

AFR

Neutral Citation No. - 2025:AHC-LKO:48621

RESERVED ON 12-08-2025

DELIVERED ON 20-08-2025

Court No. - 14

Case :- CRIMINAL APPEAL No. - 2389 of 2025

Appellant :- Dwarika And Another

Respondent :- State Of U.P. Thru. Prin. Secy. Home
Lko.

Counsel for Appellant :- Dinesh Kumar
Tripathi,Kalapanath,Vijay Kumar

Counsel for Respondent :- G.A.,Akhilesh Pratap
Singh,Pradeep Kumar Singh Vats

Hon'ble Shree Prakash Singh,J.

1. Heard Sri D.K.Tripathi, learned counsel for the appellants, Dr. V.K.Singh,learned Government Advocate assisted by Sri Shivendra Singh Rathore for the State, Sri Akhilesh Pratap Singh and Sri Pradeep Kumar Singh Vats,learned counsels for the informant.

2. Preliminary objection is raised by the learned counsel for the informant that the instant appeal under section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Code, 1973") readwith section 389 of Cr.P.C. against the Judgment and Order dated 11-07-2025 and the order of

punishment/sentence dated 15-07-2025 passed by the learned Special Judge, S.C./S.T. Act (Prevention of Atrocities) Act, 1989 (hereinafter referred to as "Act, 1989") in Sessions Trial No. 200 of 2018, under sections 307, 323, 504, 506 of I.P.C., is not maintainable, for the reason that the present matter has been tried alongwith S.C./S.T. No. 108 of 2016, arising out of Case Crime No. 133 of 2016, under sections 302, 307, 325, 304, 506 of I.P.C. and section 3(1)(X) of the S.C./S.T. Act and therefore, the appeal under section 14-A of the Act, 1989, is maintainable and more so, he has filed the appeal under the Act, 1989 for enhancement of the punishment/sentence awarded to the appellants, which is pending consideration.

3. The present appeal is directed against the Judgment and Order dated 11-07-2025 passed in Sessions Trial No. 200 of 2018, under sections 307, 302, 504, 506 of the I.P.C.

4. It is an undisputed fact that the Sessions Trial No. 200 of 2018 and S.C./S.T. No. 108 of 2016 were heard jointly, and the Judgments and Orders, have been pronounced, separately.

5. In S.C./Sessions Trial No. 108, matter is arising out of the offence under the S.C./S.T. Act wherein, the chargesheet was filed and the matter proceeded as per

the provisions of Act, 1989, whereas the Sessions Trial No. 200 of 2018, proceeded as per the "Code, 1973".

6. On the basis of the aforesaid facts and circumstances, the following questions enumerated :-

(a) Whether if joint trials of same transaction of an offence concluded and if in one of those comes under the Special Act, whether the appeal of such joint trial shall run as per the provisions prescribed under the Special Act or the procedure envisaged in "Code, 1973" for filing an appeal against such trial ?

7. Prior to discuss the issue, the provisions of Section 223 of the Code, 1973 and 14-A of the Act, 1989 are referred as under :-

"223. What persons may be charged jointly:-. *The following persons may be charged and tried together, namely:-*

- (a) persons accused of the same offence committed in the course of the same transaction;*
- (b) persons accused of an offence and persons accused of abetment of or attempt to commit, such offence;*
- (c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;*
- (d) persons accused of different offences committed in the course of the same transaction;*
- (e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-*

named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and 2[if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together."

14A. Appeals(under Act 1989)-*(1) Notwithstanding anything contained in the Code of Exclusive Special Court, to the High Court both on facts and on law, sentence or order, not being an interlocutory order, of a Special Court or an Criminal Procedure, 1973 (2 of 1974), an appeal shall lie, from any judgment,*

(2) Norwithstanding 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 the judgment, sentence or order appealed from:

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

appeal shall be entertained after the expiry of the Provided further that no 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.]”

8. Time and again, the issue regarding the joint trial is dealt with by the various courts of law including the Apex Court and in one of the leading Judgment rendered in the case of **Nathi Lal Vs. State of U.P.**, reported in **1990 SCC (Cri) 638**, it has been dealt with in paragraph no. 2 as follows :-

"2. We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both the cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other."

9. The law, which is discussed and enunciated by the Hon'ble Apex Court has become a guideline for joint trial. It is held that the same learned Judge must dispose of the matter by two separate Judgments and the evidence recorded in one particular case, will not be read into another and he would not be influenced by even whatever is argued in the cross case. This indicates that the very basis of constituting the ingredients of an offence stated to have been committed, the separate evidence is required. In the instant matter, there were two separate trials, but, in one of the trial, the matter pertains to the charges under the S.C./S.T. Act and certainly, the separate evidence must have been taken.

