

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Letters Patent Appeal No. 2296 of 2017 (O&M) in
CWP No. 24104 of 2017
Date of decision: March 06, 2018

Jalaluddin

.. Appellant

v.

State of Haryana and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE B. S. WALIA

Present: Mr. R. S. Cheema, Senior Advocate with
Mr. Arshdeep Singh Cheema, Advocate for the appellant.

Mr. Deepak Sabharwal, Additional Advocate General, Haryana.

Mr. Manav Bajaj, Advocate for
Mr. Sumeet Goel, Advocate for respondent No. 4.

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Rajesh Bindal J.

1. Aggrieved against the judgment of the learned Single Judge,
the appellant has preferred the present appeal.

2. The writ petition was filed claiming the following reliefs:

“(a) Issue a direction to entrust the investigation of case
arising from FIR No. 90 dated 23.6.2017, Police Station,
Faridabad, District GRP Ambala Cantt., under Section
323, 324, 302, 34 IPC (Annexure P/1) to an independent
agency, like Central Bureau of Investigation;

(b) Issue appropriate writ, order or directions to the

respondents for providing adequate and appropriate security to the petitioner, his family and the prosecution witnesses in view vulnerability and the nature of the crime;

(c) Issue appropriate writ, order or direction to the Ld. Trial Court to stay the proceedings during the pendency of the present petition;

(d) to (i) xx xx xx”

3. The learned Single Judge dismissed the writ petition. It is the aforesaid judgment, which has been impugned in the present intra-court appeal.

4. At the very out-set, learned counsel for the State, while referring to the judgment of Hon'ble the Supreme Court in Ram Kishan Fauji v. State of Haryana and others, (2017) 5 SCC 533, raised a preliminary objection regarding maintainability of the present appeal, as the matter relates to a criminal jurisdiction. He submitted that in the aforesaid judgment, Hon'ble the Supreme Court opined that in criminal matters, nomenclature of the case will not be relevant. Even if a Civil Writ Petition had been filed, Letters Patent Appeal cannot be filed against the order passed by the learned Single Judge. He further submitted that after due investigation in the matter by the police, challan was presented against one accused under Section 302 IPC, however, the Court considering the entire material placed before it and hearing the complainant, framed charge under Section 302 IPC against two accused. The trial is being held on day-to-day basis in view of the directions issued by this Court in Criminal Misc. No.

M-37007 of 2017—Rameshwar Dass @ Rameshwar Dayal v. State of

Haryana, decided on 6.10.2017. Out of total 45 prosecution witnesses, 19 have already been examined. Despite notice to the appellant, who is the complainant, he is not appearing for getting his evidence recorded.

5. On the other hand, learned counsel for the appellant submitted that Clause X of the Letters Patent talks about exercise of criminal jurisdiction. In the case in hand, this Court was not exercising criminal jurisdiction. All what the appellant had claimed before the learned Single Judge was fair investigation, which is a fundamental right under Article 21 of the Constitution of India, as has been held in State of West Bengal and others v. Committee for Protection of Democratic Rights, West Bengal and others, (2010) 3 SCC 571. The direction was sought for entrusting investigation of the case to an independent agency, such as Central Bureau of Investigation. Such a relief could not be claimed in a petition filed under Section 482 Cr.P.C.

6. In the alternative, it was submitted that in case this court finds that the present appeal is not maintainable, the appellant be given two weeks' time to avail of his remedy before Hon'ble the Supreme Court and the proceedings before the trial court should remain stayed. In case the trial is concluded, the relief sought by the appellant will become infructuous.

7. Heard learned counsel for the parties and perused the paper book.

8. The reliefs, for which the writ petition was filed by the appellant, have been reproduced in paragraph No. 2 of the judgment. Briefly, the facts, as pleaded in the writ petition, are that Junaid (son of the appellant) was murdered on 22.6.2017 and his two other sons, namely, Hashim and Shakir suffered serious injuries. FIR No. 90 dated 23.6.2017

was registered on the statement of Hashim. The investigation carried out by the police was quite casual. Proper offences were not added. The effort was to save the real accused or book them for minor offences, as a result of which most of them were released on bail. Certain facts regarding the manner in which the occurrence took place or the investigation was carried out by the police have also been narrated. With the aforesaid factual matrix and serious allegations against the police, prayer was made for entrusting investigation of the case in hand to an independent agency, like Central Bureau of Investigation.

