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IN THE HIGH COURT OF DELHI AT NEW DELHI

LPA 819 OF 2010
&
LPA 825 OF 2010

Judgment reserved on: 29.11.2010

Judgment delivered on: 14.01.2011

(1) LPA 819 OF 2010

C.S. AGGARWAL

. . . APPELLANT

Through: Mr. Arvind K. Nigam, Mr. Sandeep Kumar Sethi, and Mr. Siddharth Luthra, Sr. Advocates with Mr. P.K. Dubey, Mr. Anurag Yadav, Ms. Ramjana Roy, Mr. Shailesh Suman and Mr. Arshdeep Singh, Advocates.

VERSUS

STATE & ANR.

. . .RESPONDENTS

Through: Mr. Ramesh Gupta, Sr. Advocate with Mr. Rajinder Singh, Advocate for the complainant.
Mr. Ranjit Kapoor, ASC for the State.

(2) LPA 825 OF 2010

D.K. JAIN

. . . APPELLANT

Through: Mr. Pradeep K. Bakshi, Advocate with Mr. Rajat Navet and Mr. Harment Bassi, Advocates.

VERSUS

STATE & ANR.

. . .RESPONDENTS

Through: Mr. Ramesh Gupta, Sr. Advocate with Mr. Rajinder Singh, Advocate for the complainant.
Mr. Ranjit Kapoor, ASC for the State.

CORAM:-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SURESH KAIT

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?

2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. This Letter Patent Appeal has been filed against the Judgment and order dated 11th November 2010 passed by the learned Single Judge dismissing the W.P. (Crl.) No.57 of 2010. The writ was filed under Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure by the appellant C.S. Aggarwal for quashing of FIR No. 264/2009 dated 23.12.2009 lodged against the appellant by the Economic Offences Wing, Crime and Railways, Delhi under Sections 420/406/120-B of the Indian Penal Code.

2. Succinctly stated, the factual matrix of the events giving rise to the instant LPAs is as follows:

3. Mr. C. S. Aggarwal, director of M/S Rockman Projects Limited (referred to as 'RPL'), made a representation, for the purpose of securing investment, to Mr. Sameer Kohli, director M/S Kohli Housing and Development Pvt. Ltd(in short KHPDL) that the RPL is intending to develop one SEZ on 250 acres land, which is owned by the RPL, situated on Delhi-Jaipur Highway at village Shidhrawali, Gurgaon, Haryana and for this project the petitioner has received in-principal approval dated 22.08.2006 from the Government of India. On the basis of this representation, after being got convinced by the petitioner that he has full authority, supported by the Board resolution dated 14.05.2007, to enter into commercial deals on behalf of RPL, respondent no. 3 agreed to buy 74% shares worth Rs. 185 crores in the Special purpose vehicle (SPL) formed for this purpose. Respondent No. 3 was told that when the final notification regarding SEZ will be received by the company, it will transfer the

land to the SPV. In pursuant to this agreement, one MoU dated 18th June 2007 was signed and advance payment of Rs. 40 crores was made by the respondent no. 3 on the condition that either this advance will be refunded back to him or the land of 250 acres would be transferred in favour of him in case the SEZ notification is not received by 31st December 2008. This amount was to be utilized for the purpose of consolidation and procurement of more land. Subsequently, an amount of Rs. 3 crores was further given to the petitioner by respondent no.3 and he entered into a Shareholder agreement and an FDI investor Xander with RPL on 19th February 2008, which was to come into effect only if the SEZ notification has been received by 31st December 2008. However no notification could be received by RPL by 31st December 2008; instead on the same day, Mr. D. K. Jain, the other director of RPL, issued a public notice revoking all authority given to the petitioner to act on behalf of RPL. In September 2009, the petitioner published a counter public notice claiming thereby that RPL had 99 years lease agreement with D. K. Jain's land owning company for 250 acres of land and also had an agreement to sell in his favour for the entire land.