10. In the case of **Nasib Singh Vs State of Punjab and Another**, reported in **(2022) 2 SCC 89**, while adopting the ratio of Judgment of **Nathi Lal** (Supra), it has been emphasized that statutory provisions neither renders the joint trial imperative nor does it bar or prohibit separate trial and therefore, the trial court is to determine at the beginning of trial that whether the cross cases are arising out of the same transaction of crime or not and it is not open at the subsequent stage, while looking into the result of the trial, to take a decision for joint trial of the matter.

11. It is also elaborated that at the stage of appeal against such trial, if such questions are raised, then,

the person, who is raising such objection is under obligation to establish the prejudice as having been caused to him as a result of separate trial.

12. Further, Hon'ble Apex Court in the case of **A.T. Mydeen and Another Vs. Assistant Commissioner, Customs Department**, reported in **(2022) 14 SCC 392**, has categorically held that each case has to be decided on its own merit and sole rule is that both the trials must be conducted simultaneously. Paragraph no. 26 of the said Judgment is extracted as under :-

"26. So far as the law for trial of the cross-cases is concerned, it is fairly well settled that each case has to be decided on its own merit and the evidence recorded in one case cannot be used in its cross-case. Whatever evidence is available on the record of the case only that has to be considered. The only caution is that both the trials should be conducted simultaneously or in case of the appeal, they should be heard simultaneously. However, we are not concerned with cross-cases but are concerned with an eventuality of two separate trials for the commission of the same offence (two complaints for the same offence) for two sets of accused, on account of one of them absconding."

13. This court has also noticed the procedure prescribed under section 4 (2) & 5 of the Cr.P.C., which read as under :-

"4. Trial of offences under the Indian Penal Code and other laws.

(1)

(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.

14. From a bare reading of the aforesaid provisions, it is abundantly clear that every offence under any other law, shall be investigated, enquired into, tried and otherwise dealt with, according to the same provisions, but, subject to any enactment for time being enforced.

15. The Full Bench of this court in case of **Shailendra Yadav @ Salu Vs State of U.P. (Criminal Appeal No. 2174 of 2024 decided on 24-01-2025)** though dealing with different reference has held in paragraph nos. 44 and 52 of the case, which is an obiter dicta. Eventually, dealing with the aforesaid reference, the court has entered into this question as well that the intent of the legislature in incorporating the clauses (1) (2) of Section 14-A of the "Act,1989", read with the amendment, 2016, suggests that the appeals against all orders, sentence and Judgments are to be preferred to the High Court on facts as well as on law and must be respected.

16. It is a trite law that every clause of a statute should be construed with reference to the constraint and other explanation of the act as far as possible to

make a statute meaningful and it is duty of the court to find out the true intention of legislature to ascertain the purpose of statute while giving it a full meaning to the same.

17. Having at a glance of the provisions of Section 14-A of the Act, 1989, it is apparent that the same starts with non-obstante clause, which infact provides the exclusive remedy of filing an appeal notwithstanding any law time being enforced.

18. There are two issues that could not be intermingled; first that the offence arising out of same transaction as a cross case, must be tried together, but, this does not indicate or make it imperative that if in one set of allegations, an special act covers the field, the further provisions provided challenging such outcome of the trials, would come with one of the provision provided in the special act. Infact, the procedure for trial is particularly and exhaustively provided under Cr.P.C. including the appeals against such Judgment and Order passed in such trials and infact, this answers the question that if there are two separate trials, one with respect to charges in an special act and another simply in I.P.C., both can be tried together while taking the separate evidences in both the trials and without being prejudice to each of the evidences placed thereof, but, so far as further challenge of the outcome of those trials are concerned that can be heard jointly, in an appeal, but, in the

separate provision prescribed as per the law time being enforced as an special law as well as the procedure prescribed in the Cr.P.C.

19. In view of the foregoing reasons, this court finds that the trial which is concluded for the charges under an special act, will be appellable in the given provisions in special law, and the other outcome of the trial, for the charges under the I.P.C., is appellable under Cr.P.C.

20. Ergo, the objection raised is hereby ruled out. Resultantly, the instant appeal is maintainable.

21. List/put up this matter on 21-08-2025 for hearing, on admission of appeal and on bail application.

Order Date :- 20-08-2025

AKS