

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Krishna Rao**

**MAT 693 of 2021
With
IA No. CAN 1 of 2021
Kamal Chandra @ Chanda
Versus
The State of West Bengal & Ors.
With
MAT 732 of 2021
With
IA No. CAN 1 of 2021
State of West Bengal & Ors.
Versus
Gobinda Hazra & Anr.**

Mr. Ayan Bhattacharjee
Mr. Pawan Kumar Gupta
Ms. Sofia Nesar
Mr. Santanu Sett
Mr. Som Dev Ash

.....For the Appellant

Mr. Rajdeep Mazumder
Mr. Mayukh Mukherjee
Ms. Aishwarya Bazaz

.....For the Respondent/Writ Petitioner
in both the appeals

Mr. Sayak Chakraborty

.....For the State

Heard on : 22.04.2022 & 29.04.2022

Judgment on : 22.12.2022

Krishna Rao, J.:-

The de-facto complainant in connection with Liluah Police Station Case No. 213 of 2021 dt. 05.06.2021 under Section 420/406 of the Indian Penal Code, 1860 as well as the State of West Bengal have preferred the above appeals against the order passed by the Learned Single Judge in WPA No. 11326 of 2021 with CAN 1 of 2021 (Gobinda Hazra vs. State of West Bengal & Ors.) dt. 19.07.2021 wherein the Learned Single Judge had passed the following order :

“In view of the above, this Court is of the view that the cases registered against the petitioner after January, 2021, more fully set out in the 3rd paragraph hereinabove, shall remain stayed until disposal of the writ petition.

Since the proceedings have been stayed and there is no need for interrogation of the petitioner and consequently no need for custody, the petitioner shall be entitled to be enlarged on bail.

It is made clear that the petitioner shall not in any way influence any witness or tamper with any of the evidence that are likely to be material to the pending cases against him.

The State and other respondents may use affidavit-in-opposition within a period of three weeks from date. Reply, if any, be filed within a period of two weeks thereafter.

Liberty to mention for early hearing after completion of pleadings.”

The respondent/ writ petitioner has taken a preliminary objection with regard to maintainability of the appeals on the ground that the nature of relief granted to the writ petitioner which is under challenge in the instant appeals is in the nature of exercise of criminal jurisdiction and as such the instant appeal is not maintainable before this Court.

Mr. Ayan Bhattacharjee, Learned Counsel appearing for the appellant submits that the writ petitioner has neither prayed for quashing of the criminal proceeding nor the writ petitioner has prayed for any order for

initiation of the criminal proceeding since, the criminal proceeding already initiated.

Mr. Bhattacharjee further submits that the writ petitioner filed the writ petition challenging that the investigation was not been conducted in a proper manner and prayed for change of Investigating Agencies.

Mr. Bhattacharjee draws the attention of this Court to the prayer of the writ petition and submits that in none of the prayer, the writ petitioner has prayed for quashing of the proceedings initiated against the writ petitioner and for discharging of the writ petitioner from the said case.

Mr. Bhattacharjee further submits that in prayer (c) of the writ petition, the writ petitioner has only prayed for quashing of any decision arrived by the authorities continuing with the perfunctory investigation of the criminal cases initiated against the writ petitioner and it cannot be said that the writ petitioner has prayed for quashing criminal proceeding.

Mr. Bhattacharjee also submits that the main prayer of the writ petitioner is for transferring of the investigation to the Central Bureau of Investigation. Mr. Bhattacharjee draws the attention of this Court with regard to the averments made in paragraph 10 of the writ petition and submits that the main contention of the writ petitioner, the fundamental right of the writ petitioner as enshrined under the Constitution of India has been blatantly infringed by the Police Authority.

Learned Counsel for the appellant has relied upon the judgement reported in (2017) 5 SCC 533 and submits that the tenability of Intra Court Appeal will depend upon the Bench adjudicating the relief as to how it

understands and appreciate the order passed by the Learned Single Judge and there cannot be any straightjacket formula for the same.

Mr. Bhattacharjee further submits that change of Investigating Authority in exercise of power under Section 226 of the Constitution of India cannot be said to be an order passed under a criminal jurisdiction.

Mr. Bhattacharjee submits that quashing of FIR and the criminal proceeding relating to termination of the criminal proceeding can be said to be an order passed in the criminal jurisdiction. However, in the instance case, neither there is any prayer for quashing of the FIR or termination of the criminal proceeding.

Mr. Bhattacharjee points out that in the writ petition, the writ petitioner primarily prays for protection from the vexatious criminal proceeding initiated against the writ petitioner and in the alternative since, the writ petitioner has lost faith in the impartiality of the State machinery, to transfer investigation of the FIR against the writ petitioner to the Central Bureau of Investigation.

