Order reserved on:26.07.2024
Order pronounced on:09.08.2024

Court No. - 11

Case :- CRIMINAL APPEAL No. - 2174 of 2024

Appellant :- Shailendra Yadav @ Salu
Respondent :- State Of U.P Thru. Prin. Secy. Home Lko.
Counsel for Appellant :- Eshan Kumar Gupta
Counsel for Respondent :- G.A.

And

Case :- CRIMINAL APPEAL No. - 2179 of 2024

Appellant :- Abhisek @ Abhishek Yadav @ Putan
Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko.
Counsel for Appellant :- Eshan Kumar Gupta
Counsel for Respondent :- G.A.

Hon'ble Abdul Moin,J.

1. Heard Sri Eshan Kumar Gupta, learned counsel for the appellant and Sri Anurag Verma, learned Additional Government Advocate along with Sri Ajit Singh, learned State Counsel for the respondent.

2. Sri S.M. Singh Royekwar assisted by Sri Sumit Tahilramani, Sri Anupam Mehrotra assisted by Ms. Aishwarya Mathur and Sri Vikas Vikram Singh have also assisted the Court on the preliminary objection as has been raised by the learned AGA pertaining to maintainability of the aforesaid appeals.

3. As both the appeals involve common question of law and facts as such they are being heard together. For convenience, the facts of Criminal Appeal No.2174 of 2024 are being taken into consideration.

4. Instant criminal appeal has been filed under Section 374(2) of the Criminal Procedure Code, 1973 (hereinafter referred to as the ‘Code’)/Section 415 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the ‘Sanhita’) challenging the judgment and order of sentence passed by the learned Special Judge, SC/ST Act, Lucknow in

Sessions Trial No.177 of 2023 arising out of Case Crime No.215 of 2022 under Sections 307, 504, 427 IPC and Section 3(2)(v) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'Act, 1989'), Police Station Bijnor, District Lucknow. By means of the said judgment, the appellant has been convicted and awarded a sentence under Sections 308 and 504 IPC. However, he has been acquitted of the offences under the provisions of the Act, 1989.

5. A preliminary objection has been raised by Sri Anurag Verma, learned Additional Government Advocate along with Sri Ajit Singh, learned State Counsel by contending that considering the provisions of Section 14-A(1) of the Act, 1989, as the impugned judgment has been passed by the Special Court as such the instant appeal under Section 374 (2) of the Code will not be maintainable rather an appeal would have to be filed under the provisions of the Act, 1989 itself.

6. On the other hand, learned counsel for the appellant contends that as the appellant has been acquitted of the offence under the Act, 1989 and has only been convicted of the offence under IPC as such instant appeal under the provisions of the Code shall be maintainable and not an appeal under the provisions of the Act, 1989.

7. In this regard, learned counsel for the appellant argues that for an incident which is said to have occurred on 02.12.2022 a Case Crime No.215 of 2022 under Sections 307, 427, 504 IPC was registered against Putan Yadav and others. During course of investigation the provisions of Section 3(2)(v) of the Act, 1989 were also added and a charge sheet was filed in the Court under the aforesaid provisions. The trial commenced before the Special Court under the provisions of the Act, 1989 at Lucknow and the appellant by means of the judgment impugned has been found guilty of the offence under the provisions of IPC but acquitted of the offence under the Act, 1989.

8. The argument is that as the appellant stands acquitted of the offence under the Act, 1989 consequently it would be an appeal under the provisions of the Code that would be maintainable and not under the provisions of the Act, 1989.

9. In this regard, reliance has been placed upon an interim order dated 27.09.2019 passed by a Division Bench of this Court in a bunch of criminal appeals of which leading being Criminal Appeal No.3603 of 2019 in re: **Teja vs. State of U.P. and others**, wherein the Division Bench of this Court has considered the said question exhaustively and has held that where a person has been acquitted of the charges under the provisions of the Act, 1989 but convicted under the provisions of IPC then an appeal shall lie under the Code and not under the Act, 1989.

10. Sri S.M. Singh Royekwar, learned counsel, has assisted the Court on this point by arguing that although the provisions of Section 14-A(1) of the Act, 1989 start with a non-obstante clause yet the same is not a workable solution inasmuch as once the appellant, as in the instant case, has been acquitted of the offence under the Act, 1989 as such it would be a useless formality to file an appeal under the Act, 1989 once the appellate court would not have any power to set-aside the order of acquittal and to convict the appellant for the said offence.

11. Placing reliance on the Division Bench order of this Court in the case of **Teja (supra)**, the further argument of Sri Royekwar is that the said question stands decided conclusively by this Court which order would be binding on this Court and thus it is submitted that the appeal filed under the provisions of the Code more particularly under Section 374(2) of the Code is perfectly maintainable and not an appeal under the provisions of Section 14-A(1) of the Act, 1989.

12. On the other hand, Sri Anurag Verma, learned AGA has argued that the Division Bench of this Court in the case of **Teja (supra)** has not conclusively considered the non-obstante clause with which Section 14-A(1) of the Act, 1989 begins, which clearly indicates that an appeal under the

provisions of the Act, 1989 would lie notwithstanding anything contained in the Code.

