

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**HON'BLE JUSTICE SUBRATA TALUKDAR
AND
THE HON'BLE JUSTICE KESANG DOMA BHUTIA**

**MAT 993 of 2021
With
IA No. CAN1 of 2021
With
MAT 970 of 2021
With
IA No. CAN1 of 2021
With
MAT 840 of 2021
With
CAN1 of 2021**

**Suparna Kanjilal Chakraborty
vs.
Suvendu Adhikari and Ors.**

With

**State of West Bengal
vs.
Suvendu Adhikari and Ors.**

With

**State of West Bengal
vs.
Chanchal Nandi and Ors.**

For the Appellant
In MAT 993 of 2021

: Mr. Debasish Roy
Mr. Jaydeep Biswas
Mr. Ayan Bhattacharya
Mr. Arnab Basu Mullick

For the State	:	Mr. Vikash Singh
In MAT 993 of 2021		Mr. Siddharta Luthra
And for the Appellant in		Mr. Anirban Roy
MAT 970 of 2021 and		Mr. Raja Saha
In MAT 840 of 2021		Mr. Suddhadeb Adak
		Mr. Asif Ahmed
		Mr. Aditya Raju
		Mr. Debashis Ghosh
For the Respondent No.1	:	Mr. Paramjit Singh Patwalia
In both MAT 993 of 2021		Mr. Rajdeep Majumder
MAT 970 of 2021		Mr. Billwadal Bhattacharyya
and in MAT 840 of 2021		Mr. Sourav Chatterjee
		Mr. Kallol Mondal
		Mr. Moyukh Mukherjee
		Mr. Harshika Verma
		Mr. M. Hasija
		Mr. Anish Kumar Mukherjee
		Mr. Soumya Nag
		Ms. Soumsree Chatterjee
For the CBI	:	Mr. Y.J. Dastoor
		Mr. Phiroze Eduji
		Mr. Samrat Gosami

Heard on : 04/10/2021

Judgment on : 17/11/2021

Subrata Talukdar, J:

The above noted analogous appeals have been preferred against a common order dated 6th of September, 2021 in the writ petition, being WPA 11803 of 2021, passed by the Hon'ble Single Bench.

The Writ Petitioner in WPA 11803 of 2021, *i.e.* the Writ petition on which the common order dated 6th September, 2021 of the Hon'ble Single Bench came to be passed, is the Respondent No.1 in two of the above noted

analogous appeals being MAT 993 of 2021 and MAT 970 of 2021(respectively *MAT-I* and *MAT-II*). The writ petitioner is a political leader presently owing allegiance to a political party which is in opposition to the present ruling party of the State. The writ petitioner originally owed allegiance to the present ruling party and, *inter alia*, alleges that upon shifting his allegiance to the party presently in the opposition, at least six First Information Reports(FIRs) have been filed against him in four different police stations of the State. The writ petitioner alleges victimization and harassment by the State machinery as a counterblast to the change in his political allegiance.

The prayers in the writ petition are primarily protection from the vexatious criminal proceedings launched against the Writ petitioner and, in the alternative, since the writ petition has lost faith in the impartiality of the State machinery, to transfer investigation of the FIRs registered against him to the Central Bureau of Investigation (CBI).

By the order impugned, the Hon'ble Single Bench was pleased to notice and record the details of the FIRs pleaded in the writ petition. Upon recording the details, the Hon'ble Single Bench found the writ petition to be maintainable and, was *prima facie* satisfied that in the series of FIRs complained of in the writ petition, the State machinery acted over-zealously and maliciously. Upon further recording of reasons for its *prima facie* satisfaction, the Hon'ble Single Bench was pleased to observe that the writ petitioner deserves invocation of his rights under Article 21 of the

Constitution of India for protecting him from implication in false criminal cases.

Accordingly, the Hon'ble Single Bench was pleased to direct as follows:

“There shall be a stay of proceedings in respect of the Contai Police Station Case No. 248 of 2021 dated July 7, 2021 and the Nandigram Police Station Case No. 110 of 2021 dated March 18, 2021. The investigation into the other two Police Station cases i.e. Manicktala Police Station Case No. 28 of 2021 dated February 27, 2021 and Tamruk Police Station Case No. 595 of 2021 dated July 19, 2021, the investigation may go on but no coercive action shall be taken against the petitioner. The petitioner shall cooperate in the investigations. Panskura Police Station Case No. 375 of 2021 and 376 of 2021 shall also remain stayed. The State shall furnish information as regards any further FIR registered against the petitioner. The State shall also obtain leave of this Court before 20 arresting the petitioner or taking with any coercive action against the petitioner in all such cases. The Investigating Authorities shall, as far as possible, considering the public responsibilities of the petitioner, accommodate him, if he is required to give any statement, from a place and time convenient to him. Learned Advocate General prays for stay of operation of the aforesaid order Considering the entire facts and circumstances of the case, the prayer for stay is considered and refused. Let affidavit-in-opposition be filed within a period of four weeks from date. Reply, if any, be filed within a period of two weeks thereafter. Liberty to mention after completion of pleadings.”

