

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [ABA] No.110 of 2018

Suraj Dattaram Chavhan

vs.

State of Maharashtra, through P.S.O. Manora, District Washim

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

Shri P.S. Tembhare, A.P.P. for the Non-Applicant/State.

CORAM : S.B. SHUKRE, J.
DATE : 14th MARCH, 2018.

Nobody is present on behalf of the applicant. I
have heard the learned A.P.P. for the State.

He points out that after an application filed under
Section 438 of the Code of Criminal Procedure ("Cr.P.C." for
short) was rejected by the trial Court, this application under
Section 438 of Cr.P.C. has been filed before the High Court
and in this matter, some of the offences, which are registered
against the applicant, are those, which are punishable under
Section 3(1)(xi) of the Scheduled Castes and Scheduled
Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act"
for short). He submits that in paragraph 2 of the Criminal
Appeal No.70/2018 in Milind Ramakant Ekbote vs. State of
Maharashtra, decided on 2nd February, 2018, the Division
Bench of this Court has expressed a view that an appeal can
be filed against 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 law. He also submits that in another Criminal Appeal No.625/2017 in Mamta Jitendra Jadhav vs. The State of Maharashtra and others, decided on 20th September, 2017, another Division Bench of this Court entertained an appeal filed under Section 14A of the Atrocities Act against an order passed on an application filed under Section 438 of Cr.P.C. by the trial Court. He further submits that in the present case, some of the offences being those punishable under the Atrocities Act, the present application would not be maintainable before this Court and the applicant would have to take resort to the provisions of Section 14A of the Atrocities Act.

In the case of *Milind Ekbote (supra)*, the Division Bench has taken a view that under Section 14A(1) of the Atrocities Act, an appeal can be filed against any judgment, sentence or order, if the order is not an interlocutory order. After taking this view, the Division Bench proceeded to entertain the appeal filed against an order passed on an application filed under Section 438 of Cr.P.C. Of course, the Division Bench in another paragraph 5 has also observed that it was proceeding on the footing that the appeal in such a case could have been filed and even argued before the Court,

inasmuch as, there was no objection raised to the maintainability of the appeal. However, the observations made by the Division Bench in paragraph 2 are quite clear and for the sake of convenience, they are reproduced as under :

“This is an appeal traceable to section 14A of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. By sub-section (1) of Section 14A, an appeal can be filed against 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 law.”

In the case of Kashinath Kisan Deokate vs. State of Maharashtra – 2017 SCC OnLine Bom 5211, the learned Single Judge of this Court took a view that the appeal lies against the order rejecting application filed for grant of anticipatory bail.

The case of Mamta Jitendra Jadhav vs. The State of Maharashtra and others came up before the Division Bench of this Court by way of an appeal being No.625/2017. The appeal was filed to challenge the order passed by the learned Additional Sessions Judge, Greater Bombay declining to grant anticipatory bail to the appellant therein. The said appeal was entertained, heard and allowed by the Division Bench vide order passed on 20th September, 2017.

In view of the above, I am of the considered view that this application filed under Section 438 of Cr.P.C. may not be maintainable before this Court.

At this stage, Shri S. Raisuddin, learned Counsel for the applicant appears and seeks leave of the Court, on instructions, to withdraw the application with liberty to resort to Section 14A of the Atrocities Act.

Leave with liberty, as prayed for, is granted. The application is disposed of as withdrawn.

JUDGE

**sdw*