

AFR

Court No. - 67

Case :- CRIMINAL APPEAL No. - 5184 of 2022

Appellant :- Jhabbu Dubey Alias Pradeep Kumar Dubey

Respondent :- State Of U.P. And 2 Others

Counsel for Appellant :- Jaysingh Yadav

Counsel for Respondent :- G.A.,Ashutosh Kumar Tiwari

AND

Case :- CRIMINAL APPEAL No. - 6104 of 2022

Appellant :- Vishwanath Yadav And Another

Respondent :- State of U.P. and Another

Counsel for Appellant :- Achyut Jee

Counsel for Respondent :- G.A.,Ranjeet Singh

AND

Case :- APPLICATION U/S 482 No. - 22777 of 2022

Applicant :- Dharmendra @ Bauwa Bajpai And Another

Opposite Party :- State Of U.P. And 2 Others

Counsel for Applicant :- Girish Singh

Counsel for Opposite Party :- G.A.,Animesh Srivastava,Ashish Kumar

AND

Case :- APPLICATION U/S 482 No. - 2189 of 2023

Applicant :- Rakesh And 3 Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Anil Kumar Yadav,Ajeet Singh

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

1. Heard Shri Jaisingh Yadav, Shri Achyut Jee, Shri Girish Singh, Shri Anil Kumar Yadav, Shri Ajeet Singh learned counsel for the appellants/applicant and Shri Animesh Srivastava, Shri Ashish Kumar, learned counsel for opposite party no.2 as well as learned Additional Government Advocate for the State. Perused

the record of the case.

2. The common prayer sought by these proceedings, is that the further proceedings of the respective cases which are pending against the accused-appellants before different courts at different stages may be dropped in the light of compromise/settlement between the parties. These cases relate to the relevant provisions of SC/ST Act along with sections of I.P.C. are also involved, for which accused-appellants are facing trial, meaning thereby, that the pending cases against the appellants/applicants may be quashed, as there is truce and settlement between the contesting parties and the informants of these cases are not inclined to prosecute the appellants/applicants in the light of compromise/settlement executed between the parties.

3. Before addressing on the merit of the case, it is desirable to give a bird's eye view on the factual aspect involved in respective cases, so as to appreciate the controversy in hand in its correct perspective :

(I) CRIMINAL APPEAL NO.5184 OF 2022 (JHABBU DUBEY @ PRADEEP KUMAR DUBEY) :

This is the appeal u/s 14-A(1) of SC/ST Act on behalf of Jhabbu Dubey @ Pradeep Kumar Dubey challenging the charge

sheet dated 7.6.2022 as well as the cognizance order dated 4.7.2022 in S.S.T. No.265 of 2022 (State vs. Jhabbu Dubey @ Pradeep Kumar Dubey), pending in the court of Special Judge (SC/ST) Act, Lalitpur, arising out of Case Crime No.76 of 2022, u/s 324, 504 I.P.C. and 3(1)(द) & (ध) of SC/ST Act, P.S.- Jakhaura, District Lalitpur. The informant of the F.I.R. is Surendra s/o Haricharan Khatik and the injured in this case is his brother Shailendra.

F.I.R. was registered by the informant Surendra against the appellant Jhabbu Dubey on 11.4.2022 for the incident said to have taken place on 10.4.2022, with the allegation that on the fateful day the informant along with his brother Shailendra was sitting, suddenly Jhabbu Dubey, without any rhyme and reason, started hurling filthy abuses and when resisted, he became aggressive and by sword, he has caused injuries to his brother Shailendra. The investigation reveals sufficient material against the appellant and accordingly on 7.6.2022 a report u/s 173(2) of Cr.P.C. by the concerned I.O. was filed u/s 324, 504 I.P.C. and Section 3(1)(द) & (ध) of SC/ST Act against the appellant. Special Judge, SC/ST Act, Lalitpur on 4.7.2022 has taken cognizance of those offences and issued process against the

appellant to face the prosecution arising out of Case Crime No.76 of 2022 u/s 324, 504 I.P.C. and Section 3(1)(द) & (घ) of SC/ST Act.

Pending the proceeding, the informant Surendra s/o Haricharan Khatik and the injured Shailendra s/o Haricharan Khatik have given their respective affidavits before the concerned court on 31.5.2021, denying the entire story of 10.4.2022 and denying his presence over the place of incident. The injured Shailendra himself in his affidavit clearly absolved the appellant from commission of the offence. He stated in his affidavit that out of sheer accident he has fallen down and consequently received injuries and the appellant is not at all guilty of the alleged offences.

After having the affidavits, present appeal u/s 14-A(1) of SC/ST Act was filed for quashing of the proceeding pending against the appellant.