Per contra, Learned Counsel for the respondent/writ petitioner submits that in prayer (c) of the writ petition, the respondent/writ petitioner has prayed for quashing any decision taken by the respondent authority nos. 1 to 4 in continuing with the perfunctory investigation of the criminal case as referred in para (9) of writ petition. From the said prayer itself, it reveals that the writ petitioner has prayed for quashing of the proceeding and as such the instant appeal is not maintainable.

The Counsel for the respondent/writ petitioner has further submitted that in the impugned order dt. 19.07.2021, the Learned Single Judge had

stayed all criminal proceedings against the writ petitioner till the disposal of the writ petition and also stayed the interrogation and custody of the petitioner which also indicates that the Hon'ble Single Judge has passed the impugned order by invoking criminal jurisdiction.

Mr. Mazumder, Learned Counsel appearing for the respondent/writ petitioner, submits that if prayer (c) of the writ petition and the impugned order are read together it shall be established that the Learned Single Judge has passed the order invoking the criminal jurisdiction and as such the appellant cannot prefer an Intra-Court appeal before this Court.

Mr. Mazumder further submits that as the impugned order passed by the Learned Single Judge by invoking the criminal jurisdiction and as such Intra Court appeals are barred by the Letters Patent constituting the particular High Court.

Heard, the Learned Counsel for the respective parties and perused the materials on record. Clause 10 of the Letters Patent 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.”

On perusal of Clause 10 of the Letters Patent, it is clear that no appeal lies against the order passed by the Learned Single Judge in exercise of criminal jurisdiction.

In terms of the Clause 10 of the Letters Patent, 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 2nd, if, the appropriate legislature as expressly or by necessary implication not taken away the right of appeal, the appeal shall lie from the Single Judge under Clause 10 of the Letters Patent to the High Court.

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 provisions meant for Intra-Court appeal.

As far as the criminal proceeding is concerned, it is clearly stipulated that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in a position of (i) sentence and (ii) it can take within its ambit in larger interest of the State, orders to prevent apprehended breach of peace, an order to bind down persons who are danger to the maintenance of peace and order. The Hon'ble Supreme Court has ruled that the character of the proceedings 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.

The prayers in the writ petition are as follows:

“a) Issue writ of or in the nature of mandamus commanding the respondents and their men and agents and assigns, more specifically Respondents no. 1-4 to show cause as to why the investigations in connection with the FIRs as mentioned in paragraph 9, and further FIRs which have been instituted against the petitioner herein, or which he is not aware of should not be transferred to the Respondent no. 5, Central Bureau of Investigation and upon hearing the cause, transfer the said cases to the Respondent no. 5 Central Bureau of Investigation;

b) Issue writ of or in the nature of mandamus commanding the respondents and their men and agents and assigns, more specifically Respondents no. 1-4 to submit a report before This Hon’ble Court thereby disclosing the number of criminal cases which are pending against him, till the date of hearing of the instant writ application;

c) Issue a writ of or in the nature of certiorari, directing the respondents no. 1-4 to immediately and/or forthwith transmit the records pertaining to the instant cases as referred to in paragraph 9 before This Hon’ble Court so that consonable justice may therein be administered by quashing any decision arrived at by the respondent authorities 1-4 in continuing with the perfunctory investigations of the criminal cases as referred to in paragraph 9 as well as further cases in as well as in order to transfer the aforesaid case to the Respondent no. 5 Central Bureau of Investigation ;

d) Issue rule NISI in terms of prayer (a) and (c) as above and to make the rule absolute if no cause or insufficient cause is shown in reply thereto;

e) To pass an interim order restraining the respondents no. 1-4 from continuing any further with the investigation in connection with criminal cases as referred to in paragraphs 9 of the instant writ application and to release the petitioner from custody in connection with the cases in which the petitioner is arrested as stated in paragraph 9 of the said writ application;

f) To pass an interim order in terms of prayer (b) as above;

g) To pass ad interim orders in terms of prayer (e), and (f) as above;”

The primary relief as prayed for by the writ petitioner are protection from vexatious criminal proceedings initiated against the writ petitioner and in the alternative, since the writ petitioner has lost faith in the impartiality of the State machinery, to transfer investigation of the FIRs registered against the writ petitioner to the Central Bureau of Investigation(CBI).

While passing the order impugned, the Learned Single Judge had noticed and records the details of the FIRs as mentioned in the writ petition and after recording the details, the Learned Single Judge was *prima facie* satisfied that in the series of FIRs which have been initiated against the writ petitioner by the State machinery have been done so maliciously. Learned Single Judge has recorded the reasons for his satisfaction, observed 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.

