

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 567 of 2023

1. Chandra Bhushan, son of Shri Vinay Kumar Yadav, aged about 31 years, presently posted as Manager (Retail Sales) of the Ranchi 3 Retail Sales Area under the Ranchi Divisional Office of the Indian Oil Corporation Limited and having his office at Namkum, P.O. & P.S. Namkum, District- Ranchi, Jharkhand
 2. Kunal Kishore @ Kunal Kishori, son of Shri Rajendra Prasad, aged about 31 years, presently posted as Manager (Retail Sales) of the Tatanagar 1 Retail Sales Area under the Ranchi Divisional Office of the Indian Oil Corporation Limited and having his office at Namkum, P.O. & P.S. Namkum, District- Ranchi
- ... Appellants**

-Versus-

1. The State of Jharkhand
 2. Sarju Paswan, son of Late Shibu Paswan, resident of 15-A, Adityapur Jaiprakash Udyan, Adityapur, P.O. & P.S. Adityapur, District- Saraikella-Kharswan
- ... Respondents**

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Appellants	: Mr. B.M. Tripathi, Sr. Advocate Mr. Rahul Lamba, Advocate Mr. Nilesh Modi, Advocate
For the State	: Mrs. Vandana Bharti, A.P.P.
For Respondent No.2	: Mr. Navneet Toppo, Advocate

08/28.10.2024 Let the present criminal appeal be detached from Cr. Appeal (SJ)

No.847 of 2023 as in both the criminal appeal, there are different FIRs.

2. Heard Mr. B.M. Tripathi, learned counsel counsel along with Mr. Rahul Lamba, learned counsel for the appellants, Mrs. Vandana Bharti, learned counsel for the State and Mr. Navneet Toppo, learned counsel for respondent no.2.

3. I.A. No.8807 of 2023 has been filed for condonation of delay of 303 days in filing the present criminal appeal and I.A. No.1736 of 2024 has been filed for ignoring the defect, as pointed out by the office.

4. Mr. B.M. Tripathi, learned senior counsel appearing for the appellants submits that there is delay of 303 days in filing the present criminal appeal, which is arising under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. He submits that the appellants had earlier preferred Cr.M.P. No.4632 of 2022 challenging the order taking cognizance as well as the entire criminal proceeding, however, the said Cr.M.P. was dismissed by the Coordinate Bench vide order dated 24.08.2023 saying that the said Cr.M.P. is not maintainable in light of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as there is provision of appeal. He submits that thereafter the present criminal appeal has been preferred and in view of that, such delay has occurred. He further submits that proviso of Section 14-A has been struck down by the Full Bench of the Hon'ble Allahabad High Court in the case of ***Ghulam Rasool Khan and others v. State of U.P. and others***, reported in ***2022 SCC OnLine All 975*** and in this background, the delay may kindly be condoned as for civil wrong, if any, the complaint case has been registered. In this background, he submits that the limitation petition may kindly be allowed.

5. Mrs. Vandana Bharti, learned counsel for the State submits that the delay is there, however, she is not disputing that the appellants had earlier moved before this Court in the said Cr.M.P., which was dismissed as not maintainable in light of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. She is further not disputing with regard to the submission of the learned senior counsel appearing for the

appellants that the provision of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been struck down by the Full Bench of the Hon'ble Allahabad High Court.

6. Mr. Navneet Toppo, learned counsel for respondent no.2 opposed the prayer of condonation and he submits that the appellants has wrongly filed the said Cr.M.P., which was dismissed on the ground of maintainability, however, liberty was not provided to the appellants. He further submits that so far as the Full Bench judgment of the Hon'ble Allahabad High Court is concerned, that is being examined by the Hon'ble Supreme Court, in which, notice has been issued even on the stay matter. On these grounds, he submits that the delay may not be condoned and the limitation petition may kindly be rejected.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that it is an admitted position that the Full Bench of the Hon'ble Allahabad High Court has struck down the proviso of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 in ***Ghulam Rasool Khan (supra)***. It was pointed out by the learned counsel for respondent no.2 that the stay petition is being examined by the Hon'ble Supreme Court and notice has been issued. It is admitted position that the Hon'ble Supreme Court has not stayed the order of the Full Bench of the Hon'ble Allahabad High Court as yet and only notice has been issued.

8. The High Court is required to decide the case on the existing law even if the matter is referred to the larger Bench, as has been held by the

Hon'ble Supreme Court in the case of ***Union Territory of India and others v. Jammu and Kashmir National Conference and others***, reported in ***2023 SCC OnLine SC 1140***. Till the order of the Full Bench of the Hon'ble Allahabad High Court is reversed, that order is existing today.

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

10. It is also an admitted position that the appellants had earlier moved before this Court in Cr.M.P. No.4632 of 2022, which was dismissed on 24.08.2023 holding that the said Cr.M.P. is not maintainable in light of the Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

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

"22. *The Court must have the requisite territorial jurisdiction. An order passed on writ petition questioning the constitutionality of a Parliamentary Act whether interim or final keeping in view the provisions contained in Clause*

(2) of Article 226 of the Constitution of India, will have effect throughout the territory of India subject of course to the applicability of the Act.”

12. In view of the above background, this Court finds that sufficient cause is made out to condone the delay and, as such, the delay of 303 days in filing the present criminal appeal is, hereby, condoned.
13. Accordingly, I.A. No.8807 of 2023 is disposed of.
14. In view of allowing of the condonation petition, I.A. No.1736 of 2024 meant for ignoring the defect, has become infructuous and, as such, I.A. No.1736 of 2024 is disposed of as infructuous.
15. Let this appeal be placed after Deepawali vacation.
16. Office will proceed further as per the procedure.
17. It is open to the learned counsel for respondent no.2 to come prepare on the merits of the case.
18. Till the next date, interim order granted earlier shall remain in force.

(Sanjay Kumar Dwivedi, J.)

Ajay/