On the earlier occasion, in this case the Court has sought a report from the District Magistrate, Lalitpur/Social Welfare Officer as to what amount of compensation has been advanced to the injured Shailendra. Consequently a report from the C.J.M., Lalitpur dated 3.8.2022 was received, which indicates that

Rs.25,000/- (25%) has been advanced to the injured pursuant to Rule 12(4) of SC/ST Rules, 1995 and its relevant Schedule.

(II) Criminal Appeal No.6104 of 2022 (Vishwanath Yadav and another vs. State of U.P. and another):

Short counter affidavit filed today by Devendra Kumar-opposite party no.2, in which in paragraph 5, there is admission to the effect that a compromise was executed on 10.5.2021 on his own volition and accord and he voluntarily moved before the concerned court so as to quash the proceeding pending against the appellants on the basis of compromise between the contesting parties.

In this appeal the prayer sought is to set aside the impugned order dated 10.5.2022 passed by the Special Session Judge, SC/ST Act, Jhansi as well as entire criminal proceeding of Special Case No.1578 of 2019 (State vs. Vishwanath and another), arising out of Case Crime No.114 of 2019, u/s 323, 504, 506 I.P.C. and Section 3(1)(द) & (ध) of SC/ST Act, Police Station-Moth, District -Jhansi in terms of compromise dated 10.5.2022.

Perusal of the order impugned dated 10.5.2022 indicates that the learned Session Judge have mentioned that the said

compromise relates to the SC/ST Act and as the offences u/s SC/ST Act are not compoundable, and thus the compromise is rejected and declined.

In this case the F.I.R. was got registered as Case Crime No.114 of 2019 on 27.4.2019, u/s 323, 504, 506 I.P.C. and Section 3(1)(घ) of SC/ST Act by the informant Devendra against the appellants Vishwanath Yadav and Shilu with the allegation, in brief, that on the fateful day around 06.30 he was sitting at his house and per force the appellants were compelling the informant to perform their work and when the informant refused, they started hurling filthy abuses and assaulting him by kicks and fists, causing injuries to him. After commission of assault, both of them fled away from the site.

After recording the statements, the police have submitted charge sheet on 31.5.2019 u/s 323, 504 I.P.C. and 3(1)(घ) of SC/ST Act against the appellants and the learned Special Judge, SC/ST Act, have taken cognizance of those offences on 25.9.2019 under the aforesaid sections. In addition to this, on 20.2.2020 the charges were also framed against the appellants u/s 323, 504 I.P.C. and 3(1)(घ) of SC/ST Act by the Special Judge, SC/ST Act, Jhansi. Thereafter, the appellants were bailed out in the

matter and the trial is progressing against them slowly.

Meanwhile an application dated 10.5.2022 was given by the informant before the Special Judge, SC/ST Act, Jhansi, mentioning therein that the opposite party no.2 is the injured as well as the informant of the case who lodged the FIR, but on account of intervention by the local co-villagers and other respectable members of the society, the matter has been settled down amicably between the parties outside the court. Now there is no grudges against the appellants and the opposite party no.2 does not want to proceeding with the case any more and same may be quashed.

(III) APPLICATION U/S 482 No.22777 OF 2022 (Dharmendra @ Bauwa Bajpai and another vs. State of U.P. and 2 others):

In this case, the extra-ordinary power of this Court u/s 482 Cr.P.C. was invoked to quash the charge sheet No.89/2021 dated 01.06.2021, cognizance order dated 29.7.2021 as well as entire criminal proceeding of Case No.672 of 2021 (State vs. Dharmendra @ Bauwa Bajpai and another), arising out of Case Crime No.44/2021, u/s 342, 323, 308 I.P.C. and 3(1)(द) of SC/ST Act, Police Station Chaubepur, District Kanpur Nagar on the basis of compromise dated 24.6.2022, pending in the court of

Additional District/Session Judge, Court No.2/Special Judge (SC/ST Act), Kanpur Dehat.

Genesis of this case starts from lodging of F.I.R., which was registered as Case Crime No.44 of 2021 at Police Station Chaubepur on 28.2.2021 by the informant Harishchandra (opposite party no.2) against Bauwa Bajpai and Vinay for the incident said to have taken place on 27.02.2021 with the allegation that on the fateful day around 11.00 in the night the applicants had called the informant's brother Shobhit Gautam and brutally assaulted him by kicks and fists and he got admitted in Prakash Nursing Home. The FIR was registered u/s 342, 323 I.P.C. and 3(1)(द) of SC/ST Act, but after the investigation into the case, the police have submitted report u/s 173(2) Cr.P.C. u/s 342, 323, 308 I.P.C. and 3(1)(द) of SC/ST Act, mentioning that Section 308 I.P.C. has been added among array of sections keeping in view that the injured has received head injury. Cognizance of those offences was taken by the learned Special Judge, SC/ST Act, Kanpur Dehat on 29.7.2021.

