

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDI GARH

LPA No. 1397 of 2019 (O&M)
DATE OF DECISION: 19.08.2019

Jasbir Singh @Jassa

..... Appellant

versus

State of Punjab and others

..... Respondents

CORAM - HONBLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HONBLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Ms. Gursharan Kaur Mann, Advocate with
Shri Yash S. Vijay, Advocate for the appellant

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KRISHNA MURARI, CHIEF JUSTICE: (Oral)

This intra-Court appeal under clause-X of the Letters Patent is directed against the judgment and order dated 26.07.2019 passed by the learned single Judge dismissing the writ petition filed by the appellant seeking a writ, order or direction for commutation of his death sentence to life imprisonment on the ground of inordinate delay in disposal of mercy petition.

Writ petition was filed before the learned single Judge seeking the following main reliefs:-

“(i) A writ in the nature of MANDAMUS or any other appropriate writ, order or direction, for commutation of death sentence of the petitioners to life imprisonment.

- (ii) With further prayer that the order of rejection of the mercy petition by the Governor dated 15.01.2015 and the communication of rejection of mercy Petition by the President on 11.08.2016 be quashed and the death sentence be set aside.
- (iii) With further prayer that the death warrants issued against the Petitioner by the Ld. Sessions Judge, Hoshiarpur on 25.09.2016 be quashed and set aside.
- (iv) With further prayer that during the pendency of the writ petition, the death warrants issued by the learned Sessions Judge, Hoshiarpur (Annexure P-1) may kindly be stayed.
- (v) With further prayer that this Hon'ble Court may restrain the respondent no.1 to 3 from execution of death sentence of the petitioner during the pendency of the present petition.
- (vi) With a further prayer that any other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may also be issued."

The learned single Judge, vide the judgment and order impugned in this appeal, dismissed the writ petition. That is how the appellant is before us in an intra-Court appeal challenging the said judgment. Question of maintainability of this intra-Court appeal is an issue in view of the judgment of the Hon'ble Apex Court in the case of Ram Ki shan Fauji Vs. State of Haryana and others, (2017) 5 SCC 533. It is pertinent to notice at this stage that two Letters Patent Appeals, namely, the present one and LPA No.1395 of 2019 titled as Vikram Singh @ Vicky Walia vs. State of Punjab and others have been preferred. However, in LPA No.1395 of 2019, learned counsel for the appellant, when confronted with the judgment of the Hon'ble Apex Court in Ram Ki shan Fauji (supra), conceded that intra-Court appeal would not be maintainable.

However, learned counsel appearing for the appellant in the appeal at hands argued the question of maintainability of this appeal on merits. It is submitted that the present proceedings are not in continuation of criminal proceedings against the appellant, but challenge has been made to executive orders passed by the Hon'ble Governor and the Hon'ble President of India refusing to exercise their powers under Articles 72 and 161 of the Constitution of India for commuting the death sentence. Therefore, the intra-Court appeal would well be maintainable and ratio of the judgment of Hon'ble Apex Court in the case of Ram Ki shan Fauji (supra) has no application to the facts of the present case.

We have considered the arguments advanced by learned counsel for the appellant. Reference in this connection may be

made to the reliefs claimed in the writ petition, quoted hereinabove. As is evident from a perusal of the same, most of the reliefs are in respect of commutation of death sentence to life imprisonment or to stay the death warrant or to restrain the respondents from execution of death sentence awarded to the appellant-petitioner.