4. After the expiration of the deadline of 31st December 2008, respondent no. 3 demanded back his money but all of his efforts in this direction went into vain. During the investigation, carried on by the respondent on its own, he came to know that it was falsely represented to him that RPL had 250 acres land and instead only 170 acres of land was available. Even the authority, which issued approval letter, was provided with wrong information on this account that the applicant fulfills the criteria of having a minimum of 250 acres of land for the purpose of development of SEZ. It was also revealed to the respondent no. 3 that as such no payment was made

by the petitioner herein for the purpose of purchasing more land as agreed between the parties in the MoU and subsequently represented by the petitioner herein to the respondent no. 3. Under these circumstances, the respondent no. 3 filed a complaint dated 12.10.2009 at Hauz Khas police station. He also lodged a similar complaint dated 14.10.2009 with Dy. Commissioner of Police, Economic Offences Wing Crime and Railways, Delhi, in pursuant to which a FIR no.266/09 dated 23.12.2010 was registered against the appellant herein under Sections 420/406/120-B of the Indian Penal Code.

5. The appellant Sh. C.S. Aggarwal, by way of W.P. (Crl.) No. 57 of 2010 filed under article 226 of the Indian Constitution r/w section 482 Cr.P.C. challenged the registration of the aforesaid FIR and sought quashing of the same. However, Learned Single Judge of this High Court found no merit in that petition and dismissed the same vide order dated 11.11.2010 on the ground that the investigation done by the EOW clearly indicates that the petitioner had, from the very beginning, a dishonest intention to cheat the respondent no.3. Feeling aggrieved by the dismissal of his writ petition, the appellant Sh. C.S. Aggarwal has preferred the Letter Patent Appeal under clause 10 of the Letter Patent Act of the Punjab and Lahore High Court which is applicable to the Delhi High Court. Sh. D.K. Jain has also filed LPA raising the grievance that even when he was not a party to the writ proceedings, the learned Single Judge had made observations prejudicial to his interest at his back.

6. Before we could proceed with the matter in hand on merits, an objection as to the maintainability of these LPAs was raised by the respondent on the ground that the judgment of the learned Single

Judge was passed in exercise of the criminal jurisdiction and an LPA against the same is clearly barred in law in view of the clause 10 and clause 18 of the Letter Patent constituting the High Court of Judicature at Lahore, which is applicable to the High Court of Delhi as well.

7. Countering this preliminary objection, the learned counsel for the appellants have vehemently contended in support of the maintainability of the instant LPA on the ground that the impugned judgment was passed by the learned Single Judge in exercise of power under article 226 of the Constitution of India and this falls within the ambit of extra-ordinary original jurisdiction of the Delhi High Court.

8. Before we analyze the respective contentions it would be appropriate to mention at the outset that the Delhi High Court was constituted not by the Letters Patent but by the Delhi High Court Act, 1966 (in short 'the DHC Act'). However, the Letters Patent as applicable to the erstwhile Punjab and Lahore High Courts are applicable to the Delhi High Court. Section 5 of the DHC Act confers original jurisdiction to the Delhi High Court while Section 10 thereof confers appellate jurisdiction. These provisions read as follows:

“5. Jurisdiction of High Court of Delhi. –

(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such original, appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by the High Court of Punjab.

(2) Notwithstanding anything contained in any law for the time being in force, the

High Court of Delhi shall also have in respect of the said territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs.

10. Powers of Judges. –

(1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub-section (2) of section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers, shall, with the necessary modifications, apply in relation to the High Court of Delhi.

8. In addition to the appeals that can be filed under section 10 of the DHC Act, three more categories of appeals lie to this Court. Thus the following four categories constitute appellate jurisdiction of the Delhi High Court:

- a. Firstly, appeals under Section 10 of the DHC Act but they are limited only to those judgments referable to Section 5(2) thereof.
- b. Secondly, appeals under the Code of Civil Procedure.
- c. Thirdly, appeals under different statutes, which itself provides for an appeal.
- d. Fourthly, appeals under Clause 10 of the Letters Patent.

9. Here we are concerned only with the fourth category. Clause 10 of the Letters Patent, as applicable to the Delhi High Court read as follows:

“10. Appeals to the High Court from Judges of the Court – And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the Superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of Superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant of Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court where the Judge who passed the judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High Court or of such Division Court shall be to Us, Our heirs or Successors in our or their Privy Council, as hereinafter provided.”

10. This clause clearly prohibits maintainability of an intra-court appeal if the impugned judgment is passed in exercise of:

1. Revisional Jurisdiction
2. The power of superintendence
3. Criminal Jurisdiction

Similarly, clause 18 of the same Letter Patent provides that no appeal would lie from any sentence or order passed or made by the courts of original jurisdiction.