Learned counsel for the applicants has drawn attention of the Court to Annexure-6, which is a compromise deed executed on 24.6.2022, signed by Harishchandra (the informant) and

Shobhit Gautam and countersigned by Dharmendra @ Bauwa Bajpai and Vinay. In support of said application, they have filed the affidavit sworn by Shobhit Gautam, the injured. In para-5 of the affidavit, it is mentioned that since both the accused as well as victim belongs to same village, therefore, after intervention of reputed persons of the village, there is truce and compromise between them. After this compromise which was signed by the informant on his free and sweet will, the informant does not want to proceed with the case any more and he wants that the impugned proceeding against the applicants may be quashed in the light of the compromise.

(IV) APPLICATION U/S 482 No.2189 OF 2023 (Rakesh and 3 others vs State of U.P. and another):

By means of the present 482 application the applicants are invoking the plenary power of this Court u/s 482 Cr.P.C. challenging the entire proceeding of Special Session Trial No.134 of 2022 (State vs. Bhajuram & others), arising out of Case Crime No.152 of 2014, u/s 147, 323, 504, 427 I.P.C. & Section 3(1)(10) of the SC/ST Act, Police Station Puranderpur, District Maharajganj, pending in the court of learned Special Judge, SC/ST Act, Maharajganj in the light of compromise entered between the parties.

In fact this is the third application u/s 482 Cr.P.C. on behalf of applicants. First 482 Application No.6326 of 2022 (Rakesh & 3 others vs. State of U.P. & another) which was disposed of by Coordinate Bench of this Court vide order dated 6.7.2022 with a direction to get the compromise executed between the parties verified from the concerned court below. Thereafter, second 482 Application No.29644 of 2022 (Rakesh & 3 others vs. State of U.P. and another) which was dismissed as withdrawn with liberty to file a fresh vide order dated 07.12.2022.

It is contended by learned counsel for the applicant that the informant Arjun belongs to 'Dhobi' caste has lodged an FIR through an application u/s 156(3) Cr.P.C. for the incident said to have taken place on 30.11.2013 at 05.00 in the evening, but its FIR was came into existence on 12.02.2014 at 13.10 hours. It was alleged by the informant that all named accused persons have assaulted by lathi and danda causing injuries to Prabhavati and Sharda. The accused persons are 5 in number including one lady Ishrawati, belongs to caste '*Kalaar*' (OBC). FIR was registered u/s 147, 323, 504, 506, 427, 452, 380 I.P.C. and during investigation the police has added Section 3(1)X of SC/ST Act, but the charge sheet was submitted against the applicants on

26.2.2014 only u/s 147, 323, 504, 506, 427 I.P.C. and Section 3(1)X of SC/ST Act.

I have perused the compromise deed dated 23.02.2022 and 20.7.2022 (Annexure-9 and 10 to the petition) and verification order dated 18.8.2022 passed by the court below (Annexure-10 to the petition). I have also perused the respective affidavits of the informant as well as injured lady, who in so many words have accepted that on account of some misunderstanding they have lodged an FIR, but now there is a truce and compromise between them and the injured does not want to proceed with the case any further against the applicants. Therefore, they have requested that they have got no objection, if the entire proceeding pending against the applicants is quashed in the light of compromise.

4. Above-mentioned is the factual narration of respective cases which deserves attention of the Court.

5. Respective counsels have floated their statements at length and have relied upon two recent judgments pronounced by Hon'ble Apex Court on the issue of compounding of offences, especially focusing the provisions of SC/ST Act in addition to the provisions of Indian Penal Code. These two celebrated judgments recently pronounced by the Hon'ble Apex Court are :

(i) Ramgopal vs. The State of Madhya Pradesh in Criminal Appeal No.1489 of 2012 decided on 29.9.2021.

(ii) Ramawatar vs. The State of Madhya Pradesh in Criminal Appeal No.1393 of 2011 decided on 25.10.2021.

Both these judgments are of great help in deciding of aforesaid Criminal appeals u/s 14A(1) of SC/ST Act as well as Applications u/s 482 Cr.P.C.

6. After hearing the respective counsels at considerable length and learned A.G.A., a question of law poses for consideration; as to whether the High Court has power to quash the proceedings emanating from non-compoundable offences, which has no adverse impact or depriving effect on the society at large on the basis of compromise between the accused and the victim. This issue is no longer *res integra* and same has been authoritatively settled by number of judgments by the Hon'ble Apex Court. The learned counsels have heavily counted on these compromise/settlement between the parties and sought the quashing of criminal prosecution in its entirety, relying upon the aforesaid recent judgments of Hon'ble Apex Court, Ram Gopal (*supra*) and Ramawatar (*supra*).

