribed under Section 21 of the NIA Act in paragraph Nos. 17 and 18 as under:-

> "17. There is no difficulty in accepting the submission on behalf of the appellant that an order granting or refusing bail is an interlocutory order. The point however to be noted is that as provided under Section 21(4), the appeal against such an order lies to the High Court only, and to no other court as laid down in Section 21(3). **Thus it is only the interlocutory orders granting or refusing bail which are made appealable, and no other interlocutory orders, which is made clear in**

Section 21(1), which lays down that an appeal shall lie to the High Court from any judgment, sentence or order, (not being an interlocutory order) of a Special Court. Thus other interlocutory orders are not appealable at all. This is because as provided under Section 19 of the Act, the trial is to proceed on day to day basis. It is to be conducted expeditiously. Therefore, no appeal is provided against any of the interlocutory orders passed by the Special Court. The only exception to this provision is that orders either granting or refusing bail are made appealable under Section 21(4). This is because those orders are concerning the liberty of the accused, and therefore although other interlocutory orders are not appealable, an appeal is provided against the order granting or refusing the bail. Section 21(4), thus carves out an exception to the exclusion of interlocutory orders, which are not appealable under Section 21(1). The order granting or refusing the bail is therefore very much an order against which an Patna High Court Cr.Misc. No.25276 of 2016 appeal is permitted under Section 21(1) of the Act.

18. Section 21(2) provides that every such appeal under sub-Section (1) shall be heard by a bench of two Judges of the High Court. This is because of the importance that is given by the Parliament to the prosecution concerning the Scheduled Offences. They are serious offences affecting the sovereignty and security of the State amongst other offences, for the investigation of which this Special Act has been passed. If the Parliament in its wisdom has desired that such appeals shall be heard only by a bench of two Judges of the High Court, this Court cannot detract from the intention of the Parliament. Therefore, the interpretation placed by Mr. Ram Jethmalani on Section 21(1) that all interlocutory

> orders are excluded from Section 21(1) cannot be accepted. **If such an interpretation is accepted it will mean that there will be no appeal against an order granting or refusing bail. On the other hand, sub-Section (4) has made that specific provision, though sub-Section (1) otherwise excludes appeals from interlocutory orders. These appeals under sub-Section (1) are to be heard by a bench of two Judges as provided under sub-Section (2). This being the position, there is no merit in the submission canvassed on behalf of the appellant that appeals against the orders granting or refusing bail need not be heard by a bench of two Judges.** "

In our considered view, the contention which has been urged by Sri Sushil Shukla that the powers of the High Court under section 482 Cr.P.C. and its revisional power under section 397/401 Cr.P.C. along with the provisions contained under Article 226/227 of the Constitution of India are not ousted by the provisions of Section 14 A of the Act of 2015 where an appeal has been provided from any judgment/sentence or order not being an interlocutory order of a Special Court/Exclusive Special Court to the High Court both on facts and on law is too broadly framed so as to merit acceptance. It must be borne in mind that the statute itself provides a remedy to an accused against any judgment, sentence and order of the Special Court/Exclusive Special Court to the High Court. Therefore, any person, who is aggrieved by an order of the Special

Court/Exclusive Special Court can approach and prefer an appeal to the High Court for redressal of his grievance and any grievance of an accused/victim against the order of the court below can be examined both on facts and law by the High Court. Moreover the word '*order*', not being an interlocutory order, as mentioned in Section 14 A (1) of the Act, 2015 also includes *"intermediate orders"* which can be very well be assailed before the High Court. The correct answer, in our considered opinion, lies in understanding and appreciating the extent and the situations in which the powers of this Court under Articles 226/227 or the inherent powers are entitled to be invoked.

While answering this question we are conscious that Articles 226 and 227 are part of the basic structure of the Constitution. These powers as held by the Supreme Court in **State (through Special Cell, New Delhi)** cannot be limited or fettered by any act of legislature. The parameters and the grounds on which the provisions of Section 482 Cr.P.C. are entitled to be invoked are also well settled. The question therefore really is not one of ouster of these jurisdictions but whether they are entitled to be invoked in respect of judgments, sentences or orders which are otherwise appelable under Section 14A.

