

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 315 of 2015

M/s Ind Synergy Limited Having its Factory At Kotmar Post Raigarh, P.S. Chakradhar Nagar, Raigarh District Raigarh (Chhattisgarh) Through its Manager G. Surya Rao

---- Appellant

Versus

1. State of Chhattisgarh Through its Secretary, Department of Home, Naya Mantralaya, Naya Raipur, Raipur (Chhattisgarh)
2. Superintendent of Police, District Raigarh (Chhattisgarh)
3. Station House Officer, P.S. Chakradhar Nagar, District Raigarh (Chhattisgarh)
4. Sri Venkata Serveasam Sastry Tejomurty, S/o Late Shri Srinivas Rao, At Plot No. 11, Indrapuri Railway Colony (West), Maredpally, Secundderabad 500026

---- Respondents

And

WA No. 147 Of 2017

- Ind Synergy Limited, Rep. By its Manager and Authorized Signatory, Mr. G. Suryarao, S/o Late Shri Butchayya, Aged about 54 Years, Registered Office: Gokulpuram, Kachna Road, Khamardih, Shankar Nagar, Raipur (Chhattisgarh) (Objector)

---- Appellant

Vs

1. State of Chhattisgarh, Through Station House Officer, Police Station Chakradhar Nagar, Raigarh, District Raigarh (Chhattisgarh)..... (Respondent No. 1.).
2. Suresh Chandra Goyal, S/o Late Shri Ratanlal Goyal, Aged about 63 Years, R/o B-45, Maharani Bagh, New Delhi....(Petitioner No. 1).
3. Gulshan Kumar Balaya S/o Late Shri B. P. Balaya, Aged about 75 Years, R/o House No. 960, Sector-4, Urban Estate, Gurugram, Haryana 122001.....(Petitioner No. 2).

---- Respondents

And

WA No. 316 Of 2015

- M/s Ind Synergy Limited Having its Factory at Kotmar Post Raigarh, P.S. Chakradhar Nagar, Raigarh District Raigarh (Chhattisgarh) Through its Manager G. Surya Rao

---- Appellant

Vs

1. State of Chhattisgarh, Through its Secretary, Department of Home, Naya Mantralaya, Naya Raipur, Raipur (Chhattisgarh)
2. Superintendent of Police, District Raigarh (Chhattisgarh)
3. Station House Officer, P.S. Chakradhar Nagar, District Raigarh (Chhattisgarh)
4. Prakash Agrawal S/o Shri V.N. Agrawal, At 5, Raja Santosh Road Ali Pore, Kolkata

---- Respondents

And

WA No. 320 Of 2015

- M/s Ind Synergy Limited Having its Factory at Kotmar, Post Raigarh, P.S. Chakradhar Nagar, Raigarh, District Raigarh (Chhattisgarh) Through its Manager G. Surya Rao

---- Appellant

Vs

1. State of Chhattisgarh, Through its Secretary, Department of Home, Naya Mantralaya, Naya Raipur, Raipur (Chhattisgarh)
2. Superintendent of Police, District Raigarh (Chhattisgarh)
3. Station House Officer, P.S. Chakradhar Nagar, District Raigarh (Chhattisgarh)
4. Kuldeep Kumar Dhar S/o Late Shri M.N. Dhar, R/o 33, Akriti Apartment, Plot No. 62, I.P. Extension, New Delhi

---- Respondents

For Appellants	: Shri Kishore Bhaduri and Shri Aditya Goyal, Advocates.
For State/Respondents	: Shri Y.S. Thakur, Addl. Advocate General, Shri Rohit Priya Ranjan, Shri Prateek Sharma, Shri Tridib Bhattacharya & Ms.Pragya Pandey, Advocates

**Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
& Hon'ble Shri R.C.S.Samant, J.**

Judgment on Board

Per Thottathil B. Radhakrishnan, Chief Justice

03/05/2017

1. These appeals are instituted invoking the provisions in the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, (for short "Act") which deals with intra-Court appeals. The three appeals instituted in 2015 are against the common order insofar as they relate to the three writ petitions which along with an application under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') was decided by the learned Single Judge. The writ appeals instituted in 2017 is against the said order insofar as it relates to exercise of authority on the application instituted under Section 482 of Cr.P.C.
2. Going by the submissions of the learned counsel for parties on either side, the question that arises for decision, on the merits of these appeals, is as to whether they are maintainable in terms of the Act; and still further, whether the captioned appeals of 2015 would be barred by the doctrine of resjudicata if the appeal filed in 2017 fails as not maintainable since that appeal is prosecuted against the impugned common order, insofar as it relates to the dismissal of the application filed under Section 482 Cr.P.C.
3. Learned counsel for the appellants argued that these appeals are maintainable since the quality and content of the impugned order are relatable only to exercise of authority under Article 226 of the Constitution of India and it would be a misnomer of jurisdiction if we were to read that order as one having been issued with reference to either Article 227 of the Constitution of India or Section 482 of Cr.P.C. It is pointed out that in an earlier round, a Special Leave petition was carried to the Apex Court insofar

as the impugned order was rendered on Cr.M.P. No. 764/2010 which is the application instituted under Section 482 of Cr.P.C. That was withdrawn even before that matter attained attention of the Hon'ble Judges of the Apex Court on the judicial side. Later, another Special Leave Petition was filed seeking clarification that such withdrawal of the earlier SLP would not impair the writ appeals which were then pending before this Court and also the right in the appellants to seek further reliefs by making further applications as may be found necessary. Such an order was also issued by Hon'ble the Supreme Court. It is therefore argued that, for all intents and purposes, the impugned composite order issued in the four cases is substantially one rendered in jurisdiction under Article 226 of the Constitution and therefore these four appeals are maintainable under Section 2 (1) of the Act.

4. The learned counsel appearing for the contesting private respondents who instituted the Writ Petitions and the Cr.M.P. under Section 482 Cr.P.C. before the learned Single Judge argued that these writ appeals are not maintainable for different reasons. He pointedly argued that in terms of the order minted by this Court in this bunch of matters on 17-10-2016, there is a concluded decision inter-parties that the decision in Cr.M.P. No.764/2010 has become final. He further argued that notwithstanding the finality of the impugned order insofar as it related to Cr.M.P. No. 764/2010, the quality and content of the jurisdiction exercised by the learned Single Judge is referable exclusively to Article 227 of the Constitution and therefore, no intra-Court appeal lies to the Division Bench in terms of Section 2 (1) of Act and that an appeal against an order passed under Article 227 of the Constitution is expressly barred as per the proviso to that Section of the Act. To buttress this submission he made copious reference to the contents of the impugned order and the precedents referred to therein.

- 5.** Firstly, we would examine the quality and content of the adjudication made by the learned Single Judge to understand as to whether the power exercised is predominantly one under Article 226 or one that would be treated as abundantly within the supervisory jurisdiction under Article 227 of the Constitution and Section 482 of the Cr.P.C. Though mere mentioning of a particular Article or Section may not by itself be predominantly decisive, specific reference to a particular provision of the Constitution and the laws cannot also be ignored when that is done as part of expression of a decision rendered by a judicial authority empowered by the laws to exercise constitutional authority to decree. We cannot casually assume that the Judge would have been acting oblivious of the quality of jurisdiction that is being exercised with reference to any particular Article of the Constitution or a particular statutory provision. We proceed to examine the question whether the adjudication by the learned Single Judge leading to the order impugned herein, was essentially under Article 226 or 227 of the Constitution of India because the learned Single Judge has mentioned the power as under “Article 226/227” of Constitution of India.
- 6.** The writ petitions and the application under Section 482 Cr.P.C. were instituted after the final report was filed and the criminal Court was in seisin of the matter. It is submitted that the trial was proceeded with. May be, that was for the reason that the respondent herein who opposed the petitions before the learned Single Judge, had pointedly contested stating that the petitions for quashing of FIR are not maintainable after filing the charge-sheet. This appears to be the contention which was given abundant importance by the respondents before the learned Single Judge as is discernible from the enlisting of arguments in paragraph 10 of the impugned judgment. From there if we go to the 11th paragraph of the judgment we see