7. Learned A.G.A. has controverted the factum of compromise and floated his own submissions against the prayer

sought by the appellants/applicants.

8. Before scrutinizing the facts of these cases and especially the power of this Court u/s 482 Cr.P.C., it would be desirable to spell out the relevant extract of yet another celebrated judgment of Hon'ble Apex Court in the case of ***Gian Singh vs. State of Punjab, 2012 (10) SCC 303*** which reads thus :

“61.the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz; (i) to secure the ends of justice or (ii) to prevent abuse of the process of any Court. In what cases power to quash the criminal proceeding or complaint or F.I.R may be exercised where the offender and victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have serious impact on society. Similarly, any compromise between the victim and offender in relation to the offences under special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and pre-dominantly civil flavour stand on different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like

transactions or the offences arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, High Court may quash criminal proceedings if in its view, because of the compromise between the offender and victim, the possibility of conviction is remote and bleak and continuation of criminal case would put accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of process of law despite settlement and compromise between the victim and wrongdoer and whether to secure the ends of justice, it is appropriate that criminal case is put to an end and if the answer to the above question(s) is in affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceeding.”

9. On the identical footing the Hon’ble Apex Court have carved out broad fundamentals from the various judicial pronouncements and has been recapitulated by a three Judges Bench of Hon’ble Apex Court in the case of ***State of Madhya Pradesh vs. Laxmi Narayan and others, 2019 (5) SCC 688***, wherein the Hon’ble Apex Court in its para-15 has elaborated, as under :

(1) that the power conferred under [Section 482](#) of the Code to quash the criminal proceedings for the non-compoundable offences under [Section 320](#) of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or arising out of matrimonial

relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

(2) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

(3) similarly, such power is not to be exercised for the offences under the special statutes like [Prevention of Corruption Act](#) or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

(4) xxxxxxxxxxxx;

*(5) while exercising the power under **Section 482** of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc.”*

10. Now the Court has to strike a balance between the provisions of Section 320 Cr.P.C. on one hand, and Section 482 Cr.P.C. on the other hand. Meaning thereby, the offences which are not compoundable can be compounded in the criminal court in purported exercise of powers u/s 482 Cr.P.C. Any such exercise or attempt by the court would amount to alteration,

addition and modification of Section 320 of Cr.P.C., falls within the exclusive domain of the legislature. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking the inherent powers of the High Court in the interest of justice and in order to attain the larger good keeping in view the peculiarity of the facts and circumstances of such cases and for the justifiable reasons could be invoked its plenary powers to prevent the abuse of process of court and to secure the ends of justice. Thus the High Court, therefore, having regard to the nature of the offence and the facts of the parties, who have amicably settled their dispute and misunderstandings outside the court and willingly consented to nullify the criminal proceeding, can quash such proceeding in exercise of its plenary power u/s 482 Cr.P.C., even though the offences are not compoundable in nature. The High Court can indubitably evaluate the consequential impact of the offence beyond the body of an individual, and therefore, adopt a pragmatic approach to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of administration of criminal justice.

11. The offences which are serious offences or which

involved the moral turpitude or have a harmful effect on the society or a moral fabric of the society or matter involves the concerning of public policy can not be construed betwixt two individual or group only and such an offence have a potential to impact the society at large. If such an offence is permitted to compound or the offender of such an offence goes unpunished, it would not only send a wrong signal to the society, but may also accord undue benefit to unscrupulous, habitual or professional offenders, who can secure a settlement through duress, threats, societal boycotts, bribes or other dubious means.

12. Marshaling the facts and circumstances and crystallizing the various previous legal pronouncements of Hon'ble Apex Court, in the case of *Ramgopal vs. The State of Madhya Pradesh, Criminal Appeal No.1489 of 2012 decided on 29.9.2021*, the Hon'ble Apex Court have well analyzed the axiom that the plenary jurisdiction of this Court to impart a complete justice under Article 142 of the Constitution cannot *ipso facto* be limited or restricted by ordinary statutory provisions. It is also noteworthy that even in the absence of an express provision akin to Section 482 Cr.P.C., conferring powers on the Supreme Court to abrogate and set aside criminal

proceedings, the jurisdiction exercisable under Article 142 of the Constitution embraces this Court with scopious powers to quash criminal proceeding also, so as to secure complete justice. Similarly on the same line and path, the High Courts too, are armed with the power u/s 482 Cr.P.C. to quash the proceedings where the parties on its own volition and accord decided to bury their differences and dispute outside the court, approaches the High Court for quashing the proceedings, the High Court can exercise its power u/s 482 Cr.P.C. for quashing the proceedings to secure the complete justice between them. In doing so a due regard must be given to the overarching objective of sentencing in the criminal justice system, which is grounded on the sublime philosophy of maintenance of peace of the collective and that the rational of placing an individual behind bars is aimed at his reformation.

