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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 13th March, 2019

+ LPA 1194/2006

VINOD KUMAR PANDEY AND ANR. Appellants

Versus

SHEESH RAM SAINI & ANR Respondents

+ LPA 1196/2006

VINOD KUMAR PANDEY Appellant

Versus

VIJAY AGGARWAL & ANR Respondents

Present:- Mr. Arvind K. Nigam, Sr. Adv. with Mr. Kirtiman Singh, Mr. Waize Ali Noor, Mr. Mehtaab Singh Sandhu & Mr. Pratishth Kaushal, Advs. for appellant in LPA 1194/2006.

Mr. Jai Bansal with Mr. Sudhir Kumar, Advs. for appellant in LPA 1196/2006.

Mr. Rakesh Kr. Khanna, Sr. Adv. with Mr. Aman Vachher, Mr. Ashutosh Dubey & Ms. Vaishali Gupta, Advs. for respondents.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

: **Rajendra Menon, Chief Justice(Oral)**

1. Challenging orders passed by the writ court in W.P.(Crl.) No.675/2001 on 26.06.2006 directing registration of an FIR against the appellant Vinod Kumar Pandey, LPA No.1196/2006 has been filed under

Clause 10 of the Letters Patent. Similarly, LPA No.1194/2006 has been filed again under Clause 10 of the Letters Patent challenging an order dated 26.06.2006 passed in W.P.(Crl.) No. 738/2001 whereby again similar directions have been issued for registration of FIR against the appellant Vinod Kumar Pandey & Anr. The matters are pending since 2006 after admission and when the cases came up for hearing before a Co-ordinate Bench of this Court on 12.03.2018 Shri Rakesh Kumar Khanna, learned senior counsel appearing for the respondents, placing reliance on a recent judgment of the Hon'ble Supreme Court in the case of *Ram Kishan Fauji v. State of Haryana & Ors.*, (2017) 5 SCC 533, argued that against an order passed in a criminal writ petition directing for registration of FIR an LPA under Clause 10 of the Letters Patent is not maintainable; and therefore the Bench had directed for hearing on the question of maintainability of these appeals. Today, we have heard learned counsel for the parties at length on the question of maintainability of the Letters Patent Appeals and we propose to deal with the same in this judgment.

2. In W.P.(Crl.) No.675/2001, Shri Vijay Aggarwal, petitioner therein and respondent before us in LPA 1196/2006 filed a writ petition purported to be under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 seeking registration of a criminal case against respondent No.3 therein Shri Neeraj Kumar; and the prayer made in the said writ petition primarily was to register an FIR for cognizable offences under Sections 506/341/342/166 IPC against both respondent No.2 Shri Vinod Kumar Pandey and respondent No.3 Shri Neeraj Kumar, officers in the Central Bureau of Investigation and to launch prosecution against

them. Similarly, in LPA 1194/2006, challenge is made to an order passed in W.P.(Crl.) No.738/2001 wherein one Shri Sheesh Ram Saini, respondent herein filed the writ petition against Vinod Kumar Pandey and Neeraj Kumar with a prayer to register FIR against both these respondents for having committed offences under Sections 218/463/465/469/166/120-B of the Indian Penal Code. This writ petition was also filed in the form of a criminal writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973. Both the petitions were allowed.

3. In W.P.(Crl.) No. 675/2001, vide order passed on 26.06.2006, impugned in this appeal, directions were issued in Paras 33 and 34 to the effect that the Special Cell of Delhi Police is directed to register an FIR on the basis of allegations contained in the present writ petition and the complaint dated 23.02.2004 addressed to the Commissioner of Police, Delhi and take up investigation into the matter by an Officer not below the rank of Assistant Commissioner of Police working in the Special Cell independently and uninfluenced by the findings and observations contained in the report of enquiry dated 26.04.2005 submitted by the Joint Director, CBI and to conclude the investigation expeditiously within a period of two months. As far as a further relief prayed for contempt action is concerned, the matter was directed to be listed before a Division Bench of this Court.

4. Similarly, in W.P.(Crl.) No. 738/2001, identical order as detailed hereinabove was passed and therefore challenging the orders directing for registration of FIR and making investigation into the matter, the appeals have been filed and various grounds have been raised to challenge the

directions issued by the writ court.