The appellants in the appeals, being respectively first the *de facto* complainant in one of the FIRs (MAT 993 of 2021) and the State of West Bengal represented by its prosecuting arm (MAT 970 of 2021) and (MAT 840 of 2021 – MAT-III), came under the legal obligation to answer the *demurrer* raised by Mr. Patwalia, Learned Senior Counsel appearing for the writ petitioner/ the respondent No.1, challenging the maintainability of the intra-Court appeals.

Accordingly, the task of this Court has been prioritised to first address the point of *demurrer* and hence the maintainability of the appeals.

Mr. Patwalia, foundationally relies on the law unambiguously laid down *In Re: Ram Kishan Fauji Vs. State of Haryana and another*, (2017) 8 SCC 833) to contend that appeals of the present *ilk* cannot be filed within the same Court before a Hon'ble Division Bench from the order of the Hon'ble Single Bench.

The principal arguments may be summarised as follows:

First, connected to orders pertaining to criminal jurisdiction no intra-Court appeal lies.

Second, such intra-Court appeals are barred by the *Letters Patent* constituting the particular High Court.

Third, the interpretation on the exercise of criminal jurisdiction would turn on the nature of the reliefs granted and, not on the character of the Learned Tribunal granting such reliefs.

Fourth, only in the event by legislative *fiat* specific provisions of the Letters Patent are modified, the embargo on filing of intra-Court appeals can be lifted. In the absence of any legislation to the contrary, the embargo on filing intra-Court criminal appeals imposed by the Letters Patent would remain.

Learned Senior Counsel for the respondent No.1/ the writ petitioner copiously relies on several paragraphs of *In Re: Ram Kisan Fauji* to impress

the sense of the facts involved in the present batch of appeals. This Court would therefore find it useful to quote the relevant paragraphs in detail for giving a shape to the facts which are presently under consideration.

The relevant paragraphs of *In Re: Ram Kishan Fauji*, reported in (2017) 5 Supreme Court Cases 533 read as follows:

“8. Questioning the sustainability of the order passed by the Division Bench, Dr. Rajeev Dhawan, learned senior counsel, has raised a singular contention that the LPA preferred before the Division Bench was not maintainable inasmuch as the learned Single Judge had exercised criminal jurisdiction. He has placed reliance on certain authorities to which we shall refer to at the relevant place in the course of our deliberations.

*9. Mr. Sanjay Kumar Visen, learned counsel appearing for the respondent State, resisting the aforesaid submission, would contend that the writ petition was registered as a civil writ petition for the purpose of issuing a writ of certiorari and the exercise of jurisdiction by the High Court is civil in nature and, therefore, the jurisdiction exercised is civil jurisdiction that invites interference in intra-court appeal. That apart, contends Mr. Visen that the exercise of power of the learned Single Judge is strictly under [Article 226](#) of the Constitution of India and, hence, an intra-court appeal deserved to be entertained by the Division Bench. It is further submitted by him that the Lokayukta is a quasi-judicial body and when, at its instance, action is taken for inquiry, it has to come within the ambit and scope of civil jurisdiction and not criminal jurisdiction. Learned counsel for the State has stressed on the status of Lokayukta and for that matter has commended us to the authority in *Justice Chandrashekaraiiah (Retd.) v. Janekere C. Krishna & others*.*

16. The maze needs to be immediately cleared. In the instant case, we are really not concerned with the nature of the post held by Lokayukta or Upa-Lokayukta. We are also not concerned how the recommendation of the said authorities is to be challenged and what will be the procedure therefor. As has been held by this Court, neither the Lokayukta nor Upa-Lokayukta can direct implementation of his report, but it investigates and after investigation, if it is found that a public servant has committed a criminal offence, prosecution can be initiated.

17. Having discussed as aforesaid, at this juncture, reference to Clause 10 of the Letters Patent (as applicable to erstwhile Punjab & Lahore High Courts) is absolutely apposite. It reads as follows:-

“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 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 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.

18. 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.

22. From the aforesaid authority, two aspects are absolutely clear. First, where an appeal is not excluded against the judgment of the High Court of a Single Judge, an appeal would lie to the Division Bench and second, if the appropriate Legislature has expressly or by necessary implication not taken away a right of appeal, the appeal shall lie from the Single Judge under Clause 10 of the Letters Patent to the High Court.

26. The purpose of referring to this judgment is that till a competent legislature takes away the power of the Letters Patent, the same can be exercised by the High Court. However, while exercising the power under the Letters Patent, it is imperative to see what is the nature of jurisdiction that has

actually been provided in the Letters Patent. The exercise of jurisdiction has to be within the ambit and scope of the authority enshrined in the provision meant for intra-court appeal.

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.

41. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of 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.

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 and others](#)[30]. 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 Indian Penal Code against the writ petitioner in FIR Nos. 14/97, 137/97 and 77/97 as illegal and to quash the same. The learned Single Judge had allowed the writ petition by order dated 06.08.1997 and quashed the FIRs. The order passed by the learned Single Judge was assailed by the 7th respondent in intra-court appeal. The Full Bench posed the following question:-

"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."

56. As we find from the decisions of the aforesaid three High Courts, it is evident that there is no disagreement or conflict on the principle that if an appeal is barred under Clause 10 or Clause 15 of the Letters Patent, as the case may be, no appeal will lie. The High Court of Andhra Pradesh, however, has held that when the power is exercised under [Article 226](#) of the Constitution for quashing of a criminal proceeding, there is no exercise of criminal jurisdiction. It has distinguished the proceeding for quashing of FIR under [Section 482](#) CrPC and, in that context, has opined that from such an order, no appeal would lie. On the contrary, the High Courts of Gujarat and Delhi, on the basis of the law laid down by this Court in *Ishwarlal Bhagwandas* (supra), have laid emphasis on the seed of initiation of criminal proceeding, the consequence of a criminal proceeding and also the nature of relief sought before the Single Judge under [Article 226](#) of the Constitution. 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 consequence. 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 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.

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.

63. Consequently, the appeal is allowed and the impugned order is set aside. However, liberty is granted to the State to challenge the order of the learned Single Judge. There shall be no order as to costs.”

The above referred paragraphs, out of a total of 63 paragraphs of *In Re: Ram Kishan Fauji*, to the mind of this Court, act as the appropriate signage guiding this set of judicial traffic amply buttressed by reported authorities. Mr. Patwalia argues that the facts involved in the present appeals are *apropo* the facts *In Re: Ram Kishan Fauji (supra)*. It is submitted that it would be evident from the pleadings and the discussion by the

Hon'ble Single Bench in the order impugned dated 6th of September 2021 that the primary nature of the reliefs granted to the writ petitioner under challenge in these appeals is in exercise of criminal jurisdiction. As provided by the Letters Patent and noticed *In Re: Ram Kishan Fauji*, it is no more *res integra* that the exercise of criminal jurisdiction can be subjected to an intra-Court appeal.

It is submitted that the prayer for transfer of investigation to the CBI is an alternate prayer which is not part of the reliefs granted in the writ petition at this stage. Mr. Patwalia then proceeds to distinguish the decision of a Hon'ble Division Bench of this Court *In Re: Director General of Police Versus Gopal Kr. Agarwal*, MAT 318 of 2019 with MAT 353 of 2019 (2020 SCC Online Calcutta 755). Pointed reference has been made to Paragraphs 14, 15, 16, 22, 23 and 28 of *In Re: Gopal Kr. Agarwal*.

The aforesaid paragraphs read as follows:-

“14. We have carefully considered the submissions made by the Learned Senior Counsel for the respective parties on the point of maintainability of these two intra court appeals. The short question is whether or not the Learned Single Judge passed the impugned order in exercise of criminal jurisdiction.

15. In the present case, a criminal case was instituted on the complaint of the writ petitioner (who is the respondent no.1 in MAT 318 of 2019 and hereinafter referred to as 'Gopal') against the appellant (hereinafter referred to as 'Manoj') in MAT 353 of 2019. Criminal investigation started. Being aggrieved by and dissatisfied with the manner in which the investigation was proceeding, Gopal approached the Learned Single Judge by filing an application under [Article 226](#) of the Constitution of India praying for change of the investigating agency. According to him, the investigation was being done in a biased manner to protect Manoj for the reasons alleged by him in the writ petition. The Learned Single Judge was of the opinion that there was

substance in Gopal's contention and accordingly directed substitution of CBI as the Investigating Authority in the place and stead of CID.

16. In his writ petition, Gopal did not pray for quashing of the criminal proceedings and naturally so because he is the de-facto complainant. Nor did Gopal pray for an order for initiation of a criminal proceeding since the criminal proceeding already stood initiated. The order of the Learned Single Judge which is impugned before us neither had the effect of causing initiation of a criminal proceeding nor had the effect of quashing or terminating a criminal proceeding. The Learned Judge was of the view that the investigation was not being conducted in a proper manner and accordingly directed change of the investigating agency. This, in our considered opinion, did not amount to exercise of criminal jurisdiction by the Learned Single Judge.

22. The facts in the case of Ram Kishan Fauji (supra) are different from the facts in the present case. In that case the Learned Single Judge's order had a consequence which was clearly criminal in nature. The Learned Single Judge opined that the recommendation of the Lokayukta for registration of FIR against Ram Kishan Fauji deserved to be quashed and accordingly quashed the same and also quashed all actions taken pursuant to such recommendation including the FIR. This led to the termination of the criminal proceeding. In the present case, the impugned order of the Learned Single Judge does not have any such consequence. Neither the impugned order was the reason for initiation of criminal proceeding nor for termination of any criminal proceeding. In our view, the Learned Single Judge merely upheld the civil right of the writ petitioner (Gopal) to have a fair and impartial investigation conducted in connection with the alleged unnatural death of his sister, as was claimed by him. No point of criminal law was decided by the Learned Single Judge. The impugned order cannot be said to have been passed in criminal domain. We are in respectful agreement with the ratio decidendi of the decisions of the Division Bench of the Gujarat High Court and the Full Bench of the Delhi High Court which were approved by the Hon'ble Supreme Court in the case of Ram Kishan Fauji (supra), as mentioned above. Reading the Hon'ble Supreme Court's decision in the case of Ram Kishan Fauji (Supra) as a whole, we cannot accept the contention of Learned Senior Counsel representing Gopal (writ petitioner) that if the High Court in exercise of power under [Article 226](#) of the Constitution passes an order which has even the remotest connection with a

criminal case, then the order must be said to have been passed in exercise of criminal jurisdiction, notwithstanding that the order by itself does not have any criminal consequence in the sense that it neither directs initiation of a criminal proceeding which may have penal consequences for the accused person, nor it directs quashing or termination of a criminal proceeding thereby relieving the accused person of possible penal consequences. In our considered view, the decision in Ram Kishan Fauji (supra) does not advance the case of the writ petitioner on the point of maintainability of these appeals.

23. In this connection it may also be noted that the Hon'ble Supreme Court in Ram Kishan Fauji (supra) at Paragraph 42 of the Judgment observed, inter alia, that: "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." In our understanding, in the facts of the present case, the Learned Single Judge was exercising civil jurisdiction under [Article 226](#) of the Constitution and not criminal jurisdiction.

28. For the aforesaid reasons we hold that the present appeals are maintainable and not barred by Clause 15 of the Letters Patent, 1865."

It is hence submitted that since the alternate prayer for transfer of investigation to the CBI was not considered by the order dated 6th of September 2021, the nature of the reliefs granted by the Hon'ble Single Bench granting interim protection to the writ petitioner *qua* the FIRs registered against him being in the nature of exercise of criminal jurisdiction by the Hon'ble Single Bench, the ratio of *In Re: Ram Kishan Fauji* shall squarely apply.

Mr. Patwalia also relies upon the authority of *In Re: K.N. Pudur, 2018 SCC online Madras 13542*, to fortify his arguments.

The *ad interim* order of the Hon'ble Apex Court *In Re: Anup Majee Versus The Central Bureau of Investigation & Ors. in Special Leave to Appeal*

(Crl.) No(s). 1620-1621/2021 dated 22-02-2021, is also produced to assert the correctness of the law holding the field as laid down *In Re: Ram Kishan Fauji*.

Per Contra, Mr. Siddharth Luthra, Learned Senior Counsel appearing for the appellant, the State of West Bengal in *MAT-II* (MAT 970 of 2021), submits that the reliefs granted by the Hon'ble Single Bench are way beyond pleadings and blanket in nature. It is submitted that the issue in these appeals is not an issue of exercise of criminal or other jurisdiction but an issue of the Hon'ble Single Bench having no jurisdiction at all to act in the manner it has, granting sweeping reliefs.