13. Thus, the L.C.M. of aforesaid discussion is that as opposed to section 320 Cr.P.C. where the Court is squarely guided by the compromise between the parties in respect of offences ‘compoundable’ within the statutory framework, the extraordinary power enjoined upon a High Court Under Section 482 Cr.P.C. or vested in the Hon’ble Apex Court under Article 142 of

the Constitution, can be invoked beyond the metes and bounds of Section 320 Cr.P.C. Nonetheless, it is reiterated that such powers of wide amplitude ought to be exercised with its extreme care and cautious in the context of quashing criminal proceeding, bearing in mind : (i) nature and effect of offence on the conscious and temper of the society; (ii) seriousness of the injury, if any; (iii) voluntary nature of compromise between the accused and the victim; and lastly (iv) conduct of the accused persons, prior to an after the occurrence of the purported offence and/or other relevant considerations in accepting the settlement and to be acted upon by the court of law in exercise of power u/s 482 Cr.P.C.

14. Now in the instant cases where the informant/victims belonging to SC/ST community lodged F.I.Rs. u/s 323, 324, 504, 506, 342, 308 and other allied sections of I.P.C. and Section 3(1) (द) & (ध) of SC/ST Act, and now the parties have come to terms. In this regard a judgment of Hon'ble Apex Court in ***Ramawatar vs. The State of Madhya Pradesh*** (*supra*) is of great value and help. In para-18 of this judgment Hon'ble Apex Court was conscious enough to hold that having a truce and compromise with a person belong to scheduled caste and scheduled tribes

community, it is expected from the courts law to be more vigilant and cautious to ensure that the complainant/victim has entered into compromise on his/her own free will and sweet will and there is no duress or coercion, threat or allurements from any quarter. It is further observed that since a member of scheduled castes/scheduled tribes community belong to the weaker sections of our country, they are more prone to acts of coercion, and therefore, ought to be accorded a high level of protection. Therefore, accepting settlement between them the court has to test the covenants of the said compromise on the touchstone of following tests, namely :

Firstly, the occurrence(s) involved in these appeals can be categorized as purely personal or having overtones of criminal proceedings of private nature;

Secondly, the nature of injuries incurred, for which the Appellants have been convicted, do not appear to exhibit their mental depravity or commission of an offence of such a serious nature that quashing of which would override public interest;

Thirdly, give the nature of the offence and injuries, it is immaterial that the trial against the Appellants had been concluded or their appeal(s) against conviction stand dismissed.

Fourthly, the parties on their own volition, without any coercion or compulsion, willingly and voluntarily have buried their differences and wish to accord a quietus to their dispute(s);

Fifthly, the occurrence(s) in both the cases took place way back in the years 2000 and 1995, respectively. There is nothing on record to evince that either before or after the purported compromise, any untoward incident transpired between the

parties;

Sixthly, since the Appellants and the complainant(s) are resident of the same village(s) and/or work in close vicinity, the quashing of criminal proceedings will advance peace, harmony, and fellowship amongst the parties who have decided to forget and forgive any ill-will and have no vengeance against each other; and

Seventhly, the cause of administration of criminal justice system would remain un-effected on acceptance of the amicable settlement between the parties and/or resultant acquittal of the Appellants; more so looking at their present age.

Though the list is not exhausted but these are the basic tests on which the settlement is to be tested between the parties.

15. Taking the guidance from above guidelines of Hon'ble Apex Court and comparing the facts of the present cases, the nature, gravity of the offence in which charge sheet has been submitted by the police, more particularly the contesting parties belong to same village, reside either in the neighbourhood or nearby, and out of a sheer fit of anger some heated passion or altercation took place which resulted into an act of offensive by the accused against the complainant. After lapse of time the contesting parties themselves feel like that they have to reside in the same village for their remaining life with the intervention of elders and sane people of the society, adhering to the cardinal principle of forget and forgive, in a cool and composite mind, they have decided to settle down the issue forever.

16. We are in our 75th year of independence, a mature democracy where there is sufficient spread of education system even in rural areas and there is sufficient amount of awareness among all the stratas of the society including persons belonging to SC/ST community. In addition to this, there is upsurge of electronic media, social media even in the remote areas of our villages, the people are now more aware and vigilant about their rights, powers and duties. The situation is improving slowly but steadily, even in the rural areas, and therefore, there is steep rise in lodging of the criminal cases by the members of Scheduled Caste/ Scheduled Tribes community. It is also a welcome step that the parties are readily accepting the compromise between them on various accounts viz : resides in same village or in close vicinity; relationship between them for generations; inter-dependence etc. are cooling factors. These are the circumstances where the role of law courts should be act as a catalyst between them to bury their disputes and differences, instead of keep the matter linger on for an unlimited period permitting the animosity between them more firm and irrevocable. Long drawn enmity sometimes give a disastrous result to the general peace and tranquility of the society, and thus, it is expected from the law courts to act in a pro-active way and after evaluating and taking

into account the above mentioned factors, try to bury the differences for good in larger interest of the society.

