

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.147 of 2018

In
Criminal Writ Jurisdiction Case No.1209 of 2016

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Dipak Bajaj, S/o Late Awat Ram Bajaj, Resident of House No. 12/6- Flaxley Road, SM46LJ, London.

... .. Petitioner- Appellant/s

Versus

1. The Union of India through Department of Revenue, Government of India, North Block, New Delhi- 110001.
2. The Department of Revenue through its Secretary, North Block, New Delhi- 110001.
3. The Secretary, Department of Revenue, Government of India, New Delhi- 110001.
4. The Chief Commissioner of Customs (Preventive) Zone Patna, 4th Floor, C.R. Building, Birchand Patel Path, Patna- 800001.
5. The Joint Commissioner, Customs (Preventive) Zone, Patna, 4th Floor, C.R. Building, Birchand Patel Path, Patna- 800001.

... .. Respondents -Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Amit Pandey, Advocate
For the Respondent/s	:	Mr. S.D Sanjay (Addl. Soc. Gen.)
		Mr. Anshay Bahadur Mathur, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-11-2018

Heard Sri Amit Pandey, learned counsel for the appellant and Sri S. D. Sanjay, learned Additional Solicitor General for the Union of India and the other contesting respondents.

2. We had adjourned the matter day before yesterday (26.11.2018) and the order passed is extracted herein-under:-



“Heard Shri Amit Pandey, learned counsel for the appellant and Shri S.D. Sanjay, learned A.S.G. for the Union of India.

A preliminary objection has been taken to the maintainability of the appeal. From the memo of the report submitted by the office, we find that the objection had been raised on which the learned counsel for the appellant has endorsed his submissions on the order sheet dated 23rd of March, 2018, contending that the nomenclature of the writ petition would not govern the maintainability of the appeal, which otherwise would be entertainable against the impugned judgment. Learned counsel for the appellant has cited the judgment of the Apex Court in the case of **Ram Kishan Fauji V. State of Haryana & Ors. reported in (2017) 5 SCC 533**. Learned ASG has urged that the letters patent appeal would not be maintainable keeping in view the observations made therein and also keeping in view the provisions of Clause 10 of the Letters Patent Appeal under the Patna High Court Rules, as the nature of the dispute is the compounding of an offence, which is essentially a criminal matter giving rise to the writ petition filed which has been rightly captioned as a petition under “criminal writ jurisdiction”. It has further been submitted by the learned counsel for the Union of India that even otherwise the appellant has a remedy of moving a revision petition before the Central Board of Excise and Customs and consequently, in view of the said remedy being available, even otherwise the writ petition was not entertainable before the High Court. Learned counsel has also relied on a Full Bench decision of the Orissa High Court in the case of **Kasinath Nayak V. State of Odisha & Ors. (AIR 2016 Orrisa 77)**.



However, while traversing the ratio *decidendi* of the judgment in the case of **Ram Kishun Fauji** (supra), we find that the Apex Court has come to the conclusion that when the Court is required to consider a bar or non-permissibility, it has to appreciate the matter in true letter and spirit relating to subject matter of controversy, the nature of the proceedings and that the subject- matter is amenable to the jurisdiction being exercised by the High Court in criminal matters. The same has further been explained in the said judgment as is evident from paragraphs 61 to 63 of the said judgment.

Learned counsel for the appellant would urge that the refusal to exercise the territorial jurisdiction by the learned Single Judge partakes the character of civil proceedings and consequently, the same being not in conformity with the law laid down by the Apex Court in the case of **Kusum Ingots & Alloys Ltd V. Union of India & Anr. (2004) 6 SCC, 254**, the observation of the learned Single Judge that the petition was beyond the territorial jurisdiction of this Court is contrary to the ratio expressed in paragraph 27 of the said judgment. He has further relied on other decisions including the case of **Canon Steels (P) Limited V. Commissioner of Customs, [(2007) 14 SCC 464]**, to contend that the situs lay at Patna for maintaining the writ petition and there would not be want of territorial jurisdiction and consequently, this issue being a denial of the constitutional remedy to the appellant does not essentially label the petition relating to a matter exclusively under the criminal jurisdiction of this Court. He further submits that the letters patent appeal would be maintainable and consequently, since the part of the cause



of action does arise at Patna, the writ petition ought to have been entertained.

Learned counsel pray that the matter be taken up day after tomorrow to enable him to assist this Court on the relevant issue.

Put up this case day after tomorrow (28.11.2018).”

3. Today, the learned counsel have advanced their submissions not only on the maintainability of the appeal, but also the scope and exercise of the powers of this Court while entertaining a writ petition in a subject matter of the present nature and also the maintainability of the Letters Patent Appeal arising out of a judgment delivered by a learned Single Judge, as is impugned in the present appeal.

4. There is no dispute on facts to the extent that the appellant prayed for the compounding of a stated offence alleged to have been committed by him when certain gold and foreign currency came to be seized from his possession at Sonauli in district Maharajganj of the State of Uttar Pradesh near the Indo-Nepal Border. The appellant was apprehended and produced before the Chief Judicial Magistrate, Varanasi, and was sent to judicial custody. The sanction for prosecution was granted and the appellant, in the meantime, was released on bail by the Allahabad High Court.



5. On release, the appellant filed an application for compounding of the said case in terms of the Customs (Compounding of Offences) Rules, 2005 (hereinafter referred to as the '2005 Rules') before the Compounding Authority, namely, the Chief Commissioner, Customs, having jurisdiction over the place where the offence was committed under the Customs Act, 1962 (hereinafter referred to as the '1962 Act').

6. It is undisputed that the Compounding Authority has its citus as on date in Patna and consequently, the said application of the appellant was entertained by the Chief Commissioner, Customs at Patna. The Chief Commissioner, Customs, has jurisdiction in relation to the offences of three States, namely, Bihar, Jharkhand and a part of the State of Uttar Pradesh. A writ petition was filed by the appellant praying for a mandamus for the disposal of the said application and, in the meantime, the application for compounding came to be rejected which came to be challenged by an interlocutory application in the writ petition giving rise to the present appeal.

7. With the aforesaid factual backdrop, the writ petition was ultimately heard and the learned Single Judge relying on certain judgments and after considering the judgment in the case of **Kusum Ingots & Alloys Ltd. Versus Union of India** and another,



reported in **(2004) 6 SCC 254**, came to the conclusion that the writ application under Article 226 of the Constitution of India would not be entertainable by this Court and consequently, the writ petition was dismissed for want of territorial jurisdiction.

8. Aggrieved, the appellant is before us to contend that the learned Single Judge has completely overlooked the ratio of the decision in the case of **Kusum Ingots and Alloys Ltd.** (supra) and other decisions relied on by the learned counsel to urge that part of the cause of action, namely, the disposal of the compounding application did arise at Patna and, therefore, the Patna High Court had the jurisdiction to entertain the writ application of the appellant.

9. The Stamp Reporter while entertaining the appeal had mentioned the issue of maintainability of the appeal under Clause 10 of the Letters Patent of the Patna High Court to which an endorsement was made by the learned counsel for the appellant disputing the same. However, the said preliminary objection has been raised by Sri S. D. Sanjay, learned Additional Solicitor General for the respondents contending that not only the learned Single Judge was right in refusing to entertain the writ petition for want of territorial jurisdiction, but even otherwise also if the appellant was aggrieved by the judgment of the learned Single



Judge, his remedy was to file a Special Leave Petition before the Apex Court as a Letters Patent Appeal would not be maintainable keeping in view the subject matter of dispute which is essentially a writ petition that was entertained in the criminal jurisdiction of this Court. He, therefore, submits that Clause 10 of the Letters Patent of the Patna High Court specifically bars the entertaining of a Letters Patent Appeal keeping in view the subject matter of dispute which is essentially that of the commission of an offence and its compounding under the provisions of the 1962 Act and the Rules framed thereunder.

10. The learned Additional Solicitor General for the respondents has further submitted that even assuming for the sake of arguments that there was an error of judgment by the learned Single Judge, even though not admitting the same, yet this issue of jurisdiction also would not be entertainable in a Letters Patent Appeal for which reliance has been placed by the learned Additional Solicitor General on the judgment in the case of **Ambica Industries Versus Commissioner of Central Excise**, reported in **(2007) 6 SCC 769**.

11. Refuting the aforesaid submissions, learned counsel for the appellant has urged that in view of the three-Judges' decision of the Apex Court in the case of **Ram Kishan Fauji**



Versus State of Haryana and others, reported in **(2017) 5 SCC 533**, the Letters Patent Appeal would be maintainable and since the issue relating to the jurisdiction goes to the root of the matter, therefore, this Court can entertain this appeal and pronounce upon the subject matter. He has further submitted that the nature of the dispute may have arisen on account of the allegations pertaining to the alleged offence under the 1962 Act, yet the nature of the settlement which includes compounding is a civil transaction and, therefore, cannot be said to have given rise to a writ petition which was incorrectly captioned as a 'Criminal Writ' by the petitioner himself and entertained by this Court as such.

12. Another issue was raised by the appellant that there is no alternate statutory remedy available under the 1962 Act and consequently, a writ petition was entertained.

