

Harish Kumar Vs. The State of Jharkhand

Harish Kumar Vs. The State of Jharkhand

SooperKanoon Citation : sooperkanoon.com/77579

Court : Jharkhand

Decided On : Dec-03-2016

Appellant : Harish Kumar

Respondent : The State of Jharkhand

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI A.B.A. No. 365 of 2016
Harish Kumar .. Petitioner Versus The State of Jharkhand .. Opp. Party WITH
A.B.A. No. 1969 of 2016 1.Sharwan Kumar Agrawalla 2.Subhas Kumar Agrawalla
3.Ashok Kumar Agrawalla 4.Dinesh Agarwalla @ Dinesh Kr. Agarwal .. Petitioners
Versus The State of Jharkhand & Anr. .. Opp. Parties WITH A.B.A. No. 2093 of
2016 Narayan Chakraborty @ Narayan Chakarborty .. Petitioner Versus The State
of Jharkhand & Anr. .. Opp. Parties WITH A.B.A. No. 3283 of 2016 Rajendra
Prasad .. Petitioner Versus The State of Jharkhand .. Opp. Party ----- CORAM:
HON'BLE MR. JUSTICE ANANT BIJAY SINGH ----- For the Petitioners : Mr.
Indajit Sinha, Advocate, Mr. Raunak Sahay, Advocate. Mr. P.K. Mukhopadhyay,
Advocate. Mrs. Sweta Singh, Advocate. For the State : A.P.P. ----- 12/Dated:

03. 12/2016 On 28.09.2016, a detail order was passed in this case after taking
note of the recent amendments made in the Scheduled Caste and Scheduled
Tribe (Prevention of Atrocities) Act, 1989 and the matter was fixed for 18.11.2016.
Thereafter, the matter was adjourned for 29.11.2016. The issue involved in the
instant cases is whether an anticipatory bail application under Section 438 of the
Cr.P.C. is maintainable or an appeal under Section 14-A of the Scheduled Castes

and Scheduled Tribes (Prevention of Atrocities) Amendment Act is required to be filed. Further, Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act reads as under:- -2- 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.

(2) Notwithstanding anything contained in subsection

(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: 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 subsection

(1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal. The question formulated in this case has been decided by the Hon'ble Division Bench of the Patna High Court in Cr.M.P. No. 25276 of 2016 with analogous cases (Bisheshwar Mishra & Anr. V. State of Bihar) delivered on 27.10.2016, the copy of the judgment were served on learned counsels for the petitioners and also to the learned counsels for the State. Heard learned counsels for the parties. Para-9 of the judgment of Hon'ble Patna High Court reads as follows:-

9. In the background of the facts stated above, though the learned single Judges have framed no issue, while referring the matter to the Division Bench, following

questions would be required to be determined in these cases : (i) Whether a person, accused of committing an offence under the Act, is specifically barred from the benefit of statutory provisions of prearrest bail provided in Section 438 of the Code? 3 (ii) Whether a Court of Session or the High Court, while dealing with an application for grant of prearrest bail, is allowed to scrutinize the relevant materials with a view to find out whether any offence, under the Act, has been made out or not? (iii) Whether an application, under Section 438 of the Code, for grant of prearrest bail can be maintained with respect to a person, who is an accused in a case registered for the offence punishable, under the various provisions of the Act, if such a person is in a position to satisfy the court that even on the basis of allegations contained in the First Information Report or Complaint petition, no ingredient of commission of any offence, under the provisions of the Act, is made out against him ? (iv) Whether an application, under Section 438 of the Code, in a criminal case instituted under the provisions of the Act, can be entertained by a Court of Session not specified or declared either as Special Court or Exclusive Special Court under the Act ? (v) Whether consequent upon introduction of Section 14A by way of the Amendment Act, 2015, in the Act, an appeal would be maintainable against an order passed on an application filed in the court below, under Section 438 of the Code, in a case instituted under the provisions of the Act ? (vi) Whether an accused, apprehending his arrest in a case instituted under the provisions of the Act, can directly file an application under Section 438 of the Code before the High Court ? The Division Bench has further given the reply after hearing the parties and has held as follows:- 74. We have already seen that the provisions, prescribed under Section 14A, are in clear contradistinction to that of the Code. Section 14A of the Act provides for an appeal against an order of the Special Court and, in view of the ratio laid down by the Supreme Court, in *State of Gujarat Vs. Salimbhai Abdulgaffar Shaikh* (supra), it becomes clear that unless there is an order of Special Court refusing or granting prearrest bail, under Section 438 of the Code, the accused cannot invoke the power of the High Court, under Section 438 of the Code, to grant prearrest bail. 75. In other words, in order to obtain an order under Section 438 of the Code, an accused is required to, first, apply to the Special Court or the Exclusive Special Court, as the case may be, and he can, thereafter, prefer an appeal against an order refusing bail if his