As has been rightly submitted before us, the 1989 Act does not oust the jurisdiction of this Court flowing from either Articles 226/227 of the Constitution or Section 482 Cr.P.C. However, the principal issue which falls for consideration is whether these powers would be invoked in respect of causes which can duly fall for resolution within the contours of Section 14A.

In our considered opinion the answer to this question must necessarily be answered in the negative. Where the judgment, sentence or order is of a character which would be amenable to the appellate powers of this Court as conferred by Section 14A, the High Court recognising the well settled principle of judicial self-restraint would not invoke its constitutional or inherent powers. This, we do hold, since the statute provides for an adequate and efficacious remedy to the aggrieved person before the High Court itself. Since the 1989 Act has already been recognised by us to constitute a special enactment and does construct a wholesome correctional avenue in respect of any judgment, sentence or order that may be passed in proceedings under the said Act, the constitutional and inherent powers cannot be invoked in situations covered by Section 14A.

Turning to the provisions of Section 397 Cr.P.C., we find that the 1989 Act, both in terms of Section 14A as well as Section 20

overrides the Cr.P.C. This is the evident and manifest legislative intent. The revisional jurisdiction would therefore clearly stand eclipsed and ousted by Section 14A.

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.

Question C. Whether the amended provision of Section 14A would apply to offences or proceedings initiated or pending prior to 26 January 2016?

As noticed above, the introduction of Section 14A by virtue of the Amending Act puts in place a completely new challenge procedure in respect of judgments, sentences or orders passed by the Special or Exclusive Special Courts. The Amending Act received the assent of the President on 31 December, 2015 and was enforced with effect from 26 January, 2016. Prior to the

introduction of Section 14A, the 1989 Act made no provision for an appeal being preferred before the High Court. In view of the above, it was open for an aggrieved person to invoke the jurisdiction of the Court either by way of a revision under Section 397 Cr.P.C. or its inherent powers under Section 482 Cr.P.C. in respect of judgments sentences or orders passed by the Special /Exclusive Special Courts. Chapter XXIX of the Cr.P.C. also applied and thus all judgments or sentences were also subject to an appeal in accordance with the provisions placed in that Chapter. Similarly, the concurrent powers of the High Court under Section 439 Cr.P.C was also preserved and consequently, against an order refusing bail it was open to the aggrieved person to move the High Court. The question as framed for our consideration, however, has been principally formulated in light of certain decisions rendered by learned Judges of this Court relating to the application of Section 14A in respect of offences that may have been committed prior to the enforcement of the Amending Act. Our attention has been drawn to the order dated 25 August, 2017 passed by a learned Judge in **Janardan Pandey versus State of U.P.**[39] in which the following observation was made:-

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> "In view of law laid down by the Hon'ble Apex Court in the case of Garikapati Veeraya vs.N.Subbiah Choudhry and others, AIR 1957 S.C.540, on the date of initiation of the legal proceedings, substantive rights of the parties shall remain intact unless by any subsequent legislation they have been altered retrospectively. In the present case Act No.1 of 2016 has not been given retrospective effect, hence, the present appeal is not maintainable. In this case the incident is of dated 24.11.2000, therefore, remedy for the accused-appellant was to move an application under section 439 Cr.P.C. because the amending Act No. 1 of 2016 has been enforced with effect from 26.01.2016, thus, to secure ends of justice, in exercise of powers under section 482 Cr.P.C., this Court converts the appeal into an application for bail moved under section 439 Cr.P.C. and office is directed to furnish copy of this order to the In-charge Computer Centre and office of the Stamp Reporter to correct the records."

The learned Judge, as is evident from the observations extracted above opined that since the incident was of 24 November, 2000, the Amending Act and its provisions would have no application. The learned Judge proceeded to hold that the only remedy available to the appellants therein was to move an application under Section 439 Cr.P.C. Invoking the inherent powers of the Court as recognised by Section 482 Cr.P.C., the learned Judged proceeded to convert the appeal and directed it to be treated as an application under Section 439 Cr.P.C.

In another decision dated 29 August, 2017 passed in **Rohit versus State of U.P. and another**[40] the learned Judge proceeded to consider the question whether an application for condonation of delay would be maintainable in respect of an appeal preferred under Section 14A. By what, in our considered opinion, clearly appears to be a convoluted process of reasoning, the learned Judge proceeded to make the following observations:-

> "The answer to this question is not far to seek section 14-A of amending Act No. 1 of 2016 does not expressly or by necessary implication repeal provision contained in section 439 of the Code of Criminal Procedure, simply it provides a special remedy to an accused and the complainant/victim under the Special Act, it is the wisdom of the legislature to provide special remedy for a certain limited period or during the pendency of the proceedings. Till the special remedy remains available to the accused or the other parts, he would have no right to seek his remedy under the general law but as soon as special remedy ceases to exist for him, he can avail ordinary remedy provided by general law.
>
> In view of above, I find myself unable to agree with the arguments advanced by the learned Additional Government Advocate. In my opinion, special remedy of filing appeal under section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act does not abrogate or extinguish the right to move bail application under section 439 of the Code of Criminal Procedure before this Court, this normal remedy to an accused under the Special Act would remain in

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> suspension during the time special remedy provided by section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act can be availed by such an accused but after expiry of this limited period, he would be entitled like other accused to seek his bail under section 439 of the Code of Criminal Procedure."

On the strength of the conclusions arrived at and extracted herein above, the learned Judge permitted the conversion of the appeal into a bail application by invoking the inherent powers of the Court under Section 482 Cr.P.C. A discordant note with respect to the above views expressed by the learned Judge in **Janardan Pandey** and **Rohit** was struck by another learned Judge who was ceased of various bail applications in respect of offences committed under the 1989 Act. The learned Single Judge in **Satyendra** took the view that Section 14A was merely a procedural law and therefore, the date of committal of offence or of the lodging of the first information report or taking of cognisance would not be relevant for the purposes of applicability of Section 14A. The learned Single Judge also did not agree with the reasoning adopted by the learned Judge who had decided **Rohit** to the extent that it was held that on the expiry of the period of 180 days, the provisions of Section 439 Cr.P.C. and the concurrent jurisdiction of this Court under the said provision would stand revived. It was on this bail

application and the orders dated 21 December, 2017 passed thereon that the questions of law as formulated by the learned Judge were referred for consideration of a Larger Bench as noticed in the introductory part of this judgment.

At the very outset, we must state categorically that the date of commission of the offence or for that matter the submission of a charge sheet or taking of cognizance cannot possibly be said or recognised to be a circumstance relevant for invocation or application of Section 14A. Section 14A as has been held by us above principally introduces a modified challenge procedure in respect of judgments, sentences or orders passed in proceedings under the 1989 Act. A forum for redressal against orders either granting or refusing bail has also been newly created. While considering the validity of section 14A(2) we have already held that it does not impede or impinge upon any vested rights of an aggrieved person. We have also found that it does not place any onerous conditions for the exercise of the right to question the correctness of a judgment, sentence or order passed under the 1989 Act. It simply constructs and creates a special forum for the challenge to judgments, sentences and orders passed under the 1989 Act. While not disputing the settled legal position that a right of an appeal is a substantive right, the question which falls

for our consideration is slightly distinct. In the present, the principal issue to be considered is whether the aggrieved person had a vested right to invoke the jurisdiction of the High Court either by way of a revision under section 397 Cr.P.C. or section 439 Cr.P.C. It is only if we come to conclude that such a vested right existed that we would be justified in proceeding to deal with the issue of prospective or retrospective application of the provisions of section 14A which appears to have prevailed upon the learned Judge who decided **Rohit.**

The word **"vested"** is defined in *Black's Law Dictionary* (6th Edn.) at p. 1563, as:

> "Vested.—**fixed; accrued; settled; absolute; complete.** Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; **mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute 'vested rights'."**

In *Webster's Comprehensive Dictionary* (International Edition) at p. 1397, "vested" is defined as law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.

Noticing the said dictionary meanings of the word "vested" the Supreme Court in **MGB Gramin Bank Vs. Chakrawarti Singh**[41] held:-

> **"13.<u>Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned.</u>** Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/scheme could be changed. [Vide *Kuldeep Singh* v. *Govt. (NCT of Delhi)*. [(2006) 5 SCC 702 : AIR 2006 SC 2652]]"

As noticed above, a right is vested when it is complete, settled and not dependent on any contingency. A future or contingent interest which rests on an anticipated continuance of existing laws is not a vested right. It is these principles which must govern our understanding of section 14A. We find that the provision essentially creates a new forum for challenge to judgments, sentences or orders passed in proceedings under the 1989 Act. We deem it apposite to refer to the decision of the Supreme Court in **New India Insurance Co. Ltd. Vs. Shanti Misra**[42] in this context. The issue which arose for consideration before the Supreme Court was whether the creation of a remedy before the Motor Accidents Claims Tribunal under the Motor Vehicles Act, 1939 would apply to accidents which occurred

41 (2014) 13 SCC 583
42 (1975) 2 SCC 840

prior to its constitution and whether in respect of such accidents, parties would have to apply to the Civil Court. Dealing with this question, the Supreme Court observed:-

> **"5.** On the plain language of Sections 110-A and 110-F there should be no difficulty in taking the view that the change in law was merely a change of forum i.e. a change of adjectival or procedural law and not of substantive law. It is a well-established proposition that such a change of law operates retrospectively and the person has to go to the new forum even if his cause of action or right of action accrued prior to the change of forum. He will have a vested right of action but not a vested right of forum. If by express words the new forum is made available only to causes of action arising after the creation of the forum, then the retrospective operation of the law is taken away. Otherwise the general rule is to make it retrospective. The expressions "arising out of an accident" occurring in sub-section (1) and "over the area in which the accident occurred", mentioned in sub-section (2) clearly show that the change of forum was meant to be operative retrospectively irrespective of the fact as to when the accident occurred. To that extent there was no difficulty in giving the answer in a simple way. But the provision of limitation of 60 days contained in sub-section (3) created an obstacle in the straight application of the well-established principle of law. If the accident had occurred within 60 days prior to the constitution of the tribunal then the bar of limitation provided in sub-section (3) was not an impediment. An application to the tribunal could be said to be the only remedy. If such an application, due to one reason or the other, could not be made within 60 days then the tribunal had the power

to condone the delay under the proviso. But if the accident occurred more than 60 days before the constitution of the tribunal then the bar of limitation provided in sub-section (3) of Section 110-A on its face was attracted. This difficulty of limitation led most of the High Courts to fall back upon the proviso and say that such a case will be a fit one where the tribunal would be able to condone the delay under the proviso to sub-section (3), and led others to say that the tribunal will have no jurisdiction to entertain such an application and the remedy of going to the civil court in such a situation was not barred under Section 110-F of the Act. While taking the latter view the High Court failed to notice that primarily the law engrafted in Sections 110-A and 110-F was a law relating to the change of forum.

7. In our opinion taking recourse to the proviso appended to sub-section (3) of Section 110-A for excusing the delay made in the filing of the application between the date of the accident and the date of the constitution of the tribunal is not correct. Section 5 of the Limitation Act, 1963 or the proviso to sub-section (3) of Section 110-A of the Act are meant to condone the default of the party on the ground of sufficient cause. But if a party is not able to file an application for no fault of his but because the tribunal was not in existence, it will not be a case where it can be said that the "applicant was prevented by sufficient cause from making the application in time" within the meaning of the proviso. The time taken between the date of the accident and the constitution of the tribunal cannot be condoned under the proviso. Then, will the application be barred under sub-section (3) of Section 110-A? Our answer is in the negative and for two reasons:

> "(1) Time for the purpose of filing the application under Section 110-A did not start running before the constitution of the tribunal. Time had started running for the filing of the suit but before it had expired the forum was changed. And for the purpose of the changed forum, time could not be deemed to have started running before a remedy of going to the new forum is made available.
>
> (2) Even though by and large the law of limitation has been held to be a procedural law, there are exceptions to this principle. Generally the law of limitation which is in vogue on the date of the commencement of the action governs it. But there are certain exceptions to this principle. The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish vested right of action by providing for a shorter period of limitation."

The exposition of the legal position in **New India Insurance** clearly applies to the question raised before us. Section 14A firstly takes away no vested rights and merely creates a new forum of an appeal to the High Court. While taking away the concurrent jurisdiction of the Court under Section 439 Cr.P.C. and impliedly excluding its jurisdiction under Section 397 Cr.P.C, the legislature has principally created an appellate forum for the consideration of all challenges emanating from proceedings taken under 1989 Act. As has been noticed by us above, the principle legislative intent underlying the introduction of Section 14A appears to be the need to create a special and

exclusive challenge procedure in respect of offences committed under the 1989 Act. In doing so, the legislature has not affected any substantive rights of an aggrieved person. It has only created a special forum for the consideration of challenges that may be raised in respect of offences committed and tried under the 1989 Act. Viewed in this light the mere fact that the offence was committed, charge sheet filed or cognizance taken by the Court prior to enforcement of the Amending Act can clearly have no bearing on the applicability of Section 14A. These factors cannot possibly be viewed as determinative of the applicability of Section 14A.

The provisions of Section 14A would stand triggered dependent upon the date of the judgment, sentence or order which is sought to be assailed. If the order which is sought to be assailed be one which has come to be passed after 26 January, 2016 then it must be challenged only in accordance with the procedure contemplated and provided for by Section 14A.

At the same time, we do not find any reason to hold or recognise section 14A as impacting proceedings instituted or pending before this Court prior to its enforcement. They would continue to be governed by the law as prevailing prior to its introduction and enforcement. This we do hold since no express provision is

made in section 14A which may even remotely impact or effect proceedings pending before this Court prior to the promulgation of the Amending Act. The only caveat that we deem necessary to enter here is that the pending proceedings would stand saved provided they relate to a judgment, sentence, order or a decision granting or refusing bail made prior to 26 January 2016.

In view of the above conclusions, our answer to Question C would be that the mere fact that proceedings or the offence under the 1989 Act had been instituted or committed prior to enforcement of the Amending Act would have no impact on the applicability of Section 14A. The date of commission of the offence, taking of cognizance or the framing of charge are all aspects which would have no bearing on the applicability of the said provision. The sole determinative factor, in our considered opinion, would be the date of the judgment, sentence or order of the Special Court or the Exclusive Special Court, as the case may be. Similarly, the solitary factor which would be relevant for the purposes of applicability of Section 14A would be the date of the order by which an application for bail has been either granted or refused. If the judgment, sentence or order sought to be assailed be one which is passed after 26 January 2016, it would be liable

to be challenged only in accordance with the procedure prescribed under section 14A.

We, therefore, hold that the provisions of Section 14A would be applicable to all judgments, sentences or orders as well as orders granting or refusing bail passed or pronounced after 26 January, 2016. We clarify that the introduction of this provision would not affect proceedings instituted or pending before this Court prior to its enforcement provided they relate to a judgment, sentence or order passed prior to 26 January 2016. We further hold that if judgment, sentence or order was passed before 26 January 2016 and was not challenged earlier, against such judgment, sentence or order, after 26 January 2016, an appeal under Section 14A would lie.

QUESTION D: Whether upon the expiry of the period of limitation for filing of an appeal as specified in the second proviso to Section 14-A(3), Section 439 Cr.P.C. and the powers conferred on the High Court in terms thereof would stand revived?