13. Elaborating the same, the argument is that once the Legislature in its wisdom has categorically indicated in Section 14-A(1) of the Act, 1989 that notwithstanding anything contained in the Code, an appeal shall lie from any judgment of a Special Court to the High Court then irrespective of the provisions of Section 374 of the Code, an appeal has to be filed under the provisions of the Act, 1989 more particularly when it is the judgment of the Special Court which has been challenged which aspect of the matter has not been considered in the order of **Teja (supra)**.

14. Reliance has also been placed on the provisions of Section 4 and 5 of the Code.

15. It is also argued that a plain reading of the statute would indicate that once no other intention of the Legislature emerges from a plain reading of the provisions of Section 14-A of the Act, 1989 then it is apparent that the Legislature in its wisdom has indicated that irrespective of acquittal or otherwise of a person for offences under the Act, 1989 once it is a judgment of the Special Court or Exclusive Special Court which is challenged, then an appeal has to be filed to the High Court both on facts and law under the provisions of the Act, 1989.

16. The further argument is that nothing restrained the Legislature from incorporating in the Act, 1989 that in case a person is acquitted of the offence under the Act, 1989 such an appeal would not be maintainable under the provisions of the Act, 1989 and in the absence of any such provision under the Act, 1989 obviously it is an appeal under the provisions of the Act, 1989 which has to be filed by the appellant once he is aggrieved by the judgment of the Special Court, as in the instant case.

17. In this regard, reliance has been placed on the following judgments pertaining to plain reading of the statute namely-

i. **2007 (2) SCC 230- Raghunath Rai Bareja vs. Punjab National Bank.**

ii. **2011 (4) SCC 266-B. Premanand vs. Mohan Koikal.**

iii. **2022 (2) SCC 1-Punjab State Power Corporation Ltd. vs. Emta Coal Limited.**

18. As regards interpretation of non-obstante clause, reliance has been placed on the following judgments -

i. **2020 (5) SCC 274- Union of India and others vs. Exide Industries Limited and another.**

ii. **1991 (1) SCC 705- Narcotics Control Bureau vs. Kishan Lal**

iii. **2012 (13) SCC 1 - Indra Kumar Patodia vs. Reliance Industries Ltd.**

iv. **2003 (12) SCC 578-State (Union of India) vs. Ram Saran.**

v. **1971 (1) SCC 85-Madhav Rao Jivaji Rao Scindia vs. Union of India.**

19. Sri Anupam Mehrotra assisted by Ms. Aishwarya Mathur, learned counsel has assisted the Court by reiterating the arguments as raised by Sri Anurag Verma, learned AGA. Sri Mehrotra further argues that the appeal is a creation of statute. Once the Act, 1989 categorically provides for an appeal to be filed against any judgment, sentence or order of a Special Court or an exclusive Special Court to the High Court both on facts and on law and Section 14-A of the Act, 1989 starts with a non-obstante clause, then irrespective of anything contained in the Code, in case a person is aggrieved by the order/judgment of the Special Court, he would mandatorily have to file an appeal under the provisions of the Act, 1989. The further argument of Sri Mehrotra is that the appeal would be a continuation of the original proceedings and thus irrespective of the appellant having been acquitted of the offence under the provisions of the Act, 1989 yet when he is aggrieved by the judgment of the Special Court he would have to file an appeal under the Act, 1989 alone and not under the Code.

20. Placing reliance on the judgments of Hon’ble Supreme Court in the cases of **Upadhyaya Hargovind Devshanker vs. Dhirendrasinh**

Virbhadrasinhji Solanki - 1988 (2) SCC 1 and **South India Corporation (P) Ltd. vs. Secretary, Board of Revenue -1963 SCC OnLine 19**, it is contended that when a right to appeal is provided in a special law then appeal under the provisions of the Code is excluded.

21. Reliance has also been placed on Sections 2(bd) and 2(d) of the Act, 1989 to contend that under the aforesaid provisions of the Act, 1989 both exclusive Special Court and the Special Court have been established under the provisions of Section 14 of the Act, 1989 to try the offences under the Act, 1989 and once the Legislature in its wisdom has provided under Section 14-A of the Act, 1989 that an appeal shall lie from the judgment of a Special Court or an exclusive Special Court as established by Act, 1989 under Section 14 of the Act, 1989 to the High Court then obviously it is an appeal under the provisions of Section 14-A which would be maintainable under the Act, 1989 and not an appeal under the provisions of the Code.

22. Reliance has also been placed on the provisions of Section 20 of the Act, 1989 to contend that the said section categorically provides that it is the provisions of the Act, 1989 which shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force meaning thereby that irrespective of anything contained under the Code, it is the provisions of the Act, 1989 which would prevail. It is further argued that provisions of Section 20 of the Act, 1989 have not been considered by the Division Bench of this Court in the order of **Teja (supra)** and as such the order of **Teja (supra)** would not be applicable and is distinguishable and cannot be considered to be a good precedent.