11. On the basis of aforesaid bar on the maintainability of LPA against a judgment or order passed in exercise of 'criminal jurisdiction', the respondents have raised the preliminary objection. As against this, the contention of the appellant is that the writ was filed for quashing of FIR and therefore it was in the nature of Certiorari as the registration of FIR under section 154 Cr. P. C. is a statutory act. He further contends that the nature of the proceedings before the Single Judge could not be said to have been changed just because of mentioning of section 482 Cr. P. C. in the writ petition filed under Art. 226 or the categorization of the same as 'criminal writ' by the High Court registry. As far as nomenclature i.e. 'civil writ' and 'criminal writ', as adopted by the Registry is concerned, it is just a procedural aspect which has been adopted for the sake of administrative convenience only and this sub classification is not of constitutional origin. On the other hand, even if section 482 was mentioned in the writ, the power to quash a FIR, as per the decision of the Supreme Court in **State of Karnataka & Anr. Vs. Pastor P. Raju [(2006) 6 SCC 728]**, can only be exercised under Art. 226 and not under section 482 Cr. P. C. It was further submitted that the exercise of power under Art. 226 by the High Court amounts to exercise of original jurisdiction as held by the Apex Court in **Umaji Keshao Meshram and Ors Vs. Smt. Radhikabai and Anr.[AIR 1986 SC 1272]**. Predicated on this, the submission is that the Single Judge, while delivering judgment in that writ, was exercising extra-ordinary original jurisdiction which is conferred upon this High Court by the Constitution of India and not the 'criminal jurisdiction'

which is barred in view of clause 10 and 18 of the Letter Patent Act of Punjab and Lahore High Court.

12. In order to buttress his submissions, the appellants have also placed reliance upon the judgment of the Full Bench of High Court of Andhra Pradesh in **Gangaram Kandaram Vs Sunder Chhikha Amin and others [2000 (2) ALT 448]**. The relevant parts of that judgment which were specifically pointed out in that case read as under

“14. With regard to the second question as to whether the appeal under Clause 15 of Letters Patent of the Court lies against the judgment in such a case. In other words, whether the proceedings for quashing of the investigation in a criminal case under Article [226](#) of the Constitution is a civil proceeding and the judgment as above is judgment in a civil proceeding in exercise of the original jurisdiction of the Court for the purpose of appeal under Clause 15 of Letters Patent.

15. As per Clause 15 of Letters Patent, no appeal shall lie against the judgment of one Judge of the said High Court or one Judge of any Division Bench passed in exercise of appellate jurisdiction in respect of decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in exercise of the revisional jurisdiction and not being a sentence or order passed or made in exercise of power of superintendence of Section [107](#) of Government of India Act or in exercise of criminal jurisdiction. An appeal shall lie to the Division Bench under Clause 15 of Letters Patent from the judgment of one Judge of the High Court or one Judge of any Division Bench. The appeal from judgments of single Judges of the High Court shall lie to the Division Bench except the judgments prohibited by Clause 15. The learned single Judge while exercising the extraordinary jurisdiction under Article [226](#) quashed the criminal proceedings. In our view, the exercise powers under Article [226](#) of the Constitution by issuing a writ in quashing the FIR is not in exercise of criminal jurisdiction. No doubt against the order under Section [482](#) of Cr.PC or against

the proceedings under Contempt of Court, no appeal will lie under Clause 15 of Letters Patent, but against the judgments quashing the FIR is in exercise of the original jurisdiction of the Court under Article 226, writ appeal lies under Clause 15 of Letters Patent. Issuing a writ of mandamus or certiorari by the High Court under Article 226 pertaining to a criminal complaint or proceeding cannot be said to be an order passed in exercise of the criminal jurisdiction. Therefore, we hold that an appeal lies under Clause 15 of Letters Patent."