The proposition of a revival of the powers of this Court either under Section 482 Cr.P.C. or Sections 397 Cr.P.C. cannot be countenanced, more so in view of our opinion on the first question. The view expressed by the learned Judge in **Rohit** in

this context to the effect that since there is no express repeal of Section 439 Cr.P.C., the same would revive upon the expiry of 180 days also does not commend acceptance. The learned Judge, in our considered view, has clearly erred in proceeding to consider the applicability of Section 439 Cr.P.C. on the principles of an express or implied repeal of a provision. What we find is an implied exclusion of the applicability of Section 439 Cr.P.C. by a special statute. We, therefore, find ourselves unable to sustain the line of reasoning adopted by the learned Judge in **Rohit** that the provisions of Section 439 Cr.P.C. would remain in suspension during the period of 180 days and thereafter revive on its expiry. The conclusion so arrived at cannot be sustained on any known principle of statutory interpretation. We are therefore, constrained to hold that both **Janardan Pandey** as well as **Rohit** do not lay down the correct law and must, as we do, be overruled.

QUESTION E: Whether the power to directly take cognizance of offences shall be exercisable by the existing Special Courts other than the Exclusive Special Courts or Special Courts to be specified under the amended Section 14?

This issue arises principally on account of substituted Section 14 of the Amending Act. It is not in dispute that under the 1989 Act

although, Special Courts stood constituted in terms of the existing Section 14, they did not stand conferred with the power to directly take cognizance of an offence committed under the 1989 Act. In the absence of a specific power enabling the Special Courts to directly take cognizance of offences, the provisions of committal, as contained in Section 193 Cr.P.C. were applicable. It is only from the date of enforcement of the Amending Act and by virtue of the second proviso to Section 14(1) that the Special and Exclusive Special Courts have been conferred this power.

The question with which, however, were are confronted is whether this power is also open to be exercised or stands conferred upon existing Special Courts constituted and still functioning in the State by virtue of the unamended Section 14. This issue fundamentally arises since Section 14, as substituted by the Amending Act envisages the establishment of an Exclusive Special Court by the State Government with the concurrence of the Chief Justice of the High Court. Section 14(1) further prescribes that the establishment of the Exclusive Special Court must be notified in the Official Gazette. Similarly, the first proviso to Section 14 (1) confers the discretion on the State Government to establish, in districts where less number of cases under the 1989 Act are recorded, to specify the Court of Sessions

to be a Special Court. This conferment of jurisdiction on an existing Sessions Court is again made subject to the State Government specifying such Special Courts with the concurrence of the Chief Justice. The conferment of the status of a Special Court on an existing Court of Sessions, must also be notified in the Official Gazette. The second proviso then proceeds to significantly state that the Courts **"so established or specified"** shall have the power to directly take cognizance of offences under the Act. Section 14 significantly does not make any provision for the conferment of this power upon existing Special Courts which came to be constituted by virtue of the original Section 14.

In our considered view the answer to this question clearly rests and turns upon the use of the phrase **"so established or specified"**. This phrase clearly evidences and indicates that it is only those Exclusive Special Courts or Special Courts which shall now be established or specified by notification in the Official Gazette which alone would have the authority and jurisdiction to directly take cognizance of offences in terms of the conferral of power by the second proviso. Our answer to question 'D' would, therefore, be that the existing Special Courts cannot be recognised as having the authority to directly take cognizance of

offences. The existing Special Courts would, therefore, be subject to the rigours of Section 193 Cr.P.C.

It was not disputed before us that although the Amending Act was enforced on 26 January, 2016, till date the State Government has neither initiated any steps for establishment of Exclusive Special Courts nor for designation of existing Courts of Sessions as Special Courts. In view of this position a doubt was also cast on the jurisdiction and authority of the existing Special Courts. Learned counsels sought to raise a doubt with respect to existing Special Courts and whether in view of the interpretation accorded to Section 14 by us herein above, they would continue to have the jurisdiction to try cases under the 1989 Act.