17. In all above mentioned four cases, the penal provisions involved are u/s 147, 323, 324, 427, 504, 506, 342, 308 and other allied sections of I.P.C. and Section 3(1) (द) & (ध) of SC/ST Act. The parties on their own have decided to come to truce and bury their differences amicably. This Court in exercise of its plenary power u/s 482 of Criminal Procedure Code or Section 14(A)-1 of SC/ST Act have seen the covenants of the compromise and gauged the nature and gravity of the offence, in which the accused persons charged for, and this Court has no hesitation or objection to quash the proceedings of aforementioned cases in the light of compromise between the contesting parties for attaining the larger good and welfare of society. As mentioned above, the law courts should act in a pro-active way with the hope and trust that nothing untoward may happen in future between the parties and, thus, in the light of the above discussion these Criminal Appeals u/s 14A(1) of the SC/ST Act and Applications u/s 482 Cr.P.C. are **ALLOWED**, and the impugned orders and proceedings of respective cases, whose details are given herein below :-

(i) Charge sheet dated 7.6.2022, cognizance order dated 4.7.2022 and entire proceeding in S.S.T. No.265 of 2022 (State vs. Jhabbu Dubey @ Pradeep Kumar Dubey), pending in the court of Special Judge (SC/ST) Act, Lalitpur, arising out of Case Crime No.76 of 2022, u/s 324, 504 I.P.C. and 3(1)(द) & (ध) of SC/ST Act, P.S.- Jakhaura, District Lalitpur.

(ii) Impugned order dated 10.5.2022 passed by the Special Session Judge, SC/ST Act, Jhansi as well as entire criminal proceeding of Special Case No.1578 of 2019 (State vs. Vishwanath and another), arising out of Case Crime No.114 of 2019, u/s 323, 504, 506 I.P.C. and Section 3(1)(द) & (ध) of SC/ST Act, Police Station-Moth, District -Jhansi.

(iii) charge sheet No.89/2021 dated 01.06.2021, cognizance order dated 29.7.2021 as well as entire criminal proceeding of Case No.672 of 2021 (State vs. Dharmendra @ Bauwa Bajpai and another), arising out of Case Crime No.44/2021, u/s 342, 323, 308 I.P.C. and 3(1)(द) of SC/ST Act, Police Station Chaubepur, District Kanpur Nagar, pending in the court of Additional District/Session Judge, Court No.2/Special Judge (SC/ST Act), Kanpur Dehat.

(iv) Entire proceeding of Special Session Trial No.134 of 2022 (State vs. Bhajuram & others), arising out of Case Crime No.152 of 2014, u/s 147, 323, 504, 427 I.P.C. & Section 3(1)(10) of the SC/ST Act, Police Station Puranderpur, District Maharajganj, pending in the court of learned Special Judge, SC/ST Act, Maharajganj.

The above mentioned impugned charge sheets, orders or

proceedings pending against the respective appellants/applicants before the concerned courts are hereby QUASHED.

RETURN OF AMOUNT TO THE STATE IS SINE QUA NON

18. Yet another aspect of the issue which cropped up during arguments that, in the State case (FIR) initiated by any member of the SC/ST community against named or unnamed accused persons (not belonging to the SC/ST community) or the persons of the higher caste for any cognizable or non-bailable offence, the police lodges FIR under the relevant sections of the I.P.C. and the SC/ST Act and proceeds to inquire and investigate into the matter.

19. Normally any State Case, where any offence took place, there are two parties, viz : Complainant/Informant or the victim on one hand and the proposed accused persons named or unknown persons are on the other hand. State being prosecutor contest the criminal proceedings on behalf of victim or the informant. But in the instant legislation in the name of SC/ST (Prevention of Atrocities) Act, 1989 (Act No.33 of 1989), in addition to above mentioned role, the State is not only prosecutor but also acts and renders financial aid and assistance to the victim/informant's family. In fact this is the only legislation, where the State government not only provides fund to the victim,

but also provides travelling allowances, daily allowances, maintenance expenses and transport facilities to the victim of atrocities, his or her dependents and witnesses (Rule 11 of Rules 1995). In addition to this, the District Magistrate or S.D.M. or any other Executive Magistrate shall make necessary administrative and other arrangements to provide relief in cash or in kind or both, within seven days to the victim of atrocities, or their family members and dependents, according to the scale as provided in Annexure-I read with Annexure-II of the Schedule annexed to those Rules and shall also make such immediate relief including food, water, clothing, shelter, medical aid, transport facilities and other aid (Rule 12(4) of Rules 1995). This extra ordinary provision was added in the Rules of 1995 keeping in view the objective of Act 33 of 1989, which reads thus, “The SC & ST (Prevention of Atrocities) Act, 1989 was enacted with a view to prevent the commission of offences of atrocities against the members of SC/ST and establish special courts for the trial of such offences and for providing relief and rehabilitation of the victim of such offences.”