23. Sri Vikas Singh, learned counsel, has also assisted the Court by arguing that the provisions of Section 14-A of the Act, 1989 have to be read along with Section 4(2) of the Code which categorically provides that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with, according to the same provisions but subject to any enactment for the time being in force.

24. Sri Vikas Singh, learned counsel, has also adopted the arguments as advanced by Sri Anupam Mehrotra and Sri Anurag Verma.

25. Heard learned counsels for the contesting parties and perused the records.

26. From the arguments as raised by the learned counsels for the parties and perusal of records, it emerges that a preliminary objection has been raised on behalf of the respondents regarding maintainability of the instant appeal under Section 374(2) of the Code on the ground that an appeal is to be filed under Section 14-A(1) of the Act, 1989 and hence it has been prayed that the instant appeal be dismissed.

27. The same has been replied to by the learned counsel for the appellant by contending that as the appellant has been acquitted of the charges for the offences under the Act, 1989 but has been convicted for the offences under the provisions of Indian Penal Code, consequently an appeal would lie under the provisions of the Code and not Act, 1989.

28. The sheet-anchor for the said argument of the learned counsel for the appellant is the order of this Court in the case of **Teja (supra)** wherein the aforesaid question regarding maintainability of an appeal in similar circumstances has been held to be maintainable under the provisions of the Code and not the Act, 1989.

29. In order to consider the arguments as raised by the learned counsels for the parties as well as the order of this Court in the case of **Teja (supra)** this Court will have to consider the relevant provisions of the Act, 1989 as well as the Code.

30. Section 2(bd) and 2(d) of the Act, 1989 read as under:-

> ***Section 2(bd)***. *"Exclusive Special Court" means the Exclusive Special Court established under sub-section (1) of section 14 exclusively to try the offences under this Act;*
>
> ***2d***. *"Special Court" means a Court of Session specified as a Special Court in section 14;*

31. Section 14 of the Act, 1989 reads as under:-

Section 14. *Special Court and Exclusive Special Court.-*

-(1) For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, establish an Exclusive Special Court for one or more Districts:

Provided that in Districts where less number of cases under this Act is recorded, the State Government shall, with the concurrence of the Chief Justice of the High Court, by notification in the Official Gazette, specify for such Districts, the Court of Session to be a Special Court to try the offences under this Act:

Provided further that the Courts so established or specified shall have power to directly take cognizance of offences under this Act.

(2) It shall be the duty of the State Government to establish adequate number of Courts to ensure that cases under this Act are disposed of within a period of two months, as far as possible.

(3) In every trial in the Special Court or the Exclusive Special Court, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Special Court or the Exclusive Special Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded in writing:

Provided that when the trial relates to an offence under this Act, the trial shall, as far as possible, be completed within a period of two months from the date of filing of the charge sheet.

32. Section 14A of the Act, 1989 reads as under:-

14A. Appeals.

(1) Notwithstanding anything contained in the Code of Criminal Procedure,1973, an appeal shall lie, from any judgement, sentence or order, not being an interlocutory order, of a Special Court or an Exclusive Special Court, to the High Court both on facts and on law.

(2) Notwithstanding anything contained in sub-section (3) of section 378 of the Code of Criminal Procedure, 1973, an appeal shall lie to the High Court against an order of the Special Court or the Exclusive Special Court granting or refusing bail.

(3) Notwithstanding anything contained in any other law for the time being in force, every appeal under this section shall be preferred within a period of ninety days from the date of the judgement, 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.".

33. Section 20 of the Act, 1989 reads as under:-

Section 20.
Act to override other laws.—
Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any custom or usage or any instrument having effect by virtue of any such law.

34. From a perusal of the aforesaid provisions it emerges that a Special Court and Exclusive Special Court have been set up by the State Government for the purpose of providing speedy trial for the offences under the Act, 1989. Section 14 A (1) of the Act, 1989 categorically provides that notwithstanding anything contained in the Cr.P.C, 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, meaning thereby that nothing contained in the Cr.P.C shall effect the provisions of the Act, 1989 so far as the remedy provided for challenging a judgment, sentence, order of a Special Court is concerned.

35. The non-obstante clause with which Section 14 A starts indicates that this would be the only remedy available to a person aggrieved against any judgment, sentence or order of the Special Court or the Exclusive Special Court passed under the provisions of Act, 1989.

36. Section 20 of the Act, 1989 categorically provides that the provisions of the Act, 1989 shall have effect notwithstanding anything contained therewith in any other law.

37. It is an undisputed fact that Act, 1989 is a Special Act and a special law promulgated to prevent the commission of offences of atrocities against

the members of Scheduled Caste and the Scheduled Tribes and to provide for Special Courts and Exclusive Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto. This would be amply clear from a bare reading of the statement of objects and reasons of the Act, 1989.

38. From the statement of objects and reason of the Act, 1989, it also emerges that Act, 1989 came to be promulgated after considering that the existing laws like the Protection of Civil Rights Act, 1955 (hereinafter referred to as "Act, 1955") and normal provisions of the I.P.C have been found to be inadequate to check the crimes against the Scheduled Caste and Scheduled Tribes and consequently a special legislation to check and deter crimes against them committed by Non Scheduled Caste and Non Scheduled Tribes had become necessary. It is also undisputed that Special Courts have been notified by the State Government taking into consideration the provision of Section 14 (1) of the Act, 1989.

39. Further, the second proviso to Section 14 (1) of the Act, 1989 has conferred power upon the Special Courts and Exclusive Special Courts to take cognizance of the offence directly as the Court of original jurisdiction meaning thereby that the police would be required to transmit the F.I.R after institution of the case to the Special Court or the Exclusive Special Court as the Court of original jurisdiction and for the same reason, the charge sheet or a complaint is also required to be filed before such Special Court or Exclusive Special Court for the offences under the Act, 1989. With the coming of the Amendment Act, 2015 in the Act, 1989, the Court of Magistrate being not a Special Court or Exclusive Special Court within the meaning of Section 14 of the Act, 1989 shall not have any jurisdiction to entertain any application and take cognizance of offences under the Act, 1989. This has been done in order to ensure speedy and expeditious disposal of the cases.

40. Thus, keeping in view the aforesaid statements of objects and reasons, the inadequacy of the Act, 1955 and inadequacy of the normal provisions of I.P.C of checking crimes against the members of the Scheduled Caste and

Scheduled Tribes, the Act, 1989 came to be promulgated. With the coming of the amendment Act, 2015 in the Act, 1989 and the notification of the Special Courts and the Exclusive Special Courts, a complete procedure has been prescribed i.e the applications to be filed before the Court of original jurisdiction, viz the Special Court itself established under the Act, 1989 and thereafter an appeal would lie to the High Court both on facts and on law against any judgment, sentence or order of the Special Court or against any order of the Special Court granting or refusing bail, as defined under the provision of Section 14 A of the Act, 1989.

41. Here it would also be pertinent to mention the relevant provisions of the Code.

42. For the sake of convenience, Sections 4 and 5 of the Cr.P.C are reproduced as under:-

> ***4.Trial of offences under the Indian Penal Code and other laws.-***
>
> *(1) All offences under the Indian Penal Code(45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.*
>
> *(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.*
>
> ***5.Saving.-***
>
> *Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.*

43. From a reading of Sections 4 of Cr.P.C, it emerges that the trial of offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Cr.P.C. However, all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force

regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

44. Likewise Section 5 of the Cr.P.C provides that nothing contained in the Cr.P.C shall, in the absence of the specific provision to the contrary, effect any special or local law for the time being in force or any special form of procedure prescribed by any other law for the time being in force.

45. Once the aforesaid provisions of Act, 1989 are read in consonance with Sections 4 and 5 of the Cr.P.C, it clearly comes out that the Special Act, in this case the Act, 1989 has been promulgated with the aforesaid aims, objects and reasons in view more particularly when the existing normal provisions of the I.P.C and the Act, 1955 were found inadequate to deal with such situations and consequently, it is apparent that the Act, 1989 shall over ride the provisions of the general act, in this case the Criminal Procedure Code.

46. The provisions of Sections 4 and 5 Cr.P.C vis-a-vis a Special Act have been considered by the Hon'ble Supreme Court in the case of **Vishwa Mitter Vs. O.P. Poddar and ors** reported in **(1983) 4 SCC 701** wherein after considering the provision of Section 4 (2) of the Cr.P.C, the Hon'ble Supreme Court has held as under:-

> *"Section 4 of the Code of Criminal Procedure, 1973 provides for trial of offences under the Indian Penal Code and other laws. Sub-Section (1) of Section 4 deals with offences under the Indian Penal Code Sub-section (2) of Section 4 provides that all offences under any other law (other than offences under the Indian Penal Code) shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Fasciculus of sections included in Chapter XIV of the Criminal Procedure Code set out conditions requisite for initiation of proceedings. Section 190 provides for cognizance of offences by Magistrates which inter alia provides that subject to the provisions of Chapter XIV, an Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-(a) upon receiving a complaint of facts which constitute such offence;...Sec. 190 thus confers power on any Magistrate to take cognizance of any offence upon receiving a complaint of facts*

> *which constitute such offence. It does not speak of any particular qualification for the complainant. Generally speaking, anyone can put the criminal law in motion unless there is a specific provision to the contrary. This is specifically indicated by the provision of sub-section (2) of Sec. 4 which provides that all offences under any other law-meaning thereby law other than the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. It would follow as a necessary corollary that unless in any statute other than the Code of Criminal Procedure which prescribes an offence and simultaneously specifies the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, the provisions of the Code of Criminal Procedure shall apply in respect of such offences and they shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure."*

47. From a perusal of the aforesaid judgment, it is thus clear that the principle of law enunciated by the Hon'ble Supreme Court is that all offences under any other law, meaning thereby law other than the I.P.C., shall be investigated, inquired into, tried and otherwise dealt with according to the provisions in the Cr.P.C but "**subject to any enactment for the time being in force regulating the meaning or place or investigating, enquiring into, trying or otherwise deal with such offences**. In the instant case, it is apparent that the Special Act, i.e Act, 1989 will have to be considered as the " enactment for the time being in force" for the purpose of Sections 4 and 5 of the Cr.P.C

48. This Court has also to consider whether where a Special Act is providing a special remedy, can the same be allowed to be by passed to avail a general remedy. In this regard, the doctrine of *generalia specialibus non-derogant* shall be relevant.