5. During the course of hearing of the matter as indicated hereinabove, attention of this Court was invited to the judgment of the Supreme Court in the case of *Ram Kishan Fauji v. State of Haryana & Ors.* (supra) and it was argued that against an order passed by a Single Bench of this Court exercising “criminal jurisdiction” an LPA under Clause 10 of the Lahore (High Court) Letters Patent is not maintainable.

6. Today, Shri Arvind K. Nigam, learned senior counsel took us through the provisions of the Letters Patent (Lahore) Punjab, Haryana and Delhi), Clause 10 whereof, referred to the expression “excluding right to file an appeal under Clause 10 in cases where a Single Judge has exercised criminal jurisdiction”, learned Senior Counsel also took us through the provisions under the heading “criminal jurisdiction” i.e. Clauses 15, 16, 17 and 18 thereof and argued that the exercise of criminal jurisdiction which is excluded under Clause 10 deals with the ordinary original jurisdiction of the criminal Court where the High Court itself exercises its jurisdiction of trial and does not relate to exercise of power under the writ jurisdiction. He took us in detail through various provisions of the Letters Patent, referred in extenso to a judgment of a Full Bench of this Court in the case of *C.S. Agarwal v. State*; 2011 6 ILR (Del) 701. The learned Counsel also referred to the observations and findings made in Para 29 of the aforesaid judgment; the meaning and import of the word “criminal jurisdiction” as appearing in Clause 10 of the Letters Patent and tried to argue that when the power is exercised by a writ court exercising its jurisdiction under Article 226 of the Constitution of India, the jurisdiction exercised by the High Court (Single

Judge) is not a jurisdiction which is criminal in nature and a letters patent appeal is maintainable. He argued that the law laid down in the case of *Ram Kishan Fauji* (supra) is not applicable in the facts and circumstances of the present case.

7. Learned Senior Counsel Shri Arvind Nigam also took us through the historical perspective of letters patent, its development and various judgments on the issue of powers and jurisdiction of High Courts under Letters Patent, from time to time and ultimately it was argued by him that the rights available to a citizen under Article 226 of the Constitution of India are part of the basic structure of the Constitution. He also argued that Article 226 provides for various writs for protection of any right under Part-III of the Constitution and submitted that under the scheme of the Constitution there is no such classification as civil rights or criminal rights. The same is neither conceptually nor legally permissible and therefore by classifying the prayer made in the writ petition to be a criminal right under the High Court Rules, the right of appeal under Clause 10 cannot be taken away. He argued that what is prohibited under Clause 10 are only such cases where, exercising original criminal jurisdiction the High Court itself continues the trial and a conviction or punishment is ordered. In all other cases, the exercise of jurisdiction is not the original criminal jurisdiction of the High Court. It is only exercise of power under Article 226 of the Constitution and therefore an LPA is maintainable.

8. Apart from filing detailed notes and written submissions, learned Senior Counsel relied upon various judgments in support of his contentions which are as under:

“Chairman, Budge Budge Municipality v. Mongru Mia, AIR 1953 Cal 433; Sukhendu Bikash Barua v. Hare Krishna De & Ors., AIR 1953 Cal 636; Dwarkanath v. Income Tax Officer, AIR 1966 SC 81; Prabodh Verma & Ors. v. State of U.P. & Ors., (1984) 4 SCC 251; Umaji Keshao Meshram & Ors. v. Radhikabai & Anr., 1986 (Supp) SCC 401; Manoj Kumar v. Board of Revenue, 2008 (1) M.P.L.J. 152; M/s. Advani Oerlikon Ltd. Vs. Machindra Govind Makasare & Ors., AIR 2011 BOM 84; Jaswinder Singh Vs. Mrigendra Pritam Vikramsingh Steiner, 2013 (196) DLT 1; Radhey Shyam v. Chhabi Nath & Ors., (2015) 5 SCC 423 and Jogendrasinghji Vijaysinghji v. State of Gujarat & Ors., 2015(7) SCALE 495.”

