

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1964 OF 2019

THE STATE OF MAHARASHTRA
VERSUS
DEVIDAS SHANKAR KALE AND ANOTHER

...

WITH
CRIMINAL APPEAL NO.71 OF 2019

DEVIDAS S/O SHANKAR KALE
VERSUS
THE STATE OF MAHARASHTRA

...

WITH
CRIMINAL APPEAL NO.1008 OF 2022

THE STATE OF MAHARASHTRA
VERSUS
DEVIDAS SHANKAR KALE AND ANOTHER

...

Mr. A. V. Deshmukh, APP for the appellant – State in Criminal Application No.1964 of 2019 and Criminal Appeal No.1008 of 2022.

Mr. N. B. Narwade and Mr. V. B. Kale, Advocate for appellant in Criminal Appeal No.71 of 2019 and for respondent No.1 in Criminal Application No.1964 of 2019 and Criminal Appeal No.100/ of 2022.

Mr. A. C. Sisodiya h/f Mr. A. B. Girase, Advocate for respondent No.2 in Criminal Application No.1964 of 2019.

Mr. A. P. Avhad, Advocate for respondent No.3 in Criminal Application No.1964 of 2019 and Criminal Appeal No.1008 of 2022 (Appointed through Legal Aid). (Absent)

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CORAM : SMT. VIBHA KANKANWADI AND
Y. G. KHOBRAGADE, JJ.

DATE : 2nd May, 2023.

ORDER :- (Per Smt. Vibha Kankanwadi, J.)

. Criminal Application No.1964 of 2019 has been filed for condoning the delay of 33 days in filing application seeking leave to appeal under Section 378(1)(b) of the Code of Criminal Procedure. The prosecution intends to challenge the acquittal of respondent No.1 – original accused No.1 from the offences punishable under Section 120-B Indian Penal Code and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short “Atrocities Act”) so also they want to challenge the acquittal of respondent No.2 from the offence punishable under Section 307 and 120-B of Indian Penal Code as well as Section 3(2)(va) of the Atrocities Act. Here, the fact will have to be placed on record is that already the State has filed Criminal Appeal No.1008 of 2022 under Section 377 of the Code of Criminal Procedure, which was against original accused No.1 for enhancement in sentence. Here, the respondents – original accused Nos.1 and 2 stood prosecuted in Special Case No.41 of 2018 before the learned Special Judge/Additional Sessions Judge, Ahmednagar for the offence punishable under Sections 307, 120-B of Indian Penal Code and Section 3(2)(va) of the Atrocities Act. After the evidence was led, considering the entire evidence and hearing both sides, the learned Trial Judge has convicted accused No.1 on 10.01.2019 for the offence punishable under Section 307 of Indian

Penal Code and sentenced him to suffer rigorous imprisonment for seven years and to pay fine of Rs.1,00,000/-, in default to suffer simple imprisonment for one year. The fine amount has been directed to be paid as compensation to the injured under Section 357(1) of the Code of Criminal Procedure. However, original accused No.2 was acquitted of all the charges. Thus, as aforesaid, Criminal Appeal No.1008 of 2022 has been filed under Section 377 of the Code of Criminal Procedure for enhancement in the sentence along with application for condonation of delay, however, by order dated 22.12.2022, the said delay was condoned and, thus, the said appeal came to be registered. It is still pending for admission and now, Criminal Application No.1964 of 2019 is for condonation of delay of 33 days in filing Application for Leave to Appeal under Section 378(1)(b) of the Code of Criminal Procedure. It will not be again out of place to mention here that original accused No.1 has filed Criminal Appeal No.71 of 2019 challenging the conviction under Section 374 of the Code of Criminal Procedure.

2. Heard learned Advocates for the respective parties and learned APP for the State.

3. At the outset, we would like to say that the prosecution side as well as the side of the accused appears to be under wrong impression

that the provisions for appeal under the Code of Criminal Procedure are applicable to the proceedings. Here, the offence was not only under Indian Penal Code, but also under Section 3(2)(va) of the Atrocities Act. Therefore, the investigation was carried out as per the said Act and the charge-sheet was filed before the Special Court under Section 14 of the Atrocities Act. Section 14 of the Atrocities Act prescribes that for the purpose of providing speedy trial, exclusive Special Courts are required to be established in each District and such Courts shall have power to directly take cognizance of offences under the Act. Section 14 was amended in 2016. That means the charge-sheet will have to be filed directly before the Special Court established under Section 14 of the Atrocities Act and accordingly, in this case also, the charge-sheet was filed before the Special Court and, therefore, it has been numbered as Special Case on 24.01.2018.

4. Section 14-A of the Atrocities Act deals with appeals, which reads thus :-

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 sub-section (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 sub-section (1) shall, as far as possible, be disposed of within a period of three months from the date of admission of the appeal .”

The words “Notwithstanding anything contained in the Code of Criminal Procedure, 1973” would carve out the right to file appeal under any Section in the Code of Criminal Procedure and then confer the right to file appeal under Section 14-A of the Atrocities Act. As per Section 14-A(1), an appeal would lie from any judgment, sentence or order of a Special Court to the High Court both on facts and on law. Therefore, when specific provision is made under a special

enactment, the general provisions of the Code of Criminal Procedure will not be applicable. Therefore, all the appeals in the present matter ought to have been under Section 14-A(1) of the Atrocities Act. No doubt, as per Section 14-A(3) of the Atrocities Act, every appeal under this Section has to be preferred within a period of ninety days from the date of judgment, sentence or order appealed from. Therefore, limitation is prescribed and the proviso to sub-section (3) of Section 14-A gives power to this Court to entertain an appeal after expiry of the said period of ninety days, if this Court is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of ninety days. Further, special provision is made in the second proviso to sub-section (3) of Section 13-A of the Atrocities Act that no appeal would be entertained after the expiry of period of one hundred and eighty days. Therefore, even the general provisions of Section 5 of the Limitation Act for getting the delay condoned in preferring an appeal or application will not be applicable, when it comes to a judgment or order passed by the Special Court established under Section 14 of the Atrocities Act.

5. In view of the above-said legal position, which is now accepted by learned APP as well as learned Advocate Mr. N. B. Narwade for the appellant in Criminal Appeal No.71 of 2019, both of them seek leave to amend.

Further, learned APP prays that he be allowed to carry out the similar amendment, which by way of application under Section 378(1)(B) of the Code of Criminal Procedure the prosecution intends to file, to be made in Criminal Appeal No.1008 of 2022, wherein already the delay has been condoned by this Court. As the mistake has been committed by both sides, definitely, the amendment needs to be allowed. Accordingly, the following order is passed :-

ORDER

- i) The prosecution is allowed to carry out necessary amendments in Criminal Appeal No.1008 of 2022, which could be in the nature of the grounds, which they wanted to raise in proceedings, which they intended to file in application under Section 378(1)(b) of the Code of Criminal Procedure.
- ii) In view of the said amendment being carried out, Criminal Application No.1964 of 2019 stands disposed of.
- iii) Appellant in Criminal Appeal No.71 of 2019 is also allowed to carry out the necessary amendments in the said appeal.

iv) Original informant – victim be added as party respondent wherever necessary and amendment to that effect stands allowed, if not already made.

v) All the amendments to be carried out on or before 14.06.2023.

[Y. G. KHOBRAGADE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm