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

Date of Decision: 12.02.2020

+ LPA 81/2020 & CM APPL. 5604/2020 (*exemption*)

RUNEET GULATI

..... Appellant

Through: Mr. V.K. Jha & Mr. Rajiv Kumar,
Advs.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms. Kamna Vohra, ASC for State.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

D.N. PATEL, CHIEF JUSTICE (*Oral*)

CM APPL. 5604/2020 (*exemption*)

Allowed, subject to just exceptions.

LPA 81/2020

1. The present Letters Patent Appeal has been preferred by the original petitioner to W.P.(CrI.) No.3506/2019, which was dismissed by the learned Single Judge vide judgment and order dated 20.01.2020 (Annexure A-1) which prayed for parole and for quashing of order passed by the respondent rejecting the parole application vide order dated 10.12.2019.

2. The learned counsel appearing for the respondent has submitted that this Letters Patent Appeal is not tenable in law, especially, looking at Clause 10 of the Letters Patent, 1919. For ready reference, Clause 10 of Letters Patent reads as under:

“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 the 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 one Judge of the Said High Court or one Judge of any Division Court, pursuant of 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.” (emphasis supplied)

3. We may take note of ***R.P. Sachdeva v. State***, AIR 1986 Del 178, which explains our jurisdiction qua the Letters Patent Act. The relevant portion is extracted hereinbelow:

“8. The jurisdiction of the Delhi High Court is same as exercised by the High Court of Punjab in Delhi before the constitution of the Delhi High Court except as provided in Section 5(2) of the Delhi High Court Act. The High Court of Punjab under the High Courts (Punjab) orders, 1947 has the

same jurisdiction as exercised by the High Court at Lahore. There is no clause in the Letters Patent of the Lahore High Court similar to Clause 12 of the Letters Patent of the Calcutta, Madras and Bombay High Courts.”

4. Conveniently, we also note the judgment by a Full Bench of this Court in **Jaswinder Singh v. Mrigendra Pritam Vikram Singh Steiner and Ors., 196 (2013) DLT 1.** The relevant portion is as under:

“8. Now coming to the issue of exercise of letter patent - Where does the expression 'Letters Patent originate from'

Meaning & Origin of Letters Patent:

9. The term 'letters patent' is derived from the Latin term 'literae patentes' meaning 'open letters'. Primarily, a letters patent would denote a public grant from the sovereign to a subject, conferring the right to land, a franchise, a title, liberty, or some other endowment. These were letters addressed by the sovereign 'to all whom these presents shall come', reciting a grant of some dignity, office, franchise, or other privilege that has been given by the sovereign to the patentee.' The historical perspective of this is available in the National Archives of the United Kingdom, which is a Government Department and an Executive Agency of the Ministry of Justice. It sets out that 'Letters Patent' were letters issued 'open' or 'patent' expressing the sovereign's will on a variety of matters of public interest, sealed with the sovereign's great seal pendent. The patent rolls record the issue of letters patent from the reign of King John. The entries on the rolls are of a very diverse nature referring to the royal prerogative, revenue, the differential negotiations with foreign princes and states, letters of protection, of credence and of safe-conduct and the appointments and powers of ambassadors. There are also grants and confirmations of liberties, offices, privileges, lands and wardships, both to public bodies and to private individuals, charters of incorporation and so on. Letters patent are stated to have been much reduced in the course of the 19th and 20th centuries, as the kinds of

instruments produced thereby became obsolete or their administration passed to other bodies. The use of great seals was much restricted, often replaced by alternative devices.

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17. Now coming to the provinces of Punjab and Delhi, it is by an Act by the Governor General of India in Council (Act No. Xxiii of 1865) that the then Chief Court of Punjab was established and the Provinces of Punjab and Delhi were subject to its jurisdiction. This position continued till the Letters Patent constituting the High Court of Judicature at Lahore dated 21st March 1919 was issued by which the High Court at Lahore was established for the provinces of Punjab and Delhi. The Punjab High Court after 1947, continued to be governed by this Letters Patent and the Union Territory of Delhi continued to be within the jurisdiction of the Punjab High Court. Clause 9 of the Letters Patent conferred extraordinary original civil jurisdiction on the High Court.