9. He also took us through the Letters Patent of Lahore, Punjab, Haryana and Delhi, as also the Letters Patent of Madras, Bombay and Calcutta to substantiate his contention. That apart, it was emphasized by him that in deciding the issue Hon’ble Supreme Court in the case of *Ram Kishan Fauji* (supra) has not debarred exercise of jurisdiction by this Court and the said judgment is distinguishable and will not apply in the facts and circumstances of the present case.

10. In the written submissions filed, apart from reiterating all the grounds which were canvassed before us as indicated hereinabove, the Full Bench judgment in the case of *C.S. Agarwal* (supra) and the Supreme Court judgment in the case of *Ram Kishan Fauji* (supra) was tried to be distinguished on the ground that they pertain to exercising jurisdiction, criminal in nature in a petition under Article 226 where the prayer was to quash a criminal proceeding which was already set into motion. A distinction is tried to be drawn by contending that in this case the prayer is for registration of FIR and setting the criminal proceedings in motion; and, therefore, by referring to various observations made by the Full Bench in the

case of *C.S. Agarwal* (supra) and the Supreme Court in the case of *Ram Kishan Fauji* (supra) from para-10 onwards in the written submissions to say that in the present case, the criminal proceedings having not been initiated, therefore, there is no question of exercising criminal jurisdiction of this Court.

11. Per contra, Shri Rakesh Kumar Khanna, learned senior counsel heavily relied upon the judgment rendered by the Supreme Court in the case of *Ram Kishan Fauji* (supra); and the Full Bench judgment of this Court in the case of *C.S. Agarwal* (supra) and argued that the issue of maintainability of this appeal under Clause 10 of the Letters Patent is no more *res integra*. The issue stands settled and once the Hon'ble Supreme Court has held that a Letters Patent Appeal is not maintainable, he submits that no indulgence into the matter is called for. He argued that the case of *C.S. Agarwal* (supra) rendered by a Full Bench of this Court has been approved and upheld by the Hon'ble Supreme Court and therefore no indulgence need to be made into the matter now when it is crystal clear that the LPA is not maintainable.

12. We have heard learned counsel for the parties at length and we have also taken note of the submissions that were made before us at the time of hearing, so also in the written notes and submissions filed. In fact on 13th March, 2019 we had orally indicated that we are not inclined to interfere into the matter, that the appeal is not maintainable and that a detailed reasoned order will follow and, thereafter, as prayed for by counsel for the appellant, we granted time to file written submissions, which has been filed and which has been taken note of.

13. The only question before us, warranting consideration is as to whether

an appeal under Clause 10 of the Letters Patent is maintainable against an order made in a criminal writ petition. In our considered view, the said issue has been dealt with in extenso by a Full Bench of this Court in the case of *C.S. Agarwal* (supra) and by the Supreme Court in the case of *Ram Kishan Fauji* (supra) and therefore the said issue can be decided on the basis of the aforesaid two judgments itself.

14. In the case of *C.S. Agarwal* (supra), a letters patent appeal was filed challenging an order passed by a Single Bench in W.P.(Crl.) No. 57/2010 wherein jurisdiction of this Court was invoked under Article 226 of the Constitution read with Section 482 of the Cr.P.C. seeking an appropriate writ for quashing an FIR registered against the petitioner Shri C.S. Agarwal by the Economic Offences Wing (Crime & Railways), Delhi under Sections 420/406/120-B of the Indian Penal Code; and the writ petition having been dismissed the LPA was filed. The Full Bench was constituted in view of a reference made by a Division Bench vide order passed on 14.01.2011. The reference made to the Full Bench is reproduced in Para 3 of the judgment which reads as under:

“3. The Division Bench heard the matter on this aspect and vide orders dated 14.01.2011 deemed it appropriate to refer the matter to the Full Bench making following reference for consideration:

“22. Accordingly, we make following reference for consideration the Full Bench:

“Whether the writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing a FIR amount to invoking ‘original jurisdiction’ or these proceedings are to be treated as invoking ‘criminal jurisdiction?’”

15. The question formulated before the Full Bench clearly indicates that the question considered in that matter was the same question which has to be considered by us in this appeal. The learned Full Bench has analyzed various issues in the backdrop of the statutory provisions, namely, the Letters Patent of Lahore, Punjab and Delhi and the Delhi High Court Act, 1966; and in Para 8 of the said judgment after taking note of Clause 10 of the Letters Patent the Full Bench carves out three categories of cases/jurisdiction exercised by the Single Judge in which cases intra-court appeals are not maintainable. The prohibited categories are: (1) Revisional Jurisdiction; (2) Power of Superintendence; and (3) Criminal Jurisdiction.