The Learned Single Judge has passed the following order on 19th July, 2021 which is impugned in the instant appeal:

“This Court has carefully considered the rival contentions of the parties.

This Court is not inclined to interfere with the cases already pending against the petitioner prior to January, 2021. The trial into the pending cases may continue.

The subject matter in issue before this Court are the seven cases registered against the petitioner since January, 2021.

The timing of registration of cases, appears to have uncanny relationship with the switch over of political parties and weeks leading to and post the assembly elections of May, 2021. It is premature to come to any conclusive finding as to whether the registration of cases is tainted by any political or collateral motive and purpose, the allegations cannot be completely brushed aside.

It is indeed not impossible for any person to commit offences since after the change of political colour. However, to allow investigation 7 into 7 successive cases registered within a period of 2½ months against the petitioner, could jeopardize the rights of the petitioner under Article 21 of the Constitution of India.

Counsel for the State submits that investigation has not progressed in the pending cases, since the petitioner is under treatment in the hospital.

This Court is conscious of the fact that the petitioner has a remedy under Section 438 of the Cr.PC. However, given the perceived and expressed threat to Article 21 and allegation of abuse of Police Machinery, this Court is inclined to grant relief to protect guarantees under Article 21 of the Constitution. Freedom and liberty are above all and subject to none.

In view of the above, this Court is of the view that the cases registered against the petitioner after January, 2021, more fully set out in the 3rd paragraph hereinabove, shall remain stayed until disposal of the writ petition.

Since the proceedings have been stayed and there is no need for interrogation of the petitioner and consequently no need for custody, the petitioner shall be entitled to be enlarged on bail.

It is made clear that the petitioner shall not in any way influence any witness or tamper with any of the evidence that are likely to be material to the pending cases against him.

The State and other respondents may use affidavit-in-opposition within a period of three weeks from date. Reply, if any, be filed within a period of two weeks thereafter.

Liberty to mention for early hearing after completion of pleadings.

Learned Advocate General prays for stay of the aforesaid order for a period of seven days. The Prayer is considered and refused.”

Now, the point involved in the present appeal whether the Learned Single Judge has passed the impugned order while exercising Civil Jurisdiction or Criminal Jurisdiction.

As per the submissions made by the Learned Counsel for the appellant that the main contention in the writ petition that the fundamental

right of the writ petitioner as enshrined under the Constitution of India has been blatantly infringed by the Police Authority and in none of the prayers the writ petitioner has prayed for quashing of the proceeding initiated against the writ petitioner by the State Authority. In support of his submissions, Learned Counsel for the appellant has relied upon the following judgments:

- i. (2017) 5 SCC 533 (*Ram Kishen Fauji -vs- State of Haryana & Ors.*)
- ii. 2021(3) AICLR 546 (*The Director General of Police, West Bengal & Ors. -vs- Gopal Kumar Agarwal & Anr.*)
- iii. AIR 2022 Cal 51 (*Suparna Kanjilal Chakraborty -vs- Sevandu Adhikari & Ors.*)
- iv. 2021 Cri LJ 3669 (Mad) (*Home Secretary (Prison IV), Home Department -vs- A. Palaniswamy.*)
- v. 2018 (3) AIR Kar R 67 (*Union of India -vs- Asim Shariff & Ors.*)

While deciding the said issue the Hon'ble Supreme Court in the case of Ram Kishan Fauji (Supra) held that:

“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 (AIROnline 2000AP 15 (FB). 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 :*

“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 the 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 : (AIR 1965 SC 1818), 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 appropo 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 6 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."

Mr. Bhattacharjee has relied upon paragraphs 14,15,16,17,20,21,25 and 26 of the judgment passed by the Coordinate bench of this Court in the case of Gopal Kumar Agarwal (Supra) which read as follows :

“14. *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.*

15. *Criminal jurisdiction of the Calcutta High Court has been defined in Clauses 22 to 29 of the Letters Patent, 1865 which have been adverted to above. On a careful analysis and consideration of the said clauses, it cannot be said that the Learned Single Judge passed the impugned order in exercise of criminal jurisdiction. Further, on the day the Learned Judge passed the impugned order, His Lordship did not have determination to hear or decide a case in criminal jurisdiction. In our opinion, the Learned Judge exercised supervisory jurisdiction under [Article 226](#) of the Constitution of India in directing change of the investigating agency. The criminal investigation was already in progress. The investigation was not initiated as a result of the impugned order.*