9. The judgment of Hon'ble the Supreme Court in Ram Kishan Fauji's case (supra), on which strong reliance has been placed by learned counsel for the State to contend that the present appeal is not maintainable needs to be referred to in detail. In that case, on a reference by the Chief Secretary under Section 8(1) of the Haryana Lokayukta Act, 2002 for enquiry into the allegations of corruption made against Ram Kishan Fauji, Lokayukta recommended for registration of FIR under the Prevention of Corruption Act, 1988. The order passed by Lokayukta recommending registration of FIR was challenged by filing the writ petition. A Single Bench of this Court, vide order dated 14.3.2014 in the writ petition directed the State to enquire into the authenticity of the CD in question. During the pendency of the writ petition, FIR No. 10 of 2014 was registered at Police Station State Vigilance Bureau, Panchkula on 4.12.2014 under the Prevention of Corruption Act, 1988. The State aggrieved against the order passed by the learned Single Judge filed LPA No. 1426 of 2015. A Division Bench of this Court, while issuing notice of motion in the appeal, stayed operation of the judgment of the learned Single Judge. Application for

vacation of interim stay was dismissed. Subsequently, the Letters Patent Appeal was admitted on 12.5.2016.

10. The issue regarding maintainability of the Letters Patent Appeal against the order passed by the learned Single Judge was raised by the State before Hon'ble the Supreme Court. The contention raised was that the Letters Patent Appeal preferred before the Division Bench was not maintainable, inasmuch as the learned Single Judge had exercised criminal jurisdiction. Counter argument raised was that the writ petition was registered as Civil Writ Petition. The issue was civil in nature, hence, intra-court appeal was maintainable. Lokayukta is a quasi-judicial body. Action was taken at its behest, which comes within the scope of civil jurisdiction.

11. Clause 10 of the Letters Patent, which is relevant in the case in hand and which was under consideration before Hon'ble the Supreme Court in Ram Kishan Fauji's case (supra) is extracted below:

“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 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 to 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.”

12. The aforesaid Clause, besides providing for orders against which an intra-court appeal is maintainable, specifically excludes such a remedy if an order has been passed in exercise of criminal jurisdiction.

13. Clauses 15, 17 and 18 of the Letters Patent, which deal with criminal jurisdiction, are also extracted below:

“15. Ordinary original criminal jurisdiction of the High Court.- And we do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication

of these presents.

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17. *Extraordinary original criminal jurisdiction.*- And we do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places, within the jurisdiction of any court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.

18. *No appeal from High Court exercising original jurisdiction, Court may reserve points of law.*- And we do further ordain that there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the courts of original criminal jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law for the opinion of the said High Court.”

14. While referring to the aforesaid Clauses, Hon'ble the Supreme Court considered the issue whether proceedings in the case in hand before it were in the nature of “civil proceedings” or “criminal proceedings”. Judgment of Hon'ble the Supreme Court in CIT v. Ishwarlal Bhagwandas, AIR 1965 SC 1818 was referred to, in which the Court elucidated the nature of criminal proceedings. Relevant paras thereof are extracted below:

“29. After so stating, the Court elucidated the nature of criminal proceeding and, in that regard, ruled thus: (*Ishwarlal*

Bhagwandas case, AIR p. 1821,

“8. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed.”

30. Explicating the contempt further, the Court opined that:

(*Ishwarlal Bhagwandas case*, AIR p. 1821, para 8)

“8. The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed.”

It further held that a civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status, etc.

31. The aforesaid authority makes a clear distinction between

a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.”

15. After referring to various other judgments regarding intra-court appeal, the conclusions deducible were summed up in para No. 42 thereof, which is extracted below:

42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1. An appeal shall lie from the judgment of a Single Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2. The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3. A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be

a challenge under Article 227 of the Constitution and determination by the High Court under the said article and, hence, no intra-court appeal is entertainable.

42.4. The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.”

16. A perusal of the aforesaid opinion expressed by Hon'ble the Supreme Court shows that maintainability of intra-court appeal will depend on the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be any straitjacket formula.

17. While examining the facts of the case in hand, Hon'ble the Supreme Court accepted the contentions raised by learned counsel for the State about non-maintainability of the Letters Patent Appeal. The conception of “criminal jurisdiction”, as used in Clause 10 of the Letters Patent is not to be construed in narrow sense. In the case before the High Court, only the order passed by Lokayukta recommending registration of FIR was challenged. The said recommendation led to launching of prosecution, which could consequently lead to conviction and sentencing. In those facts, Hon'ble the Supreme Court opined that the learned Single Judge of the High Court had not passed order in civil proceedings.

18. Judgment of Division Bench of this Court in Adishwar Jain v. Union of India, 2006 CrL.J. 3193 was distinguished, where intra-court appeal was held to be maintainable as the proceedings were held to be civil in nature. It was a case of preventive detention under COFEPOSA Act.

