

NAFR

HIGH COURT OF CHHATTISGARH BILASPUR**Writ Appeal No. 232 of 2020**

*(Arising out of order dated 04.02.2020 passed in Writ Petition (CR)
No.91 of 2020 by the learned Single Judge)*

1. Dharmendra Kunjam S/o Late Ankaluram Kunjam, Aged About 43 Years R/o Village Timnar, Post Nagarbeda, Tahsil Antagarh, District U.B. Kanker Chhattisgarh.
2. Vijay Kumar Kunjam, S/o Mr. Sanauram Kunjam, Aged About 31 Years R/o Village Timnar, Post Nagarbeda, Tahsil Antagarh, District U.B. Kanker Chhattisgarh.
3. Amit Kumar Yadav, S/o Ratturam Yadav, Aged About 27 Years R/o Village Timnar, Post Nagarbeda, Tahsil Antagarh, District U.B. Kanker Chhattisgarh.
4. Bhuneshwar Yadav, S/o Mr. Sohanlal Yadav, Aged About 23 Years R/o Village Timnar, Post Nagarbeda, Tahsil Antagarh, District U.B. Kanker Chhattisgarh.

---- Appellants**Versus**

1. State of Chhattisgarh Through Secretary Home Department Mantralaya, Naya Raipur District Raipur Chhattisgarh.
2. Station House Officer, Police Station Amabeda District U.B. Kanker Chhattisgarh.

---- Respondents

For Appellants	: Shri Parag Kotecha, Advocate
For Respondent/State	: Shri Ghanshyam Patel, Government Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Judgment on Board****P. R. Ramachandra Menon, Chief Justice****09.03.2020**

1. The non-granting of interim relief of stay by the learned Single Judge pending in the writ petition is subjected to challenge in this appeal.
2. Heard Shri Parag Kotecha, the learned counsel appearing for the Appellants and Shri Ghanshyam Patel, the learned counsel representing the Government.

3. The writ petition was filed with the following prayers :

“10.1 That, the Hon'ble Court may kindly be pleased to set aside/quash the Charge Sheet, FIR No.3/2018 dated 21/2/18 and the proceedings initiated pursuant to Crime No.3/18 registered before the Police Station Amabeda Distt. U.B. Kanker for the alleged offences punishable under Section 294, 323, 506 B, 147, 149, 452, 365 of Indian Penal Code and Section 3(1)(r), 3(2)(va) and 3(1)(s) of Act 1989 and further please to quash the proceeding in Special Case No.02/2020 pending before Special Judge SC ST Act Uttar Bastar Kanker in the interest of justice.

10.2 That, this Hon'ble Court may kindly be pleased to grant any other relief, as it may deems fit and appropriate.”

4. The interim relief sought for is to the following effect :

“ It is, therefore, prayed that this Hon'ble Court may kindly be pleased to allow the application and stay the further proceeding in Special Case No.02/2020 pending before Special Judge SC ST Act Uttar Bastar Kanker and till the final disposal of this present petition, in the interest of justice.”

5. The said I.A. came up for consideration on 04.02.2020 and after hearing, following interim relief was passed therein :

“Mr. Parag Kotecha, Counsel for the petitioners.

Mr. H.S. Ahluwalia, Deputy A.G for the State/ respondents.

Heard.

Issue notice to the respondents on the

payment of process fee within 7 days.

Also heard on I.A. No. 01, application for grant of stay.

After hearing learned counsel for the petitioners and after going through the record, I do not consider it a good case for grant of stay.

Accordingly, I.A. No. 01, application for grant of stay stands rejected.”

6. From the above, it is clear that the interim relief of stay was rejected which made the Writ Petitioners/Appellants to feel aggrieved who are now before this Court by way of present writ appeal.

7. Shri Parag Kotecha, the learned counsel for the Appellants submits that non-granting of interim relief of stay will make the writ petition infructuous insofar as the charges have been framed by the trial Court and hence, interference of this Court is necessary.

8. The appeal is a statutory remedy and as such, the right of the appeal depends upon the provisions available under the statute. Appeal from orders passed by the learned Single Judge to the Division Bench (Intra-Court Appeal) is governed by the provisions of Section 2(1) Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 (hereinafter referred to as 'the Act of 2006'). The said provision 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.”

9. The proviso to Section 2(1) of the Act of 2006 says that no 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. Granting or rejecting of the interim prayer happens to be an interim order and as such, no appeal is maintainable as per the clear provision in the statute.

10. The scope of the above provision had come up for consideration before a Full Bench of this Court as per judgment dated **25.01.2017** in **Writ Appeal No.255 of 2016**; parties being, **Ajay Gupta v. State of Chhattisgarh and Others**, it was categorically held that no appeal will lie against an interim order unless it has an element of finality attached to it. The operative paragraph of the said judgment reads as follows :

“We therefore answer the question referred to us by holding that proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 bars appeals against those interim orders which are totally interlocutory in nature, do not decide matters of moment and do not have an element of finality attached to them. Conversely, if the order vitally affects rights of the parties having bearing on the final adjudication of the case, then even though the order is interim, it

cannot be termed as interlocutory order and an appeal would lie. An appeal would also lie against those orders which cannot be undone at the time of final hearing and which have an element of finality attached to them. The orders, effect of which cannot be undone at the time of final hearing, cannot be termed to be interlocutory orders and in such eventuality, an appeal would lie against such orders.”

11. From the above, it is clear that unless and until the order passed as an interim order is having the finality with regard to the merit of the case projected, there cannot be any appeal. The granting of stay or non-granting of the same depends upon the facts and circumstances of each case. By virtue of the clear mandate of proviso to Section 2(1) of the Act of 2006 and the scope of the provision as expressed by the Full Bench of this Court in **Ajay Gupta** (supra), we hold that the present appeal is not maintainable under any circumstance. It is dismissed accordingly.

Sd/-

(P. R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge