

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 337 of 2017**

(Arising out of judgment/order dated 10.08.2017 in Writ Petition (Cr.) No.276 of 2016
of the learned Single Judge)

1. Akash Agrawal And Company Through The Chief Partner Akash Agrawal, S/o Satbeer Agrawal, Aged About 30 Years, Plot No.285, Transport Nagar, Korba, District Korba, Chhattisgarh
2. Lalman Mishra S/o Shri S.N.Mishra, Aged About 40 Years R/o Majan, Post Khatkhari, Tahsil Hanmana, District Rewa (M.P.)

---- Appellants

Versus

1. State of Chhattisgarh Through The Secretary, Department Of Forest, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. The Chief Forest Conservator, Bilaspur Circle, Bilaspur, Chhattisgarh
3. Sub Divisional Forest Officer/ Prescribed Authority, Katghora, District- Korba, Chhattisgarh
4. Joint Divisional Forest Officer/ Authorized Officer, Katghora, Forest Division Katghora, District Korba, Chhattisgarh

---- Respondents

For Appellants	:	Shri Ashok Kumar Shukla, Advocate
For Respondents/State	:	Shri J. K. Gilda, Advocate General with Shri U.N.S. Deo, Government Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice**Hon'ble Shri Justice Sanjay Agrawal****Judgment on Board****Per Thottathil B. Radhakrishnan, Chief Justice****06.12.2017**

1. This appeal is filed against the judgment of the learned Single Judge refusing to interfere with the decision rendered by the Sessions Judge in a revision under Section 52B of the Indian Forest Act, 1927; hereinafter referred to as 'Forest Act', as it applies to the State of Chhattisgarh in view of the amendment thereto as per Madhya Pradesh Act of 9 of 1965. The question that arises for decision, at the threshold, is as to whether an appeal to the Division Bench would lie

against the decision of the learned Single Judge, having regard to the proviso to Sub-section (1) of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006; herein after referred to as 'Appeal to DB Act'. That Sub-section, with the proviso reads as follows :

“2. Appeal to the Division Bench of the High Court from a Judgment or order of one Judge of the High Court made in exercise of original jurisdiction. - (1) An appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original Jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two Judges of the same High Court :

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.”

2. The learned Counsel for the Appellant, placing reliance on the judgments of the Apex Court in **State of U.P. and another v. Johri Mal; 2004 AIR SCW 3888** and **Nawab Shaqafath Ali Khan & Ors. v. Nawab Imdad Jah Bahadur & Ors.; 2009 AIR SCW 2289**, argued for the position that judicial orders could be subjected to challenge either under Article 226 or 227 of the Constitution and the order issued by the learned Single Judge ought to be considered as one under Article 226 of the Constitution, particularly when reference has been made to that provision in the impugned judgment. He accordingly argued that the impugned order is to be considered as one issued under Article 226 of the Constitution and hence the appeal would lie. The embargo contained the provisions of Sub-section (1) of Section 2 of the Appeal to DB Act, therefore, does not apply, it is argued.
3. The learned Advocate General referred to the judgments of the Apex Court in **Radhey Shyam and Another v. Chhabi Nath and Others; (2015) 5 SCC 423** and **Jogendrasinhji Vijaysinghji v. State of Gujarat and Others; (2015) 9 SCC 1** to argue for the position that the order impugned in this appeal is one

against which an appeal would not lie since the power under Article 226 of the Constitution does not extend to include the judicial review power *in re* judicial orders. He also made reference to the judgment in **Ramachandran Nair v. Krishna Pillai; (1991) 2 KLT 162**, rendered relying on the decision of the Hon'ble Supreme Court in **Umami Keshao Meshram v. Radhikabai; AIR 1986 SC 1272**, to point out that a proceeding under Article 227 is not an original proceeding.