16. *A number of decisions of the Hon'ble Supreme Court have been cited before us, which we will refer to later in this Judgment which have laid down that undoubtedly High Courts have power to direct change of investigating authority in exercise of power under [Article 226](#) of the Constitution of India, although such power should be sparingly exercised. We are of the view that in this case the Learned Single Judge exercised such a power. Gopal approached the Learned Single Judge with the grievance that there were loopholes in the process of investigation, deliberately created by the investigating authority to shield Manoj. His contention was that he has a constitutional or civil right to have the investigation conducted in a fair and impartial manner. The Learned Judge accepted such contention and passed the impugned order. The impugned order of the Learned Judge does not by itself have any criminal consequence, be it initiation or termination of a criminal case. Even without the order of the Learned Judge, the criminal case would have proceeded to its logical conclusion. Hence, we are unable to agree with the contention of Mr. Sengupta, Learned Senior Counsel*

representing Gopal, that the impugned order was passed in exercise of criminal jurisdiction and therefore, the present appeals are barred by the provisions of Clause 15 of the Letters Patent, 1865.

17. The fulcrum of Gopal's contention that the appeals are not maintainable is the decision of the Hon'ble Supreme Court in the case of *Ram Kishan Fauji (supra)*. In that case, acting on the reference made by the Chief Secretary to the Govt. of Haryana in exercise of power under Section 8(1) of the Haryana Lokayukta Act, 2002, the Lokayukta of Haryana, after conducting requisite enquiry, recommended registration of FIR against the appellant for offences punishable under the provisions of [Prevention of Corruption Act, 1988](#) and investigation by a senior competent officer of impeccable integrity. This recommendation was challenged by the appellant before the Haryana High Court. The Learned Single Judge quashed the recommendation and all actions taken pursuant to such recommendation. This was carried before the Division Bench by way of an intra-court appeal by the State of Haryana. The Division Bench admitted the Letters Patent Appeal, stayed the operation of the Learned Single Judge's order and with a view to ensuring absolute objectivity in the ongoing investigation and to rule out any possibility of alleged prejudice against the accused, directed the Director General of Police, Haryana to constitute a Special Investigation Team comprising three senior IPS Officers, who originally did not belong to the State of Haryana. This order of the Division Bench was assailed by the appellant before the Hon'ble Supreme Court. The only point that was urged before and considered by the Hon'ble Supreme Court was whether or not the Letters Patent appeal against the Learned Single Judge's order before the Division Bench was maintainable.

20. 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.

21. *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.*

25. *We have no disagreement with the proposition of law propounded in the aforesaid decision. However, in the facts of the present case the order of the Learned Single Judge neither resulted in initiation of the criminal proceeding nor in quashing of a criminal proceeding. The facts of the instant case are different from the facts of the Delhi case discussed above.*

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

Mr. Sayak Chakraborty Learned Counsel representing the State supports the case of the appellant and submits that the appeal preferred by the appellants are maintainable and has relied upon the Judgment reported in 2006 SCC Online P&H 456 (Adhishwar Jain -vs- Union of India and Ors.):

“10. We feel that notwithstanding the fact that the said decision was rendered in the context of a writ petition, wherein an order under the Tenancy Act had been questioned, yet the decision brings into focus the nature of the proceedings under Article 226 of the Constitution. It clearly lays down that when proceedings under Article 226 concern civil rights, these are original civil proceedings falling within the ambit of Clause X of the Letters Patent.

11. Undoubtedly, a detention under the COFEPOSA Act, being purely preventive without any trial in a criminal court, challenge to such detention is for enforcement of a fundamental civil right and therefore, a writ petition under Article 226 for issue of Habeas Corpus in such like matters cannot be considered as proceedings under the criminal jurisdiction, even though the writ petition is identified as a criminal writ under the High Court Rules and Orders.

12. We are, therefore, of the view that in the light of the authoritative pronouncement, the issue raised by learned counsel for the Detaining Authority is no more *res integra*. Consequently, we reject the preliminary objection and hold that an appeal under the Letters Patent is maintainable against the judgment of a Single Judge in the petition, praying for issuance of Habeas Corpus.”

In the present case, the Learned Single Judge while passing the impugned order has invoked the criminal jurisdiction by passing the following order:

- i. Stayed the further proceeding of the criminal case initiated against the writ petitioner till the disposal of the writ application.
- ii. Restrained the police authority for taking the custody of the writ petitioner.
- iii. Restrained the police authority for further interrogation against the writ petitioner.
- iv. Granted bail to the writ petitioner.

The judgment of *Gopal Kumar Agarwal (supra)* is not applicable in the instant case as the facts of the said case are distinguishable from the present case.

In view of the above, this Court is of the considered view that the appeal preferred by the appellants are not maintainable.

MAT No. 693 of 2021 with CAN No. 1 of 2021 and MAT 732 of 2021 with CAN 1 of 2021 stand thus dismissed.

Parties shall be entitled to act on the basis of a server copy of the Judgment 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.

(Subrata Talukdar, J.)

(Krishna Rao, J.)