

NAFR

HIGH COURT of CHHATTISGARH, BILASPUR**WA No. 85 of 2021**

{Arising out of Order dated 03/03/2021 passed in Writ Petition(Cr) No. 152 of 2021 by the learned Single Judge}

1. Kunti Bai Markande W/o Shankar Dayal aged about 34 years
2. Tularam Jangde S/o Chandram Jangre aged about 46 years

Both are R/o Village Dodopar Thana City Kotwali Balodabazar Bhatapara
C.G. **-----Appellants**

VERSUS

1. State of Chhattisgarh through the Secretary, Department of Home, Mahanadi Bhawan, Atal Nagar, Raipur District Raipur Chhattisgarh.
2. The Director General of Police, Police Head Quarter, Raipur district Raipur Chhattisgarh
3. Superintendent of Police, Balodabazar, Bhatapara, Office of Superintendent of Police, District Balodabazar-Bhatapara, Chhattisgarh
4. The Station House Officer, City Kotwali, Balodabazar, district Balodabazar-Bhatapara Chhattisgarh
5. Public Prosecutor, Sessions' Court Balodabazar, Tahsil Balodabazar District Balodabazar-Bhatapara Chhattisgarh.

-----Respondents

For Appellants	: Mr. N.K. Malviya, Advocate.
For Respondent-State	: Mr. Vikram Sharma, Dy. Govt. Adv.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per the Chief Justice.

15/03/2021

1. This appeal has been preferred against the order dated 03.03.2021, passed by learned Single Judge, whereby the prayer to grant interim stay in respect of proceedings of the Sessions Trial No. 10/2021 pending before the Sessions Court, Balodabazar has been turned down. The appellants approached this Court by filing writ petition with the following prayers:

“10. Relief(s) Sought:-

10.1 The Hon'ble Court may kindly be pleased to suitably direct the appropriate Authorities for further investigation of the matter in pursuant of FIR no. 454/20 lodged on 16.7.2020 at Police Station, City Kotwali, Baloda Bazar and also aggrieved with the

Final Report filed commission of offence U/s 294, 324, 506, 302 of the I.P.C. by the prosecution in Criminal Case no. 503/2020 later on it is committed as ST. no. 10/21.

10.2 Further, the Hon'ble court may kindly be pleased to direct the Respondent authority to implede 1. Loknath Bandhe, 2. Jaikishan Bandhe, 3. Dayaram Bandhe @ Subelal Bandhe [Constable], 4. Hemant Kumar Bandhe, 5. Lekhrum Sonwani, 6. Shashi Kumar Jandge, 7. Chotu @ Chote Jandge, as co-accused in instant case by filing additional Final Report.

10.3 Any other relief, order/ direction may be pleased to issue in the facts and circumstances of the case including imposing costs."

2. The interim relief sought for, is as extracted below:

"It is therefore prayed that Hon'ble Court may kindly be pleased to stay further proceedings of Session Trial no. 10/21 pending before Sessions' Court Balodabazar until decision of the case."

3. The matter was considered and the learned Single Judge declined to grant interim order /stay, as per order under challenge, which is to the following effect:

"...No case for staying the further proceedings of the Sessions Trial No.10/2021 pending before the Sessions Court, Baloda Bazar is made out.

Accordingly, IA No.1/2021 is rejected."

4. Heard the learned counsel for the appellants in detail.
5. Right of appeal is a statutory right in terms of Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006, which is to the following effect:

"2. Appeal to 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."

By virtue of the proviso to Section 2 as above, it has been categorically stated that no appeal will lie against an interim order. The order under challenge is only an interim order and the main matter is pending consideration before the learned Single Judge.

6. Learned counsel for the appellants, however, submits that the scope of the said 'proviso' has already been considered by a Full Bench of this Court as per the decision rendered in Writ Appeal No. 255 of 2016 (*Ajay Gupta v. State of Chhattisgarh and others*) and hence the appeal is maintainable in terms thereof. We have gone through the said verdict, the operative portion of which, as contained in the last paragraph, is to the following effect.

“In view of the majority judgment rendered, the question referred to the Full Bench is answered in the following terms:

‘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.’”

7. Even a casual reading of the said verdict clearly reveals that an appeal will lie against an interim order only if the interim order is having any finality with regard to the *lis* involved. Granting of stay or refusal of stay is an interlocutory measure with respect to main relief prayed for. Hence, it cannot be said that the issue has been finally adjudicated by the learned Single Judge so as to make it within the purview of Section 2 of the Chhattisgarh High Court (Appeal to Division Bench)

Act, 2006.

8. In the said circumstance, we are of the firm view that the appeal is not maintainable.
9. Learned counsel for the appellants, however, submitted that the trial might be ordered to be finalized within a specified time, in accordance with law. This is a matter which can be brought to the notice of the learned Single Judge where the writ petition is pending.

The appeal stands dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

Pawan