4. Sub-section (1) of Section 52B of the Forest Act provides for revision before the Court of Session within the Sessions Division whereof the headquarter of the Appellate Authority is situated. The statutory revision under Section 52B is to the Court of Session. Sub-Section (5) of Section 52B of the Forest Act provides that notwithstanding anything to the contrary contained in the Code of Criminal Procedure, the order of the Court of Session passed under Section 52B shall be final and shall not be called in question before any court. **Aundal Ammal v. Sadasivan Pillai; (1987) 1 SCC 183** was rendered by the Apex Court considering the provisions relating to appeal and revision in an enactment, which provided, *inter alia*, that, except in terms of the provision for a revision in that statute, the decision of the appellate authority shall be final and shall not be liable to be called in question in any court of law. It was held by the Apex Court that the use of phrase 'shall not be liable to be called in question in any court' excludes the right to invoke any statutory appellate or revisional authority of any Court against such an order which attains statutory finality to the exclusion of further appellate or revisional measures. It is salutary that the precedential prudence emanating from that verdict applies to the situation in hand in view of Article 141 of the Constitution of India. Hence, in view of the statutory embargo in the Forest Act to the effect that the order of the Court of Session passed under Section 52B of that Act shall not be called in question in any court and the finality that is statutorily attributed to that order, an application under Section 482 Cr.P.C. would not be available to the litigant who proposes to challenge that

order. This is the law that governs that field.

5. **Radhey Shyam** (supra) was rendered holding that judicial orders of Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution. There is no reason why the *ratio decidendi* of that precedent shall not apply to the judicial orders of Criminal Courts as well, since the orders passed by the Criminal Courts in exercise of judicial powers are, essentially judicial orders. There is no *intelligible differentia* to classify the judicial orders of the Civil Courts or judicial orders of the Criminal Courts and to hold that the orders of Criminal Courts would be amenable to judicial review under Article 226 of the Constitution though judicial orders of Civil Courts cannot be subjected to such exercise. Hence, the law laid in **Radhey Shyam** (supra) regarding the non-availability of judicial review by recourse to Article 226 of the Constitution *in re* judicial orders applies on all fours to judicial orders issued by the Criminal Courts as well. Fundamentally, therefore, the power to issue any writ, direction or order in the nature of those referable to under Article 226 of the Constitution is not available for exercise as regards judicial proceedings and judicial orders of the Courts.

6. Having found that an order issued by the Court of Session on a revision under Section 52B of the Forest Act is not amenable to an application under Section 482 Cr.P.C. or a writ petition under Article 226 of the Constitution, the question that would remain is as to what would be the remedy for one who is aggrieved by such a revisional order. The Court of Session is a Court subordinate to the High Court and the High Court's power of superintendence includes judicial superintendence. The power of judicial review of the High Court under Article 227 of the Constitution would not be curtailed by any statutory finality given to any particular order or decision of a Court subordinate to the High Court. The supervisory jurisdiction under Article 227 of the Constitution would therefore be available for superintendence and judicial review of an order passed by the

Court of Session under Section 52B of the Forest Act. No power of judicial review except under Article 227 of the Constitution would be available at the level of the High Court against the decision of the Court of Session under Section 52B of the Forest Act.

7. In the aforesaid view of the matter, notwithstanding that the learned Single Judge has made mention of Article 226 of the Constitution in the impugned order, we cannot but hold that the said order ought to be treated as only one rendered in exercise of power of the superintendence under Article 227 of the Constitution.
8. We have also examined the order of the learned Single Judge from the angle of its quality and contents. That order does not amount to anything beyond what could have been rendered following an adjudication under Article 227 of the Constitution. This way also, the impugned order cannot be treated as one rendered under Article 226 of the Constitution.
9. For the aforesaid reasons, the impugned order rendered by the learned Single Judge in writ jurisdiction as against the judicial order of the Court of Session in a revision under Section 52B of the Forest Act can be treated only as one rendered under Article 227. Such an order is not justiciable in an appeal under Section 2(1) of the Appeal to DB Act in view of the proviso thereto. This appeal is hence not maintainable.
10. In the result, the appeal is dismissed as not maintainable.

Sd/-

(Thottathil B. Radhakrishnan)
Chief Justice

Sd/-

(Sanjay Agrawal)
Judge