13. The appellant has sought support from the judgment of the Punjab and Haryana High Court in **Adishwar Jain Vs Union of India & others [2006 CriLJ 3193]** whereby it was held that *an appeal under the Letters Patent is maintainable against the judgment of a Single Judge in the petition praying for issuance of Habeas Corpus.*

14. When confronted with the judgment of the division bench of Delhi High Court in the case of **Ajay Fotedar Vs State of NCT of Delhi and Ors.** [124(2005)DLT176], the appellant vehemently contended that this judgment is not only per incurium but the question of maintainability was also not raised before the bench and therefore the observations of the bench as contained in para 7 of the said judgment do not constitute the ratio of the case. Instead, reference is made to judgment of this Court in **Harwinder Singh v. Union of India and Others**, 55 (1994) Delhi Law Times 187 (DB) in support of the submission that LPA would be maintainable.

15. On the other hand, on the basis of aforesaid bar on the maintainability of LPA against a judgment or order passed in exercise of 'criminal jurisdiction', the respondents have raised the preliminary objection. Learned counsel for the respondents have not only argued that **Harwinder Singh (supra)** lays down the correct law. It is also

endeavoured that the impugned order of the learned Single Judge is in exercise of criminal jurisdiction and therefore, the LPA would not lie. They have also referred to the judgment of Gujarat High Court in **Sanjeev Rajendrabhai Bhatt v. State of Gujarat and Ors.**, 1999 Criminal Law Journal 3338, wherein the Gujarat High Court after detailed discussion, specifically opined that such an order passed by the Court would be in exercise of criminal jurisdiction and the LPA would not be maintainable. That was a case where complaint was filed by the complainant under certain provisions of the IPC read with that of Narcotic Drugs and Psychotropic Substances Act, 1985 (in short 'the NDPS Act'). The Chief Judicial Magistrate had passed the orders in the said complaint directing an officer not below the rank of DGP to conduct investigation. Revision was preferred against the aforesaid order in the Sessions Court. The Additional Sessions Judge who heard the revision held that order for investigation under Section 156(3) was not illegal. However, direction that the investigation be carried out by an officer not below the rank of DGP was set aside. Rest of the order was confirmed. Investigation was conducted wherein it was *prima facie* found that offences under certain provisions of IPC and NDPS were committed. The offences were, therefore, registered as CR. FIR was registered in accordance therewith. Since the appellant/accused apprehended arrest, he approached the High Court by filing special criminal application under Article 226 of the Constitution of India, which was dismissed. Against that LPA was filed and in this backdrop question of maintainability of LPA arose and the Court held that such LPA was not maintainable. Following passages from the said judgment were pressed into service by the learned counsel for the respondent:-

“13. So far as maintainability of LPAs is concerned, in our opinion, the point can be examined in the light of two questions; firstly whether an order passed by the learned single Judge can be said to have been made in the exercise of extraordinary powers under Article 226 of the Constitution or in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Secondly, whether the order passed by the learned single Judge can be said to have been passed in the exercise of criminal jurisdiction within the meaning of Clause 15 of the Letters Patent.

14. Article 226 of the Constitution empowers every High Court to issue to any person of authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III of the Constitution or for "any other purpose". It is settled by a catena of decisions of the Hon'ble Supreme Court as well as of this Court that the power under Article 226 of the Constitution is extraordinary and original in nature. Article 227 of the Constitution, on the other hand, enacts that every High Court shall have power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The power conferred under Article 227 is not original but supervisory and in exercise of that power, the High Court will supervise functioning of all courts and tribunals situate within its territorial jurisdiction. It is also well settled by several decisions of the Apex Court that the power of superintendence can be exercised by a High Court with a view to seeing that every Court and tribunal subordinate to the High Court exercises its power within the authority of law. Whenever there is abuse of power or excess of jurisdiction by such Court or tribunal, it is the power and duty of the High Court to correct jurisdictional errors committed by a subordinate Court or inferior tribunal by exercising supervisory jurisdiction under Article 227 of the Constitution.”

16. The Court thereafter took note of the fact that there was no provision in the Constitution for intra-court appeals but Letters Patent Appeal provided such appeals. After considering the LPA provision, namely, Clause 15 and certain judgments of the Supreme Court,

including **Umaji Keshao and Ors. V. Radhiabai and Anr.**, [1986]

1 SCR 731, the Court concluded:-

“36. In our considered view, the submission is not well founded and cannot be accepted. The observations must be considered in light of the facts before the Court. In the case before the Court, the petitioner did not approach this Court against any order passed by any Court or Government in exercise of criminal jurisdiction. Criminal trial was over and he was convicted. An appeal was pending in this Court. The question before the learned single Judge in a petition under Article 226 of the Constitution was inaction on the part of the Government in not deciding an application for extension of parole. In our considered opinion, the decision by the learned single Judge, in that petition cannot be said to be a decision in exercise of criminal jurisdiction. An intra-Court appeal against such decision was, therefore, competent. The power which was to be exercised by the State Government was neither under IPC nor under Cr. P.C. It was administrative or executive power under the Prison (Bombay Furlough and Parole) Rules, 1959. When the power was not exercised by Government, a grievance was made by the aggrieved party by invoking Article 226 of the Constitution and the learned single Judge passed an order. In our opinion, therefore, the observations of the Division Bench cannot be construed to mean that when petition is filed under Article 226 of the Constitution, LPA would lie irrespective of the fact that such question might have arisen in exercise of criminal jurisdiction.

37. This is quite clear if one reads the following observations:

In the present case, it cannot, in any way, be said that the petitioner had invoked the criminal jurisdiction under the provisions of the Code of Criminal Procedure of the High Court when he had, in fact, filed the Special Civil Application under Article 226 of the Constitution before the single Judge.

38. In our judgment, therefore, it cannot be said that in the above decision, this Court has laid down any rule of universal application regarding maintainability of Letters Patent Appeal against 'judgment' of a single Judge irrespective of the facts of the case.

39. The matter can be considered from a different angle also. It is well settled that availability of

alternative remedy is no bar to exercise of extraordinary powers by a High Court under Article 226 of the Constitution. Even if, an alternative and efficacious remedy is available to the aggrieved party, he can approach a High Court by filing a petition. It also cannot be disputed that the High Court can entertain a petition and can grant appropriate relief to the applicant notwithstanding availability of other remedy. Availability of such remedy is but one of the considerations which the Court may take into account while exercising extraordinary powers under Article 226. In other words, it is a question of discretion of the Court, and not of jurisdiction of the Court.

40. Now, if the contention of the learned counsel for the appellants is upheld, a person convicted for an offence under the Indian Penal Code or under any other law may approach a High Court by invoking extraordinary jurisdiction under Article 226 of the Constitution. If an order passed by the learned single Judge under Article 226 of the Constitution is subject to Letters Patent Appeal, against such order also, LPA would be competent. In fact, Mr. Jhaveri emphatically stated that in such cases, LPAs would lie inasmuch as it cannot be said that the learned single Judge has passed an order or delivered a judgment in exercise of criminal jurisdiction.

41. With respect, we are unable to agree with the counsel. If the argument is upheld, the bracketed portion of Clause 15 and the embargo placed therein, will become nugatory and frustrate the very object with which such a provision has been made.

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80. In our considered opinion, in the instant case, the proceedings can be said to be criminal proceedings inasmuch as, carried to its conclusion, they may result into imprisonment fine etcj as observed by the Supreme Court in Narayan Row.

81. From the totality of facts and circumstances, we have no hesitation in holding that the learned single Judge has passed an order in exercise of criminal jurisdiction. At the cost of repetition, we reiterate what we have already stated earlier that the proceedings were of a criminal, nature. Whether a criminal Court takes cognizance of an offence or sends a complaint for investigation under Sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 does not make difference so far as the nature of proceedings is concerned. Even if cognizance is not taken, that fact would not

take out the case from the purview of criminal jurisdiction.

82. In our judgment, a proceeding under Article 226 of the Constitution arising from an order passed or made by a Court in exercise or purported exercise of power under the Code of Criminal Procedure is still a 'criminal proceeding' within the meaning of Clause 15 of the Letters Patent. A proceeding seeking to avoid the consequences of a criminal proceeding initiated under the Code of Criminal Procedure will continue to remain "criminal proceeding" covered by the bracketed portion of Clause 15 of the Letters Patent.

83. As Clause 15 of the Letters Patent expressly bars an appeal against the order passed by a single Judge of the High Court in exercise of criminal jurisdiction, LPAs are not maintainable and deserve to be dismissed only on that ground. We accordingly hold that the Letters Patent Appeals are not maintainable at law and they are liable to be dismissed."