16. After considering submissions made at length, in Paras 19 and 20 the principle is discussed by the Full Bench in the following manner:

“19. No doubt, as per the aforesaid pronouncements explaining the nature of power conferred under Article 226 of the Constitution, the High court in such proceedings exercises original jurisdiction. At the same time, it is also clarified that the said jurisdiction is not to be confused with the “original civil jurisdiction” of the High Court. Further, proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. A fortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can be said that the Single Judge was exercising his ‘criminal jurisdiction’ while dealing with such a petition filed under Article 226 of the Constitution.”

20. For this reason, we cannot agree with the extreme position taken by the appellants that the exercise of powers under Article 226 of the Constitution would never tantamount to exercising criminal jurisdiction, irrespective of the nature of proceedings. We, further, are of the opinion that if such a petition relates to criminal proceedings while dealing with this petition under Article 226 of the Constitution, the Court would be exercising “criminal jurisdiction”. In this context, it would be relevant to refer to the judgment of the Supreme Court in *S.A.L. Narayan Row and Anr. vs Ishwarlal Bhagwandas and Anr.* [AIR 1965 SC 1818]. In that case, proceedings were initiated under the Income Tax Act, 1922. At the conclusion of proceedings before the High Court under Article 226, a certificate for fitness was sought under Article 131(1)(c) read with Article 132(1) of the Constitution. The question before the Apex Court was as to whether the proceedings before the High Court under Article 226 are “civil proceedings”. The Constitution Bench opined that whether the proceedings are civil or not depends upon the nature of the right violated and the appropriate relief which may be claimed and not upon the nature of the Tribunal which is invested with authority to grant relief. In the process, following pertinent observations were made which are apposite in our context:

“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.”

The Court was, thus, categorical that even in a petition under Article 226 of the Constitution when the High Court is exercising extraordinary jurisdiction, the nature of proceedings, whether civil or criminal, would depend upon the nature of right violated and the nature of relief sought in the said petition.”

(emphasis supplied)

17. Thereafter, various judgments and issues are considered and finally

the opinion on the reference is answered in Para 40 by holding that in the petition filed by the petitioner Shri C.S. Agarwal, the learned Single Judge was exercising criminal jurisdiction while dealing with a writ petition filed under Article 226 of the Constitution and an LPA against such an order is not maintainable.

18. Shri Arvind K. Nigam, learned senior counsel wanted us to take note of Para 29 of the aforesaid judgment which reads as under and to carve out an exception on the basis of the observation:

“29. It would be necessary to clarify here that it cannot be said that in any of the cases under Article 226 of the Constitution, the Court is exercising ‘criminal jurisdiction’. It would depend upon the rights sought to be enforced and the nature of relief which the petitioner seeks in such proceedings. For example, if a writ petition seeking writ of habeas corpus is filed, while dealing with such a petition, the Court is not exercising criminal jurisdiction as no criminal proceedings are pending. In fact, the order of preventive detention is made without any trial under the criminal law. Likewise, when a person is convicted and sentenced after the conclusion of criminal trial and such an order of conviction has attained finality and he files writ petition under Article 226 of the Constitution challenging the orders of the Government refusing to grant parole while dealing with such a petition, the Single Judge is not exercising criminal jurisdiction, as no criminal proceedings are pending.”

19. A perusal of the aforesaid observation made would clearly indicate that the question as to whether under Article 226 of the Constitution the writ court has exercised criminal jurisdiction would depend upon the right to be enforced and the nature of reliefs sought for in the proceedings. The Hon’ble Bench goes on to classify petitions filed for habeas corpus or

grant of parole after conviction to come within the purview of cases which may not be falling within the criminal jurisdiction but it is crystal clear from a conjoint reading of Paras 20 and 29 of the judgment rendered by the Full Bench that the jurisdiction exercised would be a criminal jurisdiction if the final conclusion of the proceedings would result in initiation of a criminal proceeding or a criminal case which may ultimately result in imposition of some sentence, imprisonment or fine under the criminal law or any other law imposing criminal liability.