49. The doctrine of *generalia specialibus non-derogant* is that if there is a conflict between a general provision and special provision, it is the special provision that shall prevail. The doctrine is not only applicable vis-a-vis two statutes or provisions within a Statute but also where there is a special conflict between two provisions of which one is specific with regard to a

subject matter while the other is general and covers the same subject apart from the other subject matter.

50. The Hon'ble Supreme Court in the case of **Commissioner of Income Tax, Patiala and Ors Vs.M/S Shahzada Nand and Sons and Ors** reported in **AIR 1966 SC 1342** with regard to aforesaid principle has held as under:-

> *"10.....To this may be added a rider': in a case of reasonable doubt, the construction most beneficial to the subject is to be adopted. But even so, the fundamental rule of construction is the same for all statutes, whether fiscal or otherwise. "**The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just or expedient**." The expressed intention must guide the court. Another rule of construction which is relevant to the present enquiry is expressed in the **maxim, generalia specialibus non derogant, which means that when there is a conflict between a general and a special provision, the latter shall prevail**. The said principle has been stated in Craies on Statute Law, 5th Edn., at P. 205, thus "The rule is, that whenever there is a particular enactment and a general enactment in the same statute, and the latter, taken in its most comprehensive sense, would overrule the former, the particular enactment must be operative, and the general enactment must be taken to affect only the other parts of the statute to which it may properly apply."*
>
> (emphasis by the Court)

51. A similar view has been taken by the Hon'ble Supreme Court in the case of **Commercial Tax Officer, Rajasthan Vs. Binani Cements Ltd (2014) 8 SCC 319**.

52. A perusal of the aforesaid judgments in the case of **M/S Shahzada Nand and Binani (supra)** leaves no doubt that it is the provision of the Special Act, in this case the Act, 1989, which would prevail over the general provisions of the Cr.P.C more particularly taking into consideration Sections 4 and 5 of the Cr.P.C. The Hon'ble Supreme Court in the case of **Moly and Anr Vs. State of Kerala-(2004) 4 SCC 584** while considering the provisions of the Act, 1989 vis-a-vis the provision of Sections 4 and 5 of the Cr.P.C and the Constitution Bench judgment of the Hon'ble Supreme Court in the case of **A. R. Antulay vs Ramdas Sriniwas Nayak And Another** reported in **(1984) 2 SCC 500** held as under:-

"13. A reading of the concerned provisions makes it clear that subject to the provisions in other enactments all offences under other laws shall also be investigated, inquired into, tried and otherwise dealt with under the provisions of the Code. This means that if another enactment contains any provision which is contrary to the provisions of the Code, such other provision would apply in place of the particular provision of the Code. If there is no such contrary provision in other laws, then provisions of the Code would apply to the matters covered thereby. This aspect has been emphasized by a Constitution Bench of this Court in para 16 of the decision in A.R. Antulay v. Ramdas Sriniwas Nayak (1984 (2) SCC 500). It reads thus"

"Section 4(2) provides for offences under other law which may be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Code of Criminal Procedure but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. In the absence of a specific provision made in the statute indicating that offences will have to be investigated, inquired into, tried and otherwise dealt with according to that statute, the same will have to be investigated, inquired into, tried and otherwise dealt with according to the Code of Criminal Procedure. In other words, Code of Criminal Procedure is the parent statute which provides for investigation, inquiring into and trial of cases by criminal courts or various designations."

Section 5 of the Code cannot be brought in aid for supporting the view that the Court of Session specified under the Act obviate the interdict contained in Section 193 of the Code so long as there is no provision in the Act empowering the Special Court to take cognizance of the offence as a Court of original jurisdiction. Section 5 of the Code reads thus:

"14.- Saving- Nothing contained in this Code shall, in the absence of a special provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

15. This Court in Directorate of Enforcement v. Deepak Mahajan (1994 (3) SCC 440) on a reading of Section 5 in juxtaposition with Section 4(2) of the Code, held as follows:

"It only relates to the extent of application of the Code in the matter of territorial and other jurisdiction but does not nullify the effect of Section 4(2). In short, the provisions of this Code would be applicable to the extent in the absence of any contrary provision in the special Act or any special provision excluding the jurisdiction or applicability of the Code".