Detention being purely preventive without any trial in a criminal court, it was held to be in violation of fundamental civil rights. Even if the writ was styled as Criminal Writ Petition for habeas corpus, the relief sought was held to be civil in nature. Relevant paras from the aforesaid judgment of Ram Kishan Fauji's case (supra) are extracted below:

“56. The conception of “criminal jurisdiction” as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequences. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 CrPC, there would be no space for an intra-court appeal, would create an anomalous, unacceptable and the inconceivable situation. The provision contained in the Letters Patent does not allow or permit such an interpretation. When we are required to consider a bar or non-permissibility, we have to appreciate the same in true letter and spirit. It confers jurisdiction as regards the subject of controversy or nature of proceeding and that subject is exercise of jurisdiction in criminal matters. It has nothing to do whether the order has been passed in exercise of extraordinary jurisdiction under Article 226 of the Constitution or inherent jurisdiction under Section 482 CrPC.

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60. On the aforesaid basis, the Division Bench in *Adishwar*

Jain case ruled that in a proceeding under Article 226 consisting of civil rights, the proceedings are civil in nature falling within the ambit of Clause 10 of the Letters Patent. In the said case, the detention was under the COFEPOSA Act. The Court observed that the said detention is purely preventive without any trial in a criminal court and the challenge to such detention is for the enforcement of a fundamental civil right and, therefore, a writ under Article 226 for issue of habeas corpus in such like matters cannot be considered as a proceeding under criminal jurisdiction even though the writ petition is identified as a criminal writ petition under the High Court Rules and others. The said decision has to be carefully appreciated. The nomenclature of a writ petition is not the governing factor. What is relevant is what is eventually being sought to be enforced. The Division Bench observed that as there is a preventive detention, there is a violation of fundamental civil right. The said decision, as is noticeable, was rendered in a different context. We are only inclined to say that the said authority does not assist the proposition expounded by the learned counsel for the State.

61. In the case at hand, the writ petition was filed under Article 226 of the Constitution for quashing of the recommendation of the Lokayukta. The said recommendation would have led to launching of criminal prosecution, and, as the factual matrix reveals, FIR was registered and criminal investigation was initiated. The learned Single Judge analysed the report and the

ultimate recommendation of the statutory authority and thought it seemly to quash the same and after quashing the same, as he found that FIR had been registered, he annulled it treating the same as a natural consequence. Thus, the effort of the writ petitioner was to avoid a criminal investigation and the final order of the writ court is quashment of the registration of FIR and the subsequent investigation. In such a situation, to hold that the learned Single Judge, in exercise of jurisdiction under Article 226 of the Constitution, has passed an order in a civil proceeding as the order that was challenged was that of the quasi- judicial authority, that is, the Lokayukta, would be conceptually fallacious. It is because what matters is the nature of the proceeding, and that is the litmus test.

62. In view of the aforesaid prismatic reasoning, the irresistible conclusion is that the Letters Patent Appeal was not maintainable before the Division Bench and, consequently, the order passed therein is wholly unsustainable and, accordingly, it is set aside. However, as the State had been diligently agitating its grievance in a legal forum which it thought had jurisdiction, we grant liberty to the State to assail the order of the learned Single Judge in accordance with law.”

19. If the facts of the case in hand are examined in the light of prayer made in the writ petition keeping in view the enunciation of law by Hon'ble the Supreme Court in Ram Kishan Fauji's case (supra), in our opinion, the order passed by the learned Single Judge was in exercise of criminal jurisdiction. Undisputedly, in the case in hand, FIR had already

been registered and the trial is in progress. The appellant claimed that his son was murdered. Prayer was for transfer of investigation to an independent agency, like Central Bureau of Investigation. Investigation of a crime would fall within the criminal jurisdiction. Either the prayer made by the appellant is allowed and after further investigation by an independent agency, fresh/supplementary challan is presented or the trial continues in pursuance to the challan already presented, the result would be either acquittal or conviction of the accused, hence, the subject-matter is nothing else but criminal in nature.

20. The contention raised by learned counsel for the appellant that writ petition has been filed alleging violation of Article 21 of the Constitution of India may not come to the rescue of the appellant to hold that intra-court appeal is maintainable. Violation of fundamental rights is the ground raised for maintaining a petition for claiming relief from the court, but what is required to be seen is the substance of the case.

21. For the reasons mentioned above, in our view, the present intra-court appeal is not maintainable, hence, the same is dismissed.

22. At this stage, we are inclined to accept the prayer made by learned counsel for the appellant in the alternative that two weeks' time be granted to him to avail appropriate remedy and the interim stay granted by this court at the time of issuance of notice of motion on 5.12.2017 be continued till then, otherwise the relief prayed for by him may be rendered infructuous. This Court has already directed the trial to be conducted on day-to-day basis, vide order passed in Rameshwar Dass @ Rameshwar Dayal's case (supra). Hence, it is directed that interim stay granted by this Court on 5.12.2017 shall continue till 20.3.2018. The trial court shall

proceed with the matter only after 20.3.2018, subject to any order produced by the appellant.

(Rajesh Bindal)
Judge

(B. S. Walia)
Judge

March 06, 2018
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No