20. In the present case, the proceedings were to register an FIR, conduct criminal investigation so that on conclusion of the proceedings a conviction and consequential punishment of imprisonment or fine can be imposed. That being the nature of relief claimed, we have no iota of doubt that the proceedings in the present case as held by the Full Bench are “criminal proceedings” and therefore the exception carved out in Para 29 would not apply in the facts and circumstances of this case.

21. The reference made to the Full Bench is clear in its term and after detailed discussion when a Full Bench has categorically held that in a matter pertaining to prayer made for quashing of an FIR, the jurisdiction invoked is a criminal jurisdiction available to this Court, we see no reason to take a different view in the matter.

22. Similarly, when the matter was again considered by the Hon’ble Supreme Court in the case of *Ram Kishan Fauji* (supra), the judgment of the Full Bench in the case of *C.S. Agarwal* (supra) was again scrutinized meticulously along with various other judgments which have been relied upon by Shri Arvind K. Nigam, learned senior counsel before us and we find

that in the case of *Ram Kishan Fauji* (supra) the Hon'ble Supreme Court has dealt with various issues in extenso and the principles culled out by the Hon'ble Supreme Court clearly show that an LPA is not maintainable when the Single Judge passes an order in a writ petition under Article 226 exercising criminal jurisdiction.

23. In the case of *Ram Kishan Fauji* (supra), a complaint was made to the Lokayukta, Haryana and ultimately when an FIR for offences punishable under the Prevention of Corruption Act was directed to be registered and investigation ordered, a writ petition in question was filed for quashing the recommendation made for registration of the criminal case and the consequential proceedings initiated thereunder. The matter travelled to Division Bench in a Letters Patent Appeal at the instance of the State of Haryana. The Division Bench on 15.12.2015 condoned the delay in filing of the LPA and stayed operation of the judgment passed by the learned Single Judge. The appellant before the Hon'ble Supreme Court, namely, Shri Ram Kishan Fauji filed an application for vacation of the stay and when the High Court (Division Bench) on 12.05.2016 declined to vacate the stay and made it absolute after admitting the appeal and further issued certain directions, the appellant before the Hon'ble Supreme Court, Shri Ram Kishan Fauji questioned the sustainability of the order passed by the Division Bench. It was his case before the Hon'ble Supreme Court that the LPA preferred before the Division Bench was not maintainable inasmuch as the learned Single Judge had exercised criminal jurisdiction and therefore against such an order an LPA was not maintainable. Various judgments including the judgment of the Full Bench in the case of *C.A. Agarwal* (supra) was referred

to and the Hon'ble Supreme Court after taking note of Clause 10 of the Letters Patent as is applicable to the erstwhile Lahore, Punjab and Delhi High Court, Clauses 10, 15, 17 and 18 thereto, dealt with the issues in Para 31 and recorded its opinion in the following manner:

“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.”

(emphasis supplied)

24. Thereafter, it referred to various judgments including the judgment in the case of *Umaji Keshao Meshram v. Radhikabai*, 1986 Supp SCC 401 and others and finally in Paras 41 and 42 laid down the following principle:

“41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of the civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein.

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.”

25. Finally, in Para 46 the Apex Court dealt with the issue in the following manner:

“46. The crux of the present matter is whether the learned Single Judge has exercised “civil jurisdiction” or “criminal jurisdiction”. In that regard, Mr Visen has strenuously contended that the Lokayukta is a quasi-judicial authority and the proceeding being quasi-judicial in nature, it cannot be regarded as one relatable to criminal jurisdiction, but it may be treated as a different kind or category of civil proceeding. His argument is supported by the Full Bench decision of the High Court of Andhra Pradesh in Gangaram Kandaram v. Sunder Chikha Amin, 2000 SCC OnLine AP 119. In the said case, a writ petition was filed for issue of a writ of mandamus to declare the action of the respondents in registering crimes under Sections 420 and 406 of the Penal code against the writ petitioner in FIRs Nos. 14, 137 and 77 of 1997 as illegal and to quash the same. The learned Single Judge had allowed the writ petition by order dated 6-8-1997 and quashed the FIRs. The order passed by the learned Single Judge was assailed by

the seventh respondent in intra-court appeal. The Full Bench posed the following question: (Gangaram case, 2000 SCC OnLine AP 119, SCC OnLine AP para2)