53. In another case pertaining to a Special Act before the Hon'ble Supreme Court in **V.C. Chinnappa Goudar Vs. Karnataka State Pollution Control Board and Anr-(2015) 14 SCC 535** wherein Section 48 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as Act, 1974) of the said Act provided that where an offence under the Act had been committed by any department of the Government then the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Upon the prosecution being started, question was raised that where the said Head of the Department was a public servant, the prosecution against them could not have been lodged without sanction under Section 197 of the Cr.P.C. The High Court, before which the said plea was raised, held that by virtue of Section 48 read with Section 49 (1) of the Act, 1974, there was a clear conflict with Sections 4, 5 and 197 of the Cr.P.C and thus held that the protection could not be given to such officers under Section 197 of the Cr.P.C. The said judgment being challenged, the Hon'ble Supreme Court held that in case Section 197 Cr.P.C is made applicable for prosecution under the Act, 1974 then the same would virtually negate the deeming fiction provided under Section 49 of the Act, 1974 and consequently the provision of Section 197 Cr.P.C would not be applicable. In this regard, the observations of the Hon'ble Supreme Court regarding the provision of Act, 1974 vis-a-vis Sections 4 and 5 of the Cr.P.C are reproduced as under:-

> *"7. Having considered the respective submissions, we find force in the submission of Mr. A. Mariparputham, learned senior counsel for the respondents. As rightly pointed out by the learned senior counsel under Section 48, the guilt is deemed to be committed the moment the offence under the 1974 Act is alleged against the Head of the Department of a Government Department. It is a rebuttable presumption and under the proviso to Section 48, the Head of the Department will get an opportunity to demonstrate that the offence was committed without his knowledge or that in spite of due diligence to prevent the commission of such an offence, the same came to be committed. It is far different from saying that the safeguard provided under the proviso to Section 48 of the 1974*

Act would in any manner enable the Head of the Department of the Government Department to seek umbrage under Section 197 Cr.P.C and such a course if permitted to be made that would certainly conflict with the deemed fiction power created under Section 48 of the 1974 Act.

8. In this context, when we refer to Section 5 Cr.P.C, the said Section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Cr.P.C would affect any special or local laws providing for any special form or procedure prescribed to be made applicable. There is no specific provision providing for any sanction to be secured for proceeding against a public servant under the 1974 Act. If one can visualise a situation where Section 197 Cr.P.C is made applicable in respect of any prosecution under the 1974 Act and in that process the sanction is refused by the State by invoking Section 197 Cr.P.C that would virtually negate the deeming fiction provided under Section 48 by which the Head of the Department of Government Department would otherwise be deemed guilty of the offence under the 1974 Act. In such a situation the outcome of application of Section 197 Cr.P.C by resorting to reliance placed by Section 4(2) Cr.P.C would directly conflict with Section 48 of the 1974 Act and consequently Section 60 of the 1974 Act would automatically come into play which has an over riding effect over any other enactment other than the 1974 Act.

9. In the light of the said statutory prescription contained in Section 48, we find that there is no scope for invoking Section 197 Cr.P.C even though the appellants are stated to be public servants.

54. In this regard, this Court may refer to the provisions of Prevention of Terrorism Act, 2002 (hereinafter referred to as "POTA") wherein Section 34 of POTA is similarly framed as Section 14 A of the Act, 1989.

55. For the sake of convenience, Section 34 of POTA is reproduced as under:-

"34. (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.

(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 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."*

56. A matter concerning Section 34 of POTA came up for consideration before the Hon'ble Supreme Court in the case of **State of Gujrat Vs. Salimbhai Abdul Gaffar Shaikh and Ors** reported in **(2003) 8 SCC 50**. In the case of **Salimbhai (Supra)**, an F.I.R had been lodged against the accused persons under various provisions of the I.P.C, Indian Railways Act, Prevention of Damage to Public Property Act and the Bombay Police Act. Bail applications were moved which came to be rejected by the Additional Sessions Judge and thereafter bail applications under Section 439 Cr.P.C were filed before the High Court. In the meanwhile, the prosecution came to the conclusion that offences under Section 3 (2) and (3) and Section 4 of the POTA had also been committed and accordingly took appropriate steps for including the aforesaid offence. A counter affidavit was filed before the High Court averring that after filing of charge sheets, evidence had been collected and commission of offences under the POTA had been found. It was also contended that application in this regard had already been moved in the Court of Additional Sessions Judge and the Railway Court for adding the aforesaid sections of POTA to the main charge sheet and the supplementary charge sheets. It was consequently pleaded that the accused should first approach the Special Court for grant of bail under POTA and they could approach the High Court only after decision on the said matter. It was also pleaded that the learned Single Judge of the High Court who was seized of the matter, keeping in view the provisions of POTA of which the accused were now accused of, had no jurisdiction to hear the bail application. The High court, however, allowed all the bail applications and directed for release of the accused. It is in those circumstances that the State Government approached the Hon'ble Supreme Court. The Hon'ble Supreme Court after examining the provisions of Section 34 of the POTA held as under:-

10. Sub-section (4) of Section 34 of POTA provides for an appeal to the High Court against an order of the Special Court granting or refusing bail. Though the word 'appeal' is used both in Code of Criminal Procedure and Code of Civil Procedure and in many other Statutes but it has not been defined anywhere. Over a period of time, it has acquired a definite connotation and meaning which is as under :-

"A proceeding undertaken to have a decision reconsidered by bringing it to a higher authority, specially the submission of a lower Court's decision to higher Court for review and possible reversal.
An appeal strictly so called is one in which the question is, whether the order of the Court from which the appeal is brought was right on the material which the Court had before it.