In our considered view, the mere substitution of Section 14 in terms of the Amending Act does not result in denuding the existing Special Courts of the authority and jurisdiction to try cases under the 1989 Act. It cannot possibly be disputed that these Special Courts came to be designated and specified as such by virtue of the original Section 14. These Courts came into existence upon the State Government with the concurrence of the Chief Justice of the High Court specifying these courts of

Sessions to be Special Courts by a notification in the Official Gazette.

The provisions of Section 14 can, by no stretch of imagination, be viewed as disrobing or divesting these existing Special Courts of their lawful authority. While it is true that the existing Special Courts would have no jurisdiction or authority to directly take cognizance of offences, this does not mean that their authority otherwise to try cases under the 1989 Act has been taken away. We further deem it apposite to observe that the issue of proceedings that may be drawn by a Special Court without complying with the procedure envisaged under Section 193 Cr.P.C. also does not render the proceedings so taken ipso fact liable to be declared null and void. The impact of a non compliance with Section 193 Cr.P.C. would ultimately be liable to be tested on the anvil of a substantial failure of justice. This position has been lucidly explained by the Supreme Court in **Ratiram and Others versus State of Madhya Pradesh Through Inspector of Police**[43] as follows:-

> **"58. In our considered opinion, because of the restricted role assigned to the Magistrate at the stage of commitment under the new Code, the non-compliance with the same and raising of any objection in that regard after conviction attracts the**

43 (2012) 4 SCC 516

> **applicability of the principle of 'failure of justice' and the convict-appellant becomes obliged in law to satisfy the appellate court that he has been prejudiced and deprived of a fair trial or there has been miscarriage of justice.** The concept of fair trial and the conception of miscarriage of justice are not in the realm of abstraction. They do not operate in a vacuum. They are to be concretely established on the bedrock of facts and not to be deduced from procedural lapse or an interdict like commitment as enshrined under Section 193 of the Code for taking cognizance under the Act. It should be a manifestation of reflectible and visible reality but not a routine matter which has roots in appearance sans any reality. **Tested on the aforesaid premised reasons, it is well nigh impossible to conceive of any failure of justice or causation of prejudice or miscarriage of justice on such non-compliance. It would be totally inapposite and inappropriate to hold that such non-compliance vitiates the trial."**

The principles enunciated in **Rati Ram** would, therefore, clearly apply.

On an overall conspectus of the above position our answer to Question E would be that the existing Special Courts do not have the jurisdiction to directly take cognizance of offences under the 1989 Act. This power stands conferred only upon the Exclusive Special Courts to be established or the Special Courts to be specified in terms of the substituted section 14. However it is clarified that the substitution of Section 14 by the Amending Act

does not have the effect of denuding the existing Special Courts of the authority to exercise jurisdiction in respect of proceedings under the 1989 Act. They would merely not have the power to directly take cognizance of offences and would be bound by the rigours of Section 193 Cr.P.C. Even if cognizance has been taken by the existing Special Courts directly in light of the uncertainty which prevailed, this would not ipso facto render the proceedings void ab initio. Ultimately it would be for the objector to establish serious prejudice or a miscarriage of justice as held in **Rati Ram.**

In light of the above discussion, our answer to the Questions formulated are as follows:-

> **A. Whether provisions of sub-section (2) of Section 14-A and the second proviso to sub-section (3) of Section 14-A of the Amending Act, are violative of Articles 14 and 21 of the Constitution, being unjust, unreasonable and arbitrary**?
>
> While we reject the challenge to section 14A (2), we declare that the second proviso to Section 14A (3) is clearly violative of both Articles 14 and 21 of the Constitution. It is not just manifestly arbitrary, it has

the direct and unhindered effect of taking away the salutary right of a first appeal which has been recognised to be an integral facet of fair procedure enshrined in Article 21 of the Constitution. The absence of discretion in the Court to consider condonation of delay even where sufficient cause may exist renders the measure wholly capricious, irrational and excessive. It is consequently struck down.

B. Whether in view of the provisions contained in Section 14-A of the Amending Act, a petition under the provisions of Article 226/227 of the Constitution of India or a revision under Section 397 of the Code of Criminal Procedure or a petition under Section 482 Cr.P.C., is maintainable. OR in other words, whether by virtue of Section 14-A of the Amending Act, the powers of the High Court under Articles 226/227 of the Constitution or its revisional powers or the powers under Section 482 Cr.P.C. stand ousted ?

We therefore answer Question (B) by holding that while the constitutional and inherent powers of this

Court are not “ousted” by Section 14A, they cannot be invoked in cases and situations where an appeal would lie under Section 14A. Insofar as the powers of the Court with respect to the revisional jurisdiction is concerned, we find that the provisions of Section 397 Cr.P.C. stand impliedly excluded by virtue of the special provisions made in Section 14A. This, we hold also in light of our finding that the word "order" as occurring in sub-section(1) of Section 14A would also include intermediate orders.

C. Whether the amended provisions of Section 14-A would apply to offences or proceedings initiated or pending prior to 26 January 2016?

We hold that the provisions of Section 14A would be applicable to all judgments, sentences or orders as well as orders granting or refusing bail passed or pronounced after 26 January, 2016. We further clarify that the introduction of this provision would not effect proceedings instituted or pending before this Court provided they relate to a judgment, sentence or order passed prior to 26 January 2016. The applicability of Section 14A does not depend

upon the date of commission of the offence. The determinative factor would be the date of the order of the Special Court or Exclusive Court.

D. Whether upon the expiry of the period of limitation for filing of an appeal as specified in the second proviso to Section 14-A (3), Section 439 Cr.P.C. and the powers conferred on the High Court in terms thereof would stand revived ?

We hold that the powers conferred on the High Court under Section 439 Cr.P.C. do not stand revived. We find ourselves unable to sustain the line of reasoning adopted by the learned Judge in **Rohit** that the provisions of Section 439 Cr.P.C. would remain in suspension during the period of 180 days and thereafter revive on its expiry. The conclusion so arrived at cannot be sustained on any known principle of statutory interpretation. We are therefore, constrained to hold that both **Janardan Pandey** as well as **Rohit** do not lay down the correct law and must, as we do, stand overruled.

E. Whether the power to directly take cognizance of offences shall be exercisable by the existing Special Courts other than the Exclusive Special

Courts or Special Courts to be specified under the amended Section 14?"

The existing Special Courts do not have the jurisdiction to directly take cognisance of offences under the 1989 Act. This power stands conferred only upon the Exclusive Special Courts to be established or the Special Courts to be specified in terms of the substituted section 14. However it is clarified that the substitution of Section 14 by the Amending Act does not have the effect of denuding the existing Special Courts of the authority to exercise jurisdiction in respect of proceedings under the 1989 Act. They would merely not have the power to directly take cognizance of offences and would be bound by the rigours of Section 193 Cr.P.C. Even if cognizance has been taken by the existing Special Courts directly in light of the uncertainty which prevailed, this would not *ipso facto* render the proceedings void *ab initio*. Ultimately it would be for the objector to establish serious prejudice or a miscarriage of justice as held in **Rati Ram.**

All the issues framed for the consideration of this Full Bench are answered accordingly. Let the matters be placed before the respective learned Single Judges for being decided on merits accordingly.

While parting we observe that having regard to the fact that although the Amending Act came into force on 26 January 2016, no Exclusive Special Courts have been established nor Special Courts designated till date, we deem it appropriate to direct the State Government to forthwith initiate the consultative process envisaged under Section 14 of the 1989 Act and to ensure that Exclusive Special Courts and Special Courts are constituted and designated within a period of eight weeks from today.

Order Date :-10.10.2018
RKK/-Arun K. Singh

(Dilip B Bhosale, CJ)

(Ramesh Sinha, J.)

(Yashwant Varma, J.)