application for is rejected by such Court. Similarly, even the State can prefer an appeal if the Special Court or the Exclusive Special Court, as the case may be, allows an application for prearrest bail made under Section 438 of the Code, to such an accused person. Further, unless there is an order of the Special Court or the Exclusive Special Court granting or refusing bail, the accused will have no right to file an appeal before the High Court for grant of prearrest bail. 76. Thus, existence of an order of the Special Court or the Exclusive Special Court is a sine qua non for approaching the High Court in appeal. This is because the provisions, prescribed under Section 14A of the Act, have an overriding effect over the provisions of the Code in view of the provisions prescribed under Section 4(2) of the Code. 77. Thus, we have no hesitation in holding that in a case instituted under the provisions of the Act, an accused, apprehending his arrest, cannot directly file an application, under Section 438 of the Code, seeking prearrest bail before this Court as the provisions, prescribed under Section 14 A(1) and (2) of the Act, like Section 34(1) and (4) of the POTA, are in clear contradistinction to that of the Code, where no appeal is provided against an order granting or refusing bail. Hence, an appeal can lie only against an order of the Special Court or the Exclusive Special Court, as the case may be. The accused will have no right to directly file an application under Section 438 of the Code before this Court for grant of prearrest bail. So, in view of the authority decision of the Patna High Court, I am of the considered view that an appeal is maintainable. In view of Section 14-A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, an appeal shall lie from any judgment, sentence or order preferably within a period of 90 days from the date of judgment. Let these application be sent to the stamp reporter to give report on the same and also on the point of limitation. In the meanwhile, learned counsels for the petitioners are directed to make necessary corrections in the -5- nomenclature of the instant cases and also to state the correct provision of law in the cause title of applications. Further, under order dated 23.09.2016 passed in A.B.A. No. 1969 of 2016, a report was called for from the learned Registrar General, as to whether any Special Court has been constituted in the district of Dhanbad and in all the districts of State of Jharkhand after the amendment in Chapter-IV of the Act came into force. Perused the report of the Registrar General of this Court dated

28.11.2016. It appears that the Section Officer has placed a note, which has been marked as 'A' under the signature of the Registrar General annexing the minutes of the Standing committee dated 17.01.2012 regarding vesting of power upon the District & Sessions Judge-I, to try the cases of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act. Under the aforesaid minutes, power has been vested / fixed upon the District Judge-cum-Additional Sessions Judge in all Judgeships, but the report failed to take into consideration that the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 has been amended by the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act 2015 (No. 1 of 2016), which has received the assent of the President of India on 31.12.2015 and has been published in the Gazette of India on 01.01.2016 and has come into force on 01.01.2016. Section-14 of Chapter-IV contemplates establishment of Special Court and now, under Section 14-A, there are two types of special courts, Special Court and Exclusive Special Court, but the minutes does not reflect that after amendment, the matter was placed before Standing Committee. So, let a fresh report from the Registrar General in the light of the Patna High Court judgment and the provisions of Section 14 & 14-A of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act, 2015 be called for with regard to the status as to Whether -6- special court and exclusive special court have been created in the State of Jharkhand or not. List this case again on 18.01.2017. Till then, interim orders granted earlier in the respective cases shall continue. (Anant Bijay Singh, J.) Sunil/-

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com