13. We have considered the submissions at the Bar and the first issue is as to the nature of the jurisdiction exercised by the learned Single Judge in a writ petition filed before this Court which has been described as a 'Writ Petition' under the criminal jurisdiction of the Patna High Court Rules. For this, the provisions of the 1962 Act and the 2005 Rules have to be referred to.

14. The 1962 Act provides for the offences and prosecutions under Chapter XVI of the 1962 Act. The settlement



of cases is provided for under Chapter XIVA of the 1962 Act. A perusal of the said Chapters would clearly indicate that in the case, at hand, the settlement which was applied for by the appellant was under the provisions of Chapter XIVA in respect of an offence, as indicated in Chapter XVI of the 1962 Act for being adjudicated by the Compounding Authority under the 2005 Rules.

15. Keeping in view the said provisions and the subject matter involved in the present case, there is no doubt that the settlement was sought by way of compounding in respect of an offence, as indicated in Chapter XVI of the 1962 Act. Consequently, the nature of the dispute arose out of an alleged criminality with regard to which the appellant sought immunity through compounding as provided under the Act and the Rules. Thus, the entire subject matter, therefore, arose out of a criminal matter and the writ petition that was entertained by the High Court was rightly entertained as a criminal writ petition.

16. Coming to the argument of the learned counsel for the appellant that the nature of transaction of compounding and settlement would be a civil transaction and, therefore, would partake the nature of a civil dispute is a misconceived argument inasmuch as it is a provision made under the 1962 Act to facilitate the long process of prosecution to be avoided at the option of the



offender and seek immunity from prosecution. This being the nature of the transaction that has to be dealt with while settling cases, the same, in no way, can be described as a civil liability being dealt with under the provisions of the 1962 Act.

17. The third issue which comes for consideration is as to whether the learned Single Judge had the jurisdiction to entertain the writ petition at Patna or not?

18. On this, the parties are seriously at variance, but what we find is that the judgment relied on by the learned counsel for the appellant in the case of **Ram Kishan Fauji** (supra) answers the previous question of the nature of the subject matter as also the nature of the writ petition which can be entertained and the jurisdiction to be exercised in respect of the said subject matter. The ratio of the said decision therefore, does not come to the aid of the appellant and consequently, we find that the nature of the jurisdiction exercised by the learned Single Judge has a direct impact on the question of the maintainability of the Letters Patent Appeal itself. We may gainfully extract paragraph 45 of the judgment in the case of **Ram Kishan Fauji** (supra) which is as follows:-

“45. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has



been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra-court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdictions is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in *Hari Vishnu Kamath v. Ahmad Ishaque*, AIR 1955 SC 233 does not render any assistance to the argument advanced by the learned counsel for the respondent-State.”

19. The other submission raised with regard to the cause of action having arisen, relying on the judgment in the case of **Kusum Ingots & Alloys Ltd.** (supra) came to be later on dealt with in the case of **Ambica Industries** (supra), as relied on by learned counsel for the respondents, and in paragraphs 36 to 41 of the said report, the law has been categorically dealt with in a case of a similar nature where an Appellate Tribunal under the Central Excise Act, 1944 had a similar nature of jurisdiction over three States. The Court came to the conclusion that if the statute did require the entertaining of a matter by a High Court on a reference, then the contemplation under the statute is of one High Court and not several High Courts. Even though, in the instant case, there is



no such provision, yet keeping in view the ratio of the aforesaid decision and in order to avoid any anomaly, we are of the considered opinion that the Compounding Authority was exercising the jurisdiction over an offence that was allegedly committed in the State of Uttar Pradesh.

20. Consequently, keeping in view the law laid down in the case of **Ambica Industries** (supra), we are inclined to hold that the appellant could have approached the Allahabad High Court for the redressal of his grievances and the writ petition would not be entertainable by this Court.

21. In this view of the matter, if the writ petition itself was not entertainable, there is no occasion for entertaining the Letters Patent Appeal, moreso, keeping in view the specific bar under Clause 10 of the Letters Patent of the Patna High Court which clearly restricts the jurisdiction of this Court to entertain an appeal in a matter of criminal jurisdiction, particularly with regard to the nature of a case presently involved.

22. We have been informed by the learned counsel for the appellant that there is no other alternative statutory remedy by way of a revision inasmuch as the provisions of Section 129DA of the 1962 Act that was inserted by Section 5 of the Customs and Central Excise Laws (Amendment) Act, 1988 was repealed by Act



No.25 of 2004 even before the said Section was brought into force.

This being the undisputed position, we, therefore, do not find any reason to entertain this appeal without prejudice to the rights of the appellant to approach the appropriate forum.

23. The appeal is, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	N. A.
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