that the learned Single Judge enumerates the different decisions referred to by the learned counsel for the respondents which, predominantly, among other things, dealt with the issue as to whether a proceeding for quashing of FIR could be maintained after the filing of the charge-sheet. Making reference to the judgments in **Ashok Chaturvedi & others vs. Shitul H. Chanchani & another: (1998) 7 SCC 698**, **M/s Pepsi Foods Ltd. and another vs. Special Judicial Magistrate & others: AIR 1998 SC 128** as well as **G. Sagar Suri & another vs. State of U.P. & others: (2000) 2 SCC 636**, the learned Single Judge deduced at the end of paragraph No.16 of the impugned judgment that the Hon'ble Supreme Court "did not accede to the argument that once charge sheet is filed and the accused would get a chance to argue on charge, jurisdiction under Section 482 of the Cr.P.C. or Article 227 of the Constitution cannot be exercised". Reverting to paragraph 15 of the impugned judgment, it can be noticed that dilating on the applicability of the law laid down in **M/s Pepsi Foods Ltd (supra)**, the learned Single Judge noticed that though the Magistrate can discharge the accused at any stage of trial, that by itself does not mean that the accused cannot approach the High Court under Section 482 of the Cr.P.C. or Article 227 of the Constitution. Taking these two findings of the learned Single Judge into consideration, we are of the considered opinion that what the learned Single Judge exercised through the impugned order is the conjoint power under Article 227 of the Constitution, which is fundamentally supervisory, and that available under Section 482 Cr.P.C., which in pith and substance, is inherent and supervisory.

7. With the aforesaid view of the matter, we are unable to hold that the impugned order was rendered in exercise of authority of Article 226 of the Constitution of India. This necessarily means that an intra-Court appeal under the provisions of the Chhattisgarh High Court (Appeal to Division

Bench) Act, 2006 is not maintainable.

8. It is settled law that the principles relatable to finality of judgments apply to criminal jurisdiction as well. Though Their Lordships of the Apex Court were dealing with findings of facts following criminal trial, it was noticed in **Pritam Singh & another vs. The State of Punjab**, reported as **AIR 1956 SC 415**, quoting with approval, the decision in **Sambasivam vs Public Prosecutor** reported as **1950 Appeal Cases 458** that the maxim "*res judicata pro veritate accipitur*" is no less applicable to criminal proceedings than to civil proceedings. We make reference to this principle for the limited purpose of reminding ourselves, the well accepted doctrine that conflict of decisions would result in failure of appeals when those decisions which have attained finality would stare at the person who challenges that particular decision in a subsequent appeal. In the context of the case in hand, if the decision rendered by the learned Single Judge, insofar as it relates to the application under Section 482 of Cr.P.C. is concerned, is to be treated as final, then the very same findings which form the foundation of the exercise of power in writ jurisdiction has also to be treated as having become final and cannot be opened in appellate jurisdiction except at the peril of being in conflict with the decision rendered in Section 482 of Cr.P.C. This is because the basic substratum of the decision of the learned Single Judge inasmuch as it results in dismissal of the petition filed under Section 482 Cr.P.C. is the same as the one rendered under Article 227 of the Constitution of India, thereby annulling the further proceedings before the Criminal Court. The conclusiveness attained by the decision of the learned Single Judge cannot be disturbed through an intra-court appeal except in conflict with the finality attained by the proceedings dealt with by the learned Single Judge under Section 482 Cr.P.C. as well as Article 227 of the Constitution of India against which no appeal lies to the Division Bench of

this Court, as has been held above.

9. For the aforesaid reasons, these appeals are held as not maintainable.
10. In the result, the writ appeals are dismissed.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-
(R.C.S. Samant)
Judge