17. Without going into the detailed discussion on merits, we may point out at this stage that we are confronted with two judgments of this Court both rendered by the Division Benches. Learned counsel appearing for the appellant has placed reliance on the decision contained in **Harwinder Singh** (supra). That was a case where the appellant was detained under Conservation of Foreign Exchange and Prevention of Smuggling Act (COFEPOSA). He filed writ petition challenging the said detention order which was given nomenclature 'Criminal Writ'. This writ petition was dismissed by a learned Single Judge. Against the judgment of the learned Single Judge, LPA was preferred and maintainability whereof was questioned by the respondents. In this backdrop, maintainability of LPA arose for consideration. The Court repelled the contention and held that the appeal is maintainable observing that merely because the writ petition filed by the appellant was identified by the nomenclature of 'Criminal Writ', it cannot be considered as proceedings under criminal

jurisdiction. Following observations from that judgment may be noted: (para 12 & 13).

“(12) We are also of the view that, only because for the sake of convenience, such a writ petition file under Article [226](#) of the Constitution of India is identified by the nomenclature of "Criminal Writ", it cannot be considered as a proceeding under the Criminal jurisdiction. Article [226](#) itself refers to several writs which could be issued by the High Court. It creates a constitutional jurisdiction, which is entirely original; in ordinary parlance, it can be referred as a Special Jurisdiction; it cannot be classified as a Criminal jurisdiction, at all, only because, a person in detention can invoke it for his release, In fact, the right sought to be projected and enforced by the petitioner, is a fundamental right and his case is that his fundamental right is violated.

(13) A detention under COFEPOSA is not a detention consequent on any finding of guilt; it is not penal at all. Detention order is made on the basis of "suspicion" based on relevant materials; the detention order is purely preventive, to prevent the detenu from indulging in certain activities for a specified period. We over rule the petitioner's objection.”

18. That was a case of preventive detention and admittedly, there was no criminal case registered against the petitioners and he did not challenge the quashing of those criminal proceedings. However, as pointed out above, the appellants rest their arguments on the plea that even if criminal case is registered in the instant case, the appellants are seeking quashing of the FIR which power can be exercised under Article 226 of the Constitution by the High Court in exercise of original jurisdiction as filing of such petition should not be treated as the petition in criminal proceedings.

19. On the other hand, in the case of **Ajay Fotedar**, the writ petition was filed for quashing of FIR (as in the instant case). This writ petition was dismissed by the learned Single Judge and in

appeal, again the question of maintainability was debated. The Court held that LPA was not maintainable, as such proceedings would be in the nature of 'criminal proceedings'. However, it would be of interest to note that the Court dealt with the appeal on merits first and did not find any substance in the appeal. First six paras of the judgments are devoted to this aspect wherein the Division Bench concluded that no inference in the judgment of learned Single Judge was called for. However, before concluding, in para 7 the Court recorded:-

“It is required to be noted that ordinarily when original jurisdiction of the High Court is invoked by filing a writ petition, a Letters Patent Appeal can be filed by when proceedings are initiated and when a specific provision is provide in the Cr.P.C., namely, Section 482, there is no question of entertaining Letters Patent Appeal.”

20. It is clear from the above that petition filed under Article 226 of the Constitution read with Section 482 Code of Criminal Procedure (Cr.P.C.) for quashing of the FIR were treated as proceedings of 'criminal nature'. The appellants contended that the aforesaid observations are *per incurium*.

21. Thus, while counsel for both the sides are ad idem that when the writ petition is filed invoking original jurisdiction of this Court, LPA would be maintainable against the order passed by the Single Judge in such a writ petition. However, the parties have joined issues on the question as to whether writ petition filed for quashing the FIR should be treated as invoking criminal jurisdiction of this Court. Whereas **Ajay Fotedar** (supra) suggests that such writ petition would be treated as invoking the criminal jurisdiction and LPA would not be maintainable, some of the observations made in **Harwinder Singh** (supra) suggests otherwise. In view of this, we

are of the opinion that the matter needs to be referred to the Full Bench to resolve this issue.

22. Accordingly, we make following reference for consideration by the Full Bench:-

“Whether the writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing a FIR amount to invoking ‘original jurisdiction’ or these proceedings are to be treated as invoking ‘criminal jurisdiction?’”

23. The Registry is directed to place the matter before Hon’ble the Chief Justice for constituting a Full Bench.

**(A.K. SIKRI)
JUDGE**

**(SURESH KAIT)
JUDGE**

January 14, 2011
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