It is submitted that the writ petitioner/ the respondent No.1 is not named in the FIRs connected to MAT 970 of 2021. Therefore, there could be no question of the writ petitioner/the respondent No.1 harbouring any apprehension as sought to be made out invoking the Writ Jurisdiction of the Court. Axiomatically therefore, there is improper exercise of jurisdiction in a vacuum by the Hon'ble Single Bench.

Mr. Luthra reiterates the position that primarily the grounds made out in the writ petition relate to transfer of investigation to the CBI. Therefore, the basis of the present intra-Court appeals should be assessed on such a premise. The anticipated relief granted by the Hon'ble Single Bench *qua* any future FIR if filed against the writ petitioner/ respondent No.1, is again in exercise of an unborn jurisdiction.

It is submitted that the reliance *In Re: Ram Kishan Fauji* is misconceived. It is pointed out that MAT 970 of 2021 is thus maintainable. The authority of 2021) SCC Online Madras 2367 is produced in support of his arguments by Learned Senior Counsel.

Mr. Vikash Singh, Learned Senior Counsel also appearing for the State appellants in MAT 970 of 2021 with MAT 840 of 2021, places particular reliance on the reported authorities of *In Re: Lalita Kumari Versus Government of Uttar Pradesh and Others* reported in (2014) 2 Supreme Court Cases 1 and *In Re: Neeharika Infrastructure Pvt. Ltd. Versus State of Maharashtra and Others* reported in 2021 SCC OnLine SC 315.

It is submitted that at *Paragraphs 45 and 80* of *In Re: Neeharika*, the principles of intervention by the Hon'ble Court in cases of this type have been laid down. It is pointed out that intervention can happen only in the rarest of cases. It is submitted that the Hon'ble Single Bench has granted blanket anticipated reliefs *qua non-existent future* FIRs. Such an exercise can and must be interdicted in these intra-Court appeals, since wrongful assumption of jurisdiction is not the same as jurisdiction irregularly exercised.

Arguing for the appellants/ the *de facto* complainant in MAT 993 of 2021, Mr. Debasis Roy, Learned Counsel, submits that the order impugned is based on surmise since the writ petitioner has been unable to make out any case of his being the named accused in the FIR connected to MAT 993 of 2021. It is not possible to speculate the outcome of the investigation. The Hon'ble Single Bench granted sweeping interim protection to the writ

petitioner/ the respondent No.1 acting on speculation and surmise. The *prima facie* conclusion drawn by the Hon'ble Single Bench of false implication of the writ petitioner/ the respondent No.1 in the FIR in issue in this appeal, is an instance of judicial overreach which can be corrected in an intra-Court appeal.

Mr. Roy contends that it is the adjudicating Court which can take the call whether the reliefs claimed are of a nature which automatically render the intra-Court appeal to be non-maintainable. Learned Counsel points out that the application of the Letters Patent should be considered not unilaterally but, in the context of the Appellate Side Rules guiding Writ proceedings.

Having heard the parties and having considered the materials placed, this Court arrives at the following findings:-

- A)** That the primary reliefs granted by the Hon'ble Single Bench pertain to the exercise of Criminal Jurisdiction;
- B)** That the alternate relief of transfer of investigation to the CBI has not been considered on merits at this stage by the Hon'ble Single Bench;
- C)** That the ratio of *In Re: Ram Kishan Fauji* applies *apropo* the facts of this case.
- D)** That the Letters Patent of the High Court at Calcutta hence act as a bar to filing an intra-Court appeal.
- E)** That the ratio of *In Re: Gopal Kumar Agarwal* rests on the point of grant of the relief of transfer of investigation and, such relief

being alternate and not under consideration by the impugned order, is hence not *apropo* the present factual scenario.

F) This Court has considered the *demurrer* on the touchstone of the nature of the jurisdiction exercised by the Hon'ble Single Bench and, not on the composition of the Hon'ble Single Bench sitting in Article 226 jurisdiction, by following the law laid down *In Re: Ram Kishan Fauji*.

In the backdrop of the above discussion and findings, this batch of analogous intra-Court appeals are held to be not maintainable.

Parties are at liberty to apply before the appropriate forum/Court.

All points on merits are left open to be decided by the appropriate forum/Court.

MAT 993 of 2021 with IA No. CAN 1 of 2021 with MAT 970 of 2021 with IA No. CAN 1 of 2021 with 840 of 2021 with CAN 1 of 2021 stands accordingly **disposed of**.

There will be, however, no order as to costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities

I agree.

(Kesang Doma Bhutia, J.)

(Subrata Talukdar, J.)