18. What is the distinction between the Original Civil Jurisdiction conferred in the Presidency towns and the Lahore High Court? The significant difference is that on the establishment of the Chartered High Court in the Presidency towns there were two kinds of original jurisdiction which were transferred to it - (i) as was being exercised by the Supreme Court in the Presidency towns; (ii) as was being exercised by the Sadar Courts. On the other hand when the Non-Chartered High Courts were established by different Letters Patent including the Lahore High Court it was the second one only which was transferred. The Supreme Courts established in the Presidency towns prior to the establishment of the Chartered High Courts were exercising the ordinary civil jurisdiction in the territories of the Presidency towns while in the Mofussil, the principal Courts of original jurisdiction were the District Courts. It may be added here that on the other hand establishment of City Civil Courts in the Presidency towns, the lower pecuniary jurisdiction from the ordinary civil jurisdiction

of the Chartered High Courts came to be vested in those city civil courts.

19. The aforesaid is the reason why there is a difference in the wording of the Letters Patent qua the three Presidency towns, which are almost identical, while on the other hand there are the Letters Patent of the Courts like the Lahore High Court.

20. There is an interesting discussion on this issue in a Division Bench Judgment of this Court in Shanta Sabharwal Vs. Sushila Sabharwal & Ors. MANU/DE/0016/1979 : AIR 1979 Delhi 153, in the opinion rendered by Mr. Justice V.S. Deshpande (Retd.), the then Chief Justice which in turn is based on a Constitution Bench judgment of the Supreme Court in Aswini Kumar Ghosh Vs. Arabinda Bose MANU/SC/0022/1952 : (1953) 4 SCR 1 by the then Chief Justice of India, Mr. Justice M. Patanjali Sastri. The relevant portion is reproduced hereinunder:

5. After having given earnest consideration to the submission, we find that (1) the decision of the Supreme Court does not change the legal position existing at the time the Full Bench decision was given, (2) additional reasons are found to support those on which the Full Bench decision rested, and (3) even otherwise reference to a larger Bench would not be expedient.

(1) The decision of the Supreme Court in Shanti Kumar's case (MANU/SC/0017/1974 : AIR 1974 SC 1719) does not define the meaning of the word "Judgment" as used in cl. (15) of the Bombay and cl. (10) of the Delhi Letters Patent. It only reaffirms the proposition already established in Central Bank of India v. Gokal Chand, MANU/SC/0053/1966 : AIR 1967 SC 799, that it is only an order which affects the rights and liabilities of parties which can be called a judgment. The uncertainty exists because of the

difficulty in drawing the line between an order which is merely procedural and an order which affects any rights and liabilities of the parties. This has been the situation from before the Full Bench judgment as also thereafter and is likely to continue even after the Supreme Court decision.

(2) The view that the maintainability of an appeal against an order of a single Judge of this Court acting in ordinary original jurisdiction is governed by the Code of Civil Procedure and not by the Letters Patent is supported by additional reasons which were not mentioned in the Full Bench decision.

(A) In the Public Trustee v. Rajeshwar Tyagi, ILR (1973) 1 Delhi 29. (MANU/DE/0134/1972 : AIR 1972 Delhi 362), a Division Bench of this Court to which one of us (V.S. Deshpande, J. as he then was) was a party, pointed out the following distinction, namely (i) when a judgment is delivered by a single Judge exercising the jurisdiction inherited from the Punjab High Court under S. 5(1) of the Delhi High Court Act then the appeal against it lies under cl. (10) of the Letters Patent; and (ii) on the other hand, when a single Judge delivers a judgment in exercise of the ordinary original civil jurisdiction obtained by this Court from the Subordinate Court under S. 5(2) of the Delhi High Court Act, then the appeal lies under S. 10(1) of the Act. This position is undisputed. The question that arises is whether the meaning of the word "Judgment" in Section 10(1) of the Delhi High Court Act is the same as that in cl. (10) of the Letters Patent.

Conclusion:

29. In our view the issue of maintainability of an appeal under clause 10 of the Letters Patent as against Section 10 (1) of the said Act is vitally connected with the nature of powers conferred under the Letters Patent to the Delhi High Court. The distinction between the Letters Patent of the Chartered High Courts and the Non-Chartered High Courts have, thus, been set out in detail aforesaid because there is a fundamental difference between the two Letters Patents. This fundamental difference arises from the jurisdictions being exercised by the then existing courts prior to the Letters Patent by which the Chartered and the Non-Chartered High Courts were established. The Chartered High Courts were preceded by the Supreme Courts established in the presidency towns. These Supreme Courts had both the original jurisdiction and the appellate jurisdiction qua the territory in question. Thus, when the Chartered High Courts were established there were two kinds of original jurisdiction which were transferred to it, i.e., one being exercised by the Supreme Court in presidency towns as well as one being exercised by the Sadar Courts in the Mofussil areas. This is also reflected in the Letters Patents qua the presidency towns where clauses 11 & 12 of the Letters Patent were included.

30. Insofar as the Non-Chartered High Courts like the Lahore High Court are concerned, there was absence of the aforesaid clauses of the Letters Patent on account of the fact that there were no prior Supreme Courts enjoying original jurisdiction but the similar system of Mofussil and Sadar Courts prevailed. Thus, the Letters Patent of the Chartered High Courts conferred only the appellate jurisdiction of the Sadar Courts and if original jurisdiction would have been conferred up to a pecuniary limit, such jurisdiction would have been created for the first time under the Letters Patent. This, however, did not

arise as no such original jurisdiction was created. The similarity of clause 10 of the Non-Chartered High Courts vis-à-vis clause 15 of the Chartered High Courts would, thus, make no difference in view of the absence of existence of any original jurisdiction when the Letters Patent were established. Thus, when clause 10 of the Letters Patent refers to an appeal from the Single Judge to a Division Bench, it is not relatable to the exercise of ordinary original civil jurisdiction by the learned Single Judge of the Court. This is the reason that when writ jurisdictions are being exercised as extraordinary original civil jurisdiction, an appeal lies to the Division Bench under Clause 10 of the Letters Patent as applicable to Delhi which in turn had inherited the same from the parent Lahore High Court.

31. The establishment of the ordinary original civil jurisdiction in the Delhi High Court is a sequitur to the statutory provisions of the said Act. It is in terms of Section 5(2) of the said Act that ordinary original civil jurisdiction was conferred on the Delhi High Court for suits exceeding Rs.25,000.00 (now the limit is Rs.20.00 lakh). When such ordinary original civil jurisdiction is, thus, exercised by a learned Single Judge of this Court, the appeal is provided for under Section 10 (1) of the said Act. Sub-Section (2) of Section 10 of the said Act has been made subject to the provisions of subsection (1), and provides that the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab would apply in relation to the High Court of Delhi.

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33. An important aspect is that the aforesaid discussion takes place in the context of Clause 15 of the Letters Patent of the Bombay High Court. As explained aforesaid there is a distinction between Clause 15 of the Letters Patent of the Bombay High Court and Clause 10 of the Letters Patent as applicable to Delhi inasmuch as the Lahore High Court never

enjoyed the original jurisdiction, only the appellate jurisdiction having been conferred on it from the Sadar Courts upon its establishment.

34. We are of the view that principles enunciated in Shah Babulal Khimji case (supra) as to what would constitute an appealable judgment/order must equally apply to Section 10 of the said Act so that if an order, which is not an appealable order under the said Code, but otherwise satisfies the tests as laid down in Shah Babulal Khimji case (supra), in other words effects vital and valuable rights or, is an order which, decides matters of moment; the remedy of appeal to the Division Bench would equally be available.

35. In Shanta Sabharwal case (supra) the Division Bench of this Court while placing reliance on the judgment of the Supreme Court in Aswini Kumar case (supra) referred to the distinction drawn between the powers conferred under Section 5 (1) and Section 5(2) of the said Act. In this behalf the judgment in Public Trustee case (supra) of a Division Bench of this Court was relied upon which observed that when a judgment is delivered by a Single Judge exercising the jurisdiction inherited from the Punjab High Court under Section 5(1) of the said Act then the appeal against it lies under Clause 10 of the Letters Patent and on the other hand, when a Single Judge delivers a judgment in exercise of the ordinary original civil jurisdiction obtained by this Court from the Subordinate Court under Section 5(2) of the said Act, then the appeal lies under Section 10 (1) of the said Act. Thereafter it proceeded to refer to the meaning of the word "judgment" under Section 10 (1) of the said Act and Clause 10 of the Letters Patent and emphasised the historical distinction between the original jurisdiction exercised by the two groups of High Courts, i.e., the Chartered High Courts and the Non-Chartered High Courts."