20. This is the only legislature where the State is providing funds to the victims to contest the case so that the offenders may

be punished. From the objective as mentioned in Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 it would reflect that “despite of the various measures adopted to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they have remained vulnerable. They are subjected to various offences, indignities, humiliations and harassments. Through spread of education some awareness has been created amongst them and they have been trying to assert their rights. Still there has been an increase in the disturbing trend of commission of certain atrocities upon the members of SC/ST community. In some part of country, specially in rural areas, they have been denied certain civil rights. In some part of country untouchability against them or demand statutory minimum wages or refuse to do any bonded and forced labour are in practice. The people of the higher castes will treat them as slaves or look upon them with utter humiliation and indignified way. When the members of SC/ST community try to preserve their self-respect and honour of their women, they become irritants for the dominant and the mighty. In order to cap this yawning difference, the legislature in its own wisdom have legislated the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with a laudable object to

have a deterrent impact upon dominant society and to check their highhandedness towards them. The special courts are formed and the procedures are eased so that have a speedy justice and effective punishment system for offenders.

21. In addition to above penal clauses in aforesaid Act, the SC/ST Rules of 1995 have also promulgated which provides the financial assistance to such victims so that they may contest their cases. Earning of the State is being utilized to water them so that they may contest their case to its logical conclusion. In this regard Rules 11 and 12 of the SC/ST Rules, 1995 deserve special attention, which reads thus :

“11. Travelling allowances, daily allowance, maintenance expenses and transport facilities to the victim atrocity, his or her dependent and witnesses.—

(1) Every victim of atrocity or his/her dependent and witnesses shall be paid to and for rail fare by second class in express / mail/ passenger train or actual bus or taxi fare from his / her place of residence or actual bus or taxi fare from his /her place of residence or place of stay to the place of investigation or hearing of trial of an offence under the Act.

(2) The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make necessary arrangements for providing transport facilities or reimbursement of full payment thereof to the victims of atrocity and witnesses for visiting the investigating officer, Superintendent of Police/Deputy Superintendent of Police, District Magistrate or any other Executive Magistrate.

(3) Every woman witness, the victim of atrocity or her dependent being a woman or a minor, a person more than sixty

years of age and a person having 40 per cent or more disability shall be entitled to be accompanied by an attendant of her/ his choice. The attendant shall also be paid travelling and maintenance expenses as applicable to the witness or the victim of atrocity when called upon during hearing, investigation and trial of an offence under the Act.

(4) The witness, the victim of atrocity or his/her dependent and the attendant shall be paid daily maintenance expenses for the days he/she is away from the place of his/her residence or stay during investigation, hearing and trial of an offence, at such rates but not less than the minimum wages, as may be fixed by the State Government for the agricultural laborers.

(5) In addition to daily maintenance expenses the witness' the victim of atrocity (or his/her dependent) and the attendant shall also be paid diet expenses at such rates as may be fixed by the State Government from time to time.

(6) The payment of travelling allowance, daily allowance, maintenance expenses and reimbursement of transport facilities shall be made immediately or not later than three days by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate to the victims, their dependents/attendant and witnesses for the days they visit the investigating officer or in-charge police station or hospital authorities or Superintendent of Police, Deputy Superintendent of Police or District Magistrate or any other officer concerned or the Special Court.

(7) When an offence has been committed under Sec. 3 of the Act, the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall reimburse the payment of medicines, special medical consultation, blood transfusion, replacement of essential clothing, meals and fruits provided to the victim(s) of atrocity.

12. Measures to be taken by the District Administration.-

(1) The District Magistrate and the Superintendent of Police shall visit the place or area where the atrocity has been committed to assess the loss of life and damage to the property

and draw a list of victim, their family members and dependents entitled for relief.

(2) Superintendent of Police shall ensure that the First Information Report is registered in the book of the concerned police station and effective measures for apprehending the accused are taken.

(3) The Superintendent of Police, after spot inspection, shall immediately appoint an investigation officer and deploy such police force in the area and take such other preventive measures as he may deem proper and necessary.