An appeal is removal of the cause from an inferior to one of superior jurisdiction for the purposes of obtaining a review or retrial. An appeal generally speaking is a rehearing by a superior Court on both law and fact."

11. Broadly speaking, therefore, an appeal is a proceeding taken to rectify an erroneous decision of a Court by submitting the question to a higher Court, and in view of express language used in sub-section (1) of Section 34 of POTA the appeal would lie both on facts and on law. Therefore even an order granting bail can be examined on merits by the High Court without any kind of fetters on its powers and it can come to an independent conclusion whether the accused deserves to be released on bail on the merits of the case. The considerations which are generally relevant in the matter of cancellation of bail under sub-section (2) of Section 439 of the Code will not come in the way of the High Court in setting aside an order of the Special Court granting bail. It is therefore evident that the provisions of POTA are in clear contradistinction with that of Code of Criminal Procedure where no appeal is provided against an order granting bail. The appeal can lie only against an order of the Special Court and unless there is an order of the Special Court refusing bail, the accused will have no right to file an appeal before the High Court praying for grant of bail to them. Existence of an order of the Special Court is, therefore, sine qua non for approaching the High Court.

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. 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

Sessions 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 well settled principle that the intention of the legislature must be found by reading the Statute as a whole. Every clause of 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 Statute and give full meaning to the same. The different provisions in the Statute should not be interpreted in 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 learned counsel for the respondents. In A.R. Antulay v. Ramdas Srinivas Nayak & Anr. 1984 (2) SCC 500, the scope of special Act making provision for creation of a Special Court for dealing with offences thereunder and the application of Code of Criminal Procedure in such circumstances has been considered and it has been held that the procedure in Cr.P.C. 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. 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.

14. That apart if the argument of 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.

15. In the present case, the respondents did not chose to apply for bail before the Special Court for offences under POTA and consequently there was no order of refusal of bail for offences under the said Act. The learned Single Judge exercising powers under Section 439 read with Section 482 Cr.P.C. granted them bail. The order of the High Court is clearly without jurisdiction as under the scheme of the Act the accused can only file an appeal against an order of refusal of bail passed by the Special Court before a Division Bench of the High Court and, therefore, the order under challenge cannot be sustained and has to be set aside. Even on merits the order of the High Court is far from satisfactory. Though it is a very long order running into 87 paragraphs but the factual aspects of the case have been considered only in one paragraph and that too in a very general way.

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 the 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 redress of the grievance of the aggrieved party. (See Madhu Limaye v. State of Maharashtra AIR 1978 SC. There being a specific provision for grant of bail, the High Court clearly erred in taking recourse to Section 482 Cr.P.C. while enlarging the respondents on bail."

57. Thus keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Salimbhai (supra)**, it clearly comes out that an appeal, as provided under the provisions of the Act, 1989 would be a proceeding to rectify erroneous decision both on facts and on law and consequently in this case too, the appellants can only approach this Court by filing of an appeal under the provisions of Section 14 A of the Act, 1989 and this Court cannot allow filing of an appeal under the general provisions of the Code.

58. Apart from what has been discussed above, a very relevant aspect of the matter is that Section 14A(1) of the Act, 1989 starts with a non-obstante clause i.e. **notwithstanding** anything contained in the Code an appeal shall lie from any judgment, sentence or order of Special Court to the High Court

meaning thereby that irrespective of anything contained in the Code an appeal **shall** lie from the judgment of a Special Court or an Exclusive Special Court to the High Court.

59. Admittedly, in this case the judgment under challenge is the judgment of the Special Court and thus considering the mandatory provisions of sub-section (1) of Section 14A of the Act, 1989 the appeal shall mandatorily lie to the High Court under the provisions of the Act, 1989 and not the Code.

60. The non-obstante clause has been considered by Hon'ble Supreme Court in the aforesaid judgments which incidentally have not been considered in the Division Bench order of this Court in the case **Teja (supra)**.

61. Apart from above, the order of this Court in the case of **Teja (supra)** has not considered the provisions of Section 20 of the Act, 1989 as well as Sections 4 and 5 of the Code. The Division Bench has also not considered the judgments of Hon'ble Supreme Court in the case of **V.C. Chinnappa Goudar (supra)** and **Moly (supra)**, which both judgments have considered the provisions of Section 4 and 5 of the Code. The Division Bench has also not considered the judgment of Hon'ble Supreme Court in the case of **Vishwa Mitter (supra)** wherein the provisions of Section 4(2) of the Code and Section 5 of the Code vis-a-vis the special Act have been considered.