(Emphasis supplied)

5. The Court's ambit in an LPA qua criminal jurisdiction is found in

Ram Kishan Fauji v. State of Haryana reported in (2017) 5 SCC 533, paragraphs 19, 20, 21 and 45 read as under:

“19. Presently, we may fruitfully refer to Clauses 15, 17 and 18 that deal with criminal jurisdiction. Clause 15 that provides for ordinary criminal jurisdiction of the High Court reads as under:

***“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.”*

20. Clauses 17 and 18, being pertinent, are extracted below:

*“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.”*
(emphasis supplied)

21. It is worthy to mention here that Clause 10 of the Letters Patent establishing the Lahore High Court (which is applicable to the Hon'ble Punjab and Haryana High Court) is in pari materia with Clause 15 of the Letters Patent of the Chartered High Courts. The four-Judge Bench, in South Asia Industries (P) Ltd. v. S.B. Sarup Singh [South Asia Industries (P) Ltd. v. S.B. Sarup Singh, (1965) 2 SCR 756 : AIR 1965 SC 1442] , speaking through Subba Rao, J. (as his Lordship then was) referred to Clauses 10 and 11 of the Letters Patent and, in that context, ruled: (AIR p. 1445, para 5)

“5. ... A plain reading of the said clause indicates that except in the 3 cases excluded an appeal lay against the judgment of a Single Judge of the High Court to the High Court in exercise of any other jurisdiction. As the clause then stood, it would appear that an appeal lay against the judgment of a Single Judge of the High Court made in exercise of second appellate jurisdiction without any limitation thereon. The effect of the amendment made in 1928, so far as is relevant to the present enquiry, is the exclusion of the right of appeal from a judgment passed by a Single Judge sitting in second appeal unless the Judge who passed the judgment grants a certificate that the case is a fit one for appeal.”

(emphasis supplied)

The Court in the said case after referring to number of authorities also observed: (AIR p. 1447, para 11)

“11. ... A statute may give a right of appeal from an order of a tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the powers conferred on it under Section 108 of the Government of India Act, 1915, an appeal under Section 39 of the Act will be heard by a Single

Judge. Any judgment made by the Single Judge in the said appeal will, under Clause 10 of the Letters Patent, be subject to an appeal to that Court. If the order made by a Single Judge is a judgment and if the appropriate legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a Single Judge under Clause 10 of the Letters Patent to the High Court. It follows that, if the Act had not taken away the letters patent appeal, an appeal shall certainly lie from the judgment of the Single Judge of the High Court.”

(emphasis supplied)

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*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* does not render any assistance to the argument advanced by the learned counsel for the respondent State.”*

(emphasis supplied)

6. Therefore, a bare reading of the above makes it clear that the true element of an appeal is determined the nature of relief sought. What falls for consideration before us is whether the issue of grant of parole for the purpose of filing an SLP would deem the relief to be of a criminal nature or of a civil nature. Since the appeal would be to challenge the finality, as

achieved, in the criminal proceedings, the appeal would keep such a finality in abeyance, thus, the relief sought would be criminal in nature. It is trite that a Letters Patent Appeal cannot sustain against such a relief which has contours of criminal nature.

7. Similar view was taken by a division bench of this court in ***Vikas Yadav v. State (NCT of Delhi)***, (2015) 150 DRJ 607 (DB).

8. In view of the aforesaid decision and also looking to the nature of the writ petition preferred by this appellant in W.P.(CrI.) No.3506/2019, and looking to the relief sought therein, it is connected with criminal jurisdiction hence this Letters Patent Appeal is not tenable in law.

9. Looking to the writ petition preferred by this writ petitioner, the prayer in the writ petition reads as under:

*“a) Issue appropriate Writ for directing the respondent to release the petitioner on parole for a period of two months in FIR no.180/2012, P.S. Maurya Enclave, U/s. 302/201/364/120B/34 IPC or
b) Pass any other or further order/ orders which this Hon'ble court deems fit in the interest of justice.”*

10. Thus, as per facts, circumstances, judicial pronouncements and also looking to the nature of the writ petition preferred by this appellant, and looking to the prayer in the writ, this Letters Patent Appeal is not tenable in law.

11. Hence, this Letters Patent Appeal is dismissed.

CHIEF JUSTICE

FEBRUARY 12, 2020
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C.HARI SHANKAR, J