(4) The District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate shall make arrangements for providing immediate relief in cash or in kind or both to the victims of atrocity, their family members and dependents according to the scale as in the schedule annexed to these Rules (Annexure-I read with Annexure-II). Such immediate relief shall also include food, water, clothing, shelter, medical aid, transport facilities and other essential items.

(4A) For immediate withdrawal of money from the treasury so as to timely provide the relief amount as specified in sub-rule (4), the concerned State Government or Union territory Administration may provide necessary authorisation and powers to the District Magistrate.

(4B) The Special Court or the Exclusive Special Court may also order socio-economic rehabilitation during investigation, inquiry and trial, as provided in clause (c) of sub-section of section 15A of the Act.

(5) The relief provided to the victim of the atrocity or his /her dependent under sub-rule (4) in respect of death, or injury to, or damage to property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.

(6) The relief and rehabilitation facilities mentioned in sub-rule (4) above shall be provided by the District Magistrate or the Sub-Divisional Magistrate or any other Executive Magistrate in accordance with the scales provided in the Schedule annexed to these rules.

(7) A report of the relief and rehabilitation facilities provided to the victims shall also be forwarded to the Special Court by the District Magistrate or the Sub-Divisional Magistrate or the Executive Magistrate or Superintendent of Police. In case the Special Court is satisfied that the payment of relief was not made to the victim or his/her dependent in time or the amount of relief or compensation was not sufficient or only a part of payment of relief or compensation was made, it may order for making in full or part the payment of relief or any other kind of assistance.

22. It would not be out of place to mention here that this financial assistance is given with a sole motive to victims considering that they are downtrodden so that they may not feel scared or hopeless and give-up the proceedings on account of paucity of funds. The State has come out to help them and Welfare Department of the State has been authorised and empowered to provide financial assistance to them. This indeed is a laudable object whereby the State being a welfare State is providing the financial assistance to the victims belonging to SC/ST community so that they may contest their cases, summon the witnesses and meet out all the expenses incurred during trial. Thus the underline idea of providing financial assistance is that there shall not be any paucity of funds to the victim in contesting the case to its logical conclusion and the wrongdoers may be suitably punished and penalized for their acts committed against the victims. All these arrangements are provided to the victims

by the State Government only to achieve an objective that the members of SC/ST community should feel free in contesting the case and rest of the financial burden shall be borne out by the State.

23. Thus, the objective behind Rules 11 & 12 of the SC/ST Rules, 1995, is indeed laudable and commendable, but with a caveat/a rider over it. It pre-supposes that the state government has to bear the financial burden of the entire trial, whereby the offenders and wrongdoers may be punished after the trial. That's why at every stage of trial the Welfare department of the state government releases funds to the victim.

But, where the parties have come to truce and settle their dispute outside the court, without any threat or coercion upon them, resultantly the entire trial gets aborted in its midst. No doubt it's a welcome step taken by the contesting parties, but the state government or its treasury shall not be put to any kind of financial loss. We are living in a Welfare State but surely not in a Charitable State. At the cost of repetition, since release of the funds in favour of the victim is at every stage of the trial viz : lodging of FIR; filing of charge sheet; committal of the case; and lastly conclusion of trial, as such, in the event of any truce

between the parties, it's natural and logical result should be, return of the amount received by the victim from the state exchequer.

24. Moreover, when there is settlement between the parties, there is no threat for any offensive against the victim and the entire atmosphere is full of peace, tranquility and positivity. There cannot be any good justification to keep that money for the victim and in all fairness they are supposed to return back the money to the State Government. This is the hard-earned money of innocent tax-payers and any atrocities against the victims cannot be exploited to earn and enjoy the money from the State Government even when there is compromise between them.

25. Thus, under these circumstances, where there is compromise/settlement between the victim and the accused, the same shall be verified by the concerned Session Judge, SC/ST Act taking into account the factors enumerated by the Hon'ble Apex Court quoted above. After being satisfied the concerned Session Judge shall ask the informant/victim to deposit the entire amount received from the "Samaj Kalyan Vibhag" of the State Government back within next ten days and then pass a suitable order verifying the covenants and the signatories of the

compromise.

26. Deposit of the amount received by the victim belonging to the SC/ST community, if there is a compromise between the contesting parties, then the deposit of the amount back in the State exchequer shall be sine-qua-non and condition precedent for any settlement or truce between the parties without which no compromise could be verified by the court concerned.

27. Since all the four proceedings have already been allowed by this Court, still the victims are directed to deposit the amount received by them within next twenty days in the treasury of Samaj Kalya Vibhag of respective Session's Division.

28. Let the copy of this judgment be circulated to all the Sessions Division of the State so as to comply with the orders in the same terms and conditions in future.

Order Date :- 28.02.2023

M. Kumar