The issue with respect to maintainability of intra-Court appeals in matters arising out of criminal jurisdiction exercised by the Single Bench of the High Court stands squarely answered by the Hon'ble Apex Court in Ram Ki shan Fauji (supra). In the said case before the Hon'ble Apex Court, a writ petition was filed before the High Court under Article 226 of the Constitution of India for quashing the recommendations of Lokayukta which would have led to launching of criminal prosecution. In pursuance thereof, an FIR was registered and criminal investigation was initiated. The learned Single Judge of this Court 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 the FIR treating the same as a natural consequence. The State went up in Letters Patent Appeal. The Division Bench without issuing notice to the respondents in the intra court appeal, after condoning the delay in filing the appeal, stayed the operation of the order passed by the learned single Judge and, subsequently, an application made for vacation of the interim order was dismissed and the interim order was made absolute. After admission of appeal by the LPA Bench, the order was put

to challenge before the Hon'ble Apex Court by the petitioner therein.

One of the principal arguments advanced was that the Letters Patent Appeal preferred before the Division Bench was not maintainable, inasmuch as, the learned single Judge had exercised criminal jurisdiction. The Hon'ble Apex Court, after analyzing the relevant law on the subject as also the provisions of the Letters Patent, observed as under:-

“On a plain reading of the aforesaid clause of the Letters Patent, it is manifest that no appeal lies against the order passed by the Single Judge in exercise of criminal jurisdiction. Thus, the question that is required to be posed is whether the learned Single Judge, in the obtaining factual matrix has exercised criminal jurisdiction or not.”

On an analysis of the relevant provisions, the Hon'ble Apex Court further observed that the character of the proceeding does not depend 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.

Viewed from the aforesaid observations, as noticed above, the main relief claim by the present appellant/petitioner is in respect of commutation of death sentence to life imprisonment. Thus, it cannot be said by any stretch of imagination that the reliefs claimed did not touch upon the criminal jurisdiction of this Court.

Another argument advanced before the Hon'ble Apex Court was that a writ of certiorari can be issued on many a ground and when the learned Single Judge has issued a writ of the present nature in quashing the order of the Lokayukta, it has to be treated as an order under Article 226 of the Constitution of India. That apart, he urged that the issue whether it would be under Article 226 or 227 is to be determined by the Division Bench of the High Court. The same argument that the order is to be treated as an order passed under Article 226 of the Constitution of India is advanced before us. However, the said argument has been advanced only to be rejected, as after considering same, the Hon'ble Apex Court has held as under:-

“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.”

The Hon'ble Apex Court, in para-57, referring to the judgments of the High Courts of Gujarat and Delhi and relying upon the

Law laid down by the Apex Court in Commissioner Of Income-Tax, vs Ishwarlal Bhagwandas and others, 1965 AIR 1818, has observed as under:-

“57. From the aforesaid analysis, it is demonstrable that the Gujarat High Court has opined that relying on the authority of this Court in Ishwarlal Bhagwandas (supra), the issue whether the proceedings are civil or not would depend upon the nature of the right violated and the appropriate relief which might be claimed and not upon the nature of the tribunal which has been invested to grant relief. The Division Bench further opined that even if cognizance is not taken in respect of a criminal case, it would not take out the case from the purview of criminal jurisdiction. Thus, it has been held by the Division Bench that when there is a proceeding under Article 226 of the Constitution arising from an order made by a Court in exercise of power under the Code of Criminal Procedure, it would be a criminal proceeding within the meaning of Letters Patent.”

The Hon'ble Apex Court has further observed in the para- 65 as under:-

“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."

On an application of the principles set out by the Hon'ble Apex Court in the case of Ram Ki shan Fauji (supra), where the main relief claimed in the petition is in respect of commutation of death sentence to life imprisonment, merely because orders rejecting the mercy petition by the Hon'ble Governor and the Hon'ble President of India are also under challenge, will not convert it into civil proceeding, as invocation of jurisdiction by the appellant/petitioner was that of criminal jurisdiction of this Court.

In view of the aforesaid facts, discussion and the law settled by the Hon'ble Apex Court, the present Letters Patent Appeal is held to be non-maintainable and accordingly stands dismissed.

(KRI SHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

19. 08. 2019
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NOTE:

Whether speaki ng/ non- speaki ng: Speak i ng
Whether reportabl e: YES