62. Faced with the aforesaid situation wherein there is a Division Bench order of this Court in the case of **Teja (supra)** which has been passed without considering the provisions of Section 20 of the Act, 1989 as well as Sections 4 and 5 of the Code and the judgments as aforesaid, this Court is seized with a situation wherein the Division Bench order in the case of **Teja (supra)** would be binding upon this Court comprising of lesser strength i.e. single bench.

63. In this situation, the judgment of the Hon'ble Supreme Court in the case of **Central Board of Dawoodi Bohara Community and Ors. v. State of Maharashtra and Ors** reported in **(2005) 2 SCC 673** would be relevant.

For the sake of convenience, paragraph 12 of the said judgment, which would have a direct bearing in the present case, is reproduced below:-

> *"12. Having carefully considered the submissions made by the learned Senior Counsel for the parties and having examined the law laid down by the Constitution Benches in the abovesaid decisions, we would like to sum up the legal position in the following terms:*
>
> *(1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench of lesser or coequal strength.*
>
> *(2) A Bench of lesser quorum cannot disagree or dissent from the view of the law taken by a Bench of larger quorum.* ***In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open only for a Bench of coequal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of coequal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted****.*
>
> *(3) The above rules are subject to two exceptions: (i) the abovesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) in spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in doubt, needs correction or consideration then by way of exception (and not as a rule) and for reasons given by it, it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of the Chief Justice constituting the Bench and such listing. Such was the situation in Raghuvir Singh and Hamoli Devi."*
>
> *(emphasis by the Court)*

64. Likewise, the Hon'ble Supreme Court in the case of **Tribhovandas Purshottamdas Thakkar vs. Ratilal Motilal Patel and others** reported in **AIR 1968 SC 372**, has held as under:-

> *"10. ...**When it appears to a Single Judge or a Division Bench that there are conflicting decisions of the same Court, or there are***

> ***decisions of other High Courts in India which are strongly persuasive and take a different view from the view which prevails in his or their High Court, or that a question of law of importance arises in the trial of a case, the Judge or the Bench passes an order that the papers be placed before the Chief Justice of the High Court with a request to form a special or Full Bench to hear and dispose of the case or the questions raised in the case****. For making such a request to the Chief Justice, no authority of the Constitution or of the Charter of the High Court is needed, and by making such a request a Judge does not assume to himself the powers of the Chief Justice. A Single Judge does not by himself refer the matter to the Full Bench: he only requests the Chief Justice to constitute a Full Bench for hearing the matter. Such a Bench is constituted by the Chief Justice. The Chief Justice of a Court may as a rule, out of deference to the views expressed by his colleague, refer to the case; that does not mean, however, that the source of the authority is in the order of reference."*
>
> *(emphasis by the Court)*

65. Again the Hon'ble Supreme Court in the case of **Sri Bhagwan vs. Ramchand** reported in **A.I.R. 1965 SC 1767**, held as under:-

> *"18. ...It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be re-considered, he should not embark upon that enquiry siting as a single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevent papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety...."*

66. Accordingly, keeping in view the aforesaid judgments as well as the conflict as discussed above between the order of this Court in the case of **Teja (supra)** as well as the mandatory provisions of Section 14-A, Section 20, Sections 4 and 5 of the Code, this Court is of the view that the correctness of the Division Bench order in the case of **Teja (supra)** needs to be considered by a Larger Bench of this Court. Consequently, the Court refers the following questions for consideration by a Larger Bench under Chapter V Rule 6 of the Allahabad High Court Rules, 1952:-

(I) What would be the remedy available to a person who may have been acquitted of the offences under the provisions of the Act, 1989 but convicted for offences under the provisions of IPC i.e. whether to file an appeal under the provisions of the Code or an appeal under the provisions of Section 14A(1) of the Act, 1989 when the judgment is by a Special Court or an Exclusive Special Court?

(II) Whether the Division Bench in it's order in the case of **Teja (supra)** has correctly held that in case a person has been acquitted of the charges of offences under the Act, 1989 then he can file an appeal under the provisions of the Code even though when the judgment is of the Special Court or an Exclusive Special Court?

67. This Court accordingly directs the Registry of this Court to place the record of this case before the Hon'ble Chief Justice/ Senior Judge as the case may be, for constitution of a Larger Bench for considering and answering the questions aforesaid.

68. A request is made to Hon'ble Chief Justice/Senior Judge to have a Larger Bench constituted at the earliest considering that various appeals pertaining to the same question are being filed both under the Code as well as the Act, 1989.

69. The Court also records the assistance of Sri S.M. Singh Royekwar, Sri Sumit Tahilramani, Sri Anupam Mehrotra, Ms. Aishwarya Mathur and Sri Vikas Vikram Singh, learned counsels.

Order Date :- 09.08.2024 **(Abdul Moin, J.)**
A. Katiyar

After the order dated 09.08.2024 has been pronounced, it has been informed that there is an interim order operating in both the appeals.

As this Court has referred the matter to the Larger Bench of this Court, as such, till the decision is taken by the Larger Bench, interim order passed earlier shall continue.

Order Date :- 09.08.2024 **(Abdul Moin, J.)**
A. Katiyar