“2. ... ‘... (ii) Whether appeal under clause 15 of the Letters Patent of the Court lies against the judgment in such a case. In other words, whether a proceeding for quashing of investigation in a criminal case under Article 226 of the Constitution of India is a civil proceeding and the judgment as above is a judgment in a civil proceeding in exercise of the original jurisdiction of the Court for the purposes of appeal under Clause 15 of the Letters Patent.’ ”

In the above paragraph, the Hon’ble Supreme Court took note of the decision of the Full Bench of the Andhra Pradesh High Court in *Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine AP 119 where the High Court had held that an LPA was maintainable.

26. In Para 53, the judgment of the Full Bench in the case of *C.S. Agarwal* (supra) was referred to as is detailed hereinunder:

“53. The Full Bench of the High Court of Delhi in *C.S. Agarwal v. State*, 2011 SCC OnLine Del 3136 was dealing with a situation wherein a writ petition was filed before the High Court under Article 226 of the Constitution of India read with Section 482 CrPC seeking for appropriate writ for quashing of the FIR. As the writ petition was dismissed by the learned Single Judge, an intra-court appeal was preferred. A preliminary objection was taken by the respondents as regards the maintainability of the LPA contending that the judgment of the learned Single Judge was passed in exercise of criminal jurisdiction and the letters patent appeal against such an order is barred by Clause 10 and Clause 18 of the Letters Patent constituting the High Court of Judicature at Lahore, which is applicable to the Judicature of High Court of Delhi. The Full Bench analysed Clause 10 of the Letters Patent and took note of

what has been prohibited for entertaining any intra-court appeal. The Full Bench, analysing various decisions, opined thus: (SCC OnLine Del para 19)

“19. ... proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. A fortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ Petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can be said that the Single Judge was exercising his “criminal jurisdiction” while dealing with such a petition filed under Article 226 of the Constitution.”

27. The Full Bench took note of another judgment of the Division Bench of the Gujarat High Court in the case of *Sanjeev Rajendrabhai Bhatt v. State of Gujarat*, (2000) 1 Guj LR 206 and held as under:

“32. The test, thus, is whether criminal proceedings are pending or not and the petition under Article 226 of the Constitution is preferred concerning those criminal proceedings which could result in conviction and order of sentence.

33. When viewed from this angle, it is clear that if the FIR is not quashed, it may lead to filing of challan by the investigating agency, framing of charge and can result in conviction or order on sentence. Writ of this nature filed under Article 226 of the Constitution seeking quashing of such an FIR would therefore be “criminal proceedings” and while dealing with such proceedings, the High Court exercises its “criminal jurisdiction”.”

28. In Para 54 a Constitution Bench judgment in *CIT v. Ishwarlal*

Bhagwandas, (1966) 1 SCR 190 was referred to and after going in detail in Paras 61 and 62, the Apex Court came to the conclusion that the Letters Patent Appeal was not maintainable because the jurisdiction exercised by the Single Judge of the High Court was criminal jurisdiction under Article 226 of the Constitution.

29. Finally, in Para 58 after giving detailed analysis, the Apex Court came to the conclusion that the views expressed by the High Courts of Gujarat and Delhi have correctly laid down the law whereas the view expressed by the Full Bench of the Andhra Pradesh High Court in the case of *Gangaram Kandaram* (supra) is not correct and answered the question in Paras 61 and 62 in the following manner:

“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.*”

30. Having so held at this stage, it may be appropriate to consider the points raised in the written submissions with regard to the distinguishing features in this case and the case considered by the Full Bench in the case of *C.S. Agarwal* (supra) and by the Supreme Court in *Ram Kishan Fauji* (supra). In fact the issue has been already discussed in detail by us hereinabove; that apart, answers to the arguments advanced by learned counsel for the appellants are available in the judgments rendered by the Full Bench in the case of *C.S. Agarwal* (supra) and the Supreme Court in the case of *Ram Kishan Fauji* (supra) itself. If we take note of para-20 of the observations made in the case of *C.S. Agarwal* (supra) which has been reproduced by us in para-10 of this order, we would find that the Full Bench took note of a Constitution Bench judgment of the Supreme Court in the case of *S.A.L. Narayan Row and Anr. vs Ishwarlal Bhagwandas and Anr.* AIR 1965 SC 1818 and observed that whether the proceedings are criminal or not depends upon the nature of the right violated and the appropriate relief which may be claimed and not upon the nature of the proceedings. It holds that a criminal proceeding is one which if carried out to its logical conclusion, may result in imposition of sentence, conviction, etc.

31. Similarly, the question as to whether a civil right or a criminal right is

violated, would depend upon the nature of right violated and the relief sought for in a writ petition under Article 226 of the Constitution. Thereafter, we may take note of the law laid down in the case of *S.A.L. Narayan Row* (supra) and the fact that when a criminal Court takes cognizance of an offence and sends a complaint for investigation under sub-Section (3) of Section 156 of the Code of Criminal Procedure, the same will not make any difference to the nature of proceedings concerned. It is observed that even if cognizance is not taken that would not take out the case from the purview of the criminal jurisdiction.

32. In our considered view, if proceedings that are initiated to avoid the consequence of a criminal act or crime, come within the purview of a criminal proceedings, then a proceeding instituted for setting in motion a proceeding on account of any criminal act would also fall in the same category, that is, jurisdiction exercised by a Court in exercise of its criminal jurisdiction. This, in our considered view, is the principle reiterated in the case of *Ram Kishan Fauji* (supra) also wherein after considering various provisions, the law has been discussed in detail as indicated hereinabove in our judgment. In our considered view merely because the proceedings are initiated for registration of FIR it would not mean that a Court which issues a direction for registration of an FIR or carrying out an investigation has not exercised criminal jurisdiction. A Court which directs for investigation in accordance with the requirement of criminal law, namely, the procedure contemplated in the Code of Criminal Procedure, in our considered view, exercises criminal jurisdiction and it does not make any difference if the proceedings initiated are for initiating a criminal proceedings or to quash a

criminal proceeding already initiated. In both cases, as observed in the judgments referred to hereinabove, the effect of the order would be to proceed with a matter, criminal in nature with regard to a criminal offence committed and to bring to its logical conclusion, i.e., either conviction or acquittal of the alleged accused. That being so, we see no reason to take a different view in the matter merely because the prayer in the writ petition was to register an FIR and proceed with the investigation.

33. If we analyse the case in hand in the backdrop of the aforesaid legal principles as laid down by the Full Bench of this Court in the case of *C.S. Agarwal* (supra) and by the Hon'ble Supreme Court in the case of *Ram Kishan Fauji* (supra), we are of the considered view that arguments identical in nature as was canvassed by Shri Arvind K. Nigam, learned senior counsel with reference to Clauses 10, 15, 16, 17 and 18 of the Letters Patent Punjab, Haryana and Delhi have already been considered by a Full Bench of this Court and by the Hon'ble Supreme Court and merely on certain distinguishing features pointed out to us at the time of hearing it is not appropriate for us to deviate from the settled legal principle and take a different view by holding that these issues have not been properly dealt with or not considered or not decided by the Hon'ble Supreme Court or the Full Bench.

34. In our considered view, the judgments rendered by the Full Bench and the Hon'ble Supreme Court are binding on us. The ratio of these judgments clearly show that in a case pertaining to quashing of an FIR or registration of a criminal case, the jurisdiction exercised by the learned Single Judge is criminal jurisdiction available to the Court; and once the order arises out of a

criminal jurisdiction exercised by the Court an LPA under Clause 10 is not maintainable.

35. On 26.06.2006, the writ Court had directed for registration of FIR and proceed with the investigation immediately and conclude it within two months. This order has not been given effect to till now. Accordingly, we direct for registration of the FIR forthwith and conclude the investigation within a period of two months as directed by the learned writ court.

36. Accordingly, finding the present appeals to be not maintainable, we uphold the preliminary objection raised by the respondents and dismiss both the appeals.

CHIEF JUSTICE

ANUP JAIRAM BHAMBHANI, J

MARCH 13, 2019
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