

21. BA] SL. No.	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGE'S ORDERS
			<p>CRLA No.629 of 2023 Ishrar and others Vs. State of Uttarakhand <u>Hon'ble Ashish Naithani, J.</u></p> <p>Mr. Arvind Vashishth, learned Senior Counsel assisted by Mr. K.R. Gazi, learned counsel for the Appellant.</p> <p>2. Mr. Chitrarth Kandpal, learned Brief Holder for the State.</p> <p>3. Mr. Shariq Khurshid, learned counsel for the Respondent No.2.</p> <p>4. Present criminal appeal is moved by the appellants under Section 14-A of The Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 challenging the order dated 28.08.2023 passed by learned Session Judge, Haridwar in Session Trial No.15 of 2020 (Case Crime No.240 of 2020) State vs. Ishrar and others under Section 323 read with 34, 332, 353, 354 of IPC and Section 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act.</p> <p>5. The facts in brief, as culled out from the record, are that FIR No. 0240 of 2020 was registered at Police Station Kotwali, District Haridwar, under Sections 188, 323 and 354 IPC and Sections 3(1)(w)(i), 3(1)(r) and 3(1)(s) of the SC/ST Act. As per the FIR, on 28.03.2020, the victim, who was the Gram Pradhan of Village Nagla Imarti, had gone to inspect sanitation work during the Covid-19 period, whereupon it is alleged that appellant Ishrar abused her with castiest slurs, assaulted her with a lathi/danda and attempted to drag her, with the alleged assistance of other co-accused persons,</p>

		<p>during which her mobile phone was also damaged.</p> <p>6. Heard learned counsel for the parties and perused the record.</p> <p>7. Learned counsel for the appellants submits that the victim, though Hindu by birth, had renounced her earlier faith, converted to Islam, performed nikah with late Rifaqat Ali, and had also availed benefits as the widow of a Muslim OBC in the State of Uttarakhand.</p> <p>8. It is further submitted by the learned counsel for the appellant that the learned trial court, vide order dated 28.08.2023, has committed an error of law by allowing framing of charges under Section 3(1)(r), 3(1)(s), 3(1)(w)(i) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities Act), 1989, as the victim had renounced and converted from Hinduism to Islam, executed a nikahnama with a Muslim OBC, and had also availed benefits as the widow of a Muslim OBC in Uttarakhand.</p> <p>9. It is submitted that in view of the bar under Clause 3 of The Constitution (Scheduled Castes) Order, 1950, the victim could not claim the benefit of Scheduled Caste status after conversion to Islam, and therefore no offence under the SC/ST Act is made out.</p> <p>10. At this juncture, in the present criminal appeal the appellant seeks the setting aside of the order dated 28.03.2023 passed by the Learned trial court.</p> <p>11. Having heard learned counsel for the parties and upon perusal of the record, this Court finds merit in the submission advanced on behalf of the appellants that, in view of Clause 3 of the Constitution (Scheduled Castes) Order, 1950, a person professing a religion other than Hindu, Sikh or Buddhist religion cannot claim</p>
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the benefit of Scheduled Caste status.

12. In view of the aforesaid, this Court is of the opinion that the learned trial court has not considered the legal effect of such conversion while permitting framing of charges under Sections 3(1)(r), 3(1)(s) and 3(1)(w)(i) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

13. Accordingly, the appeal is admitted, and the effect and operation of the impugned order dated 28.08.2023, passed by learned Session Judge, Haridwar shall remain stayed.

14. List on 20.07.2026 for further hearing.

15. Stay application stands disposed of.

(Ashish Naithani, J.)

07.05.2026

Arti