



W.A.No.2167 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.A.No.2167 of 2022 and CMP.Nos.16145 and 16146/2022

Ajay Kumar Bishnoi

.. Appellant

vs.

1. The Inspector of Police,
J.2 Adyar Police Station,
Dr.Muthulakshmi Road,
Indira Nagar, Adyar,
Chennai-600 020.

2. The Inspector of Police
rep. by the Inspector of Police,
Economic Offence Wing,
Janakpuri Main Road,
Near Janakpuri District Centre,
Janakpuri,
New Delhi, Delhi-110 058.

3.Khusheel International Coatings,
having Office at DDA,
Building District Centre,
Janakpuri, New Delhi-110 058.

.. Respondents



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Writ Appeal filed under Clause 15 of Letters Patent against the order dated 30.08.2022 passed in W.P.No.25661 of 2019 by a learned Single Judge of this Court.

For Appellant :: Mr.Nithyaesh Natraj
For 1st Respondent :: Mr.S.Rajkumar, APP.

JUDGMENT

(Judgment of the Court was pronounced by the Hon'ble Acting Chief Justice)

This Writ Appeal is directed against the order dated 30.08.2022 passed in W.P.No.25661 of 2019 in and by which the prayer made by the writ petitioner/appellant herein for issuance of a Writ of declaration to declare the FIR in Crime No.104 of 2017 dated 10.06.2017 on the file of the 2nd respondent, namely, the Inspector of Police, Economic Offence Wing, Janakpuri Main Road, Janakpuri, New Delhi-110 058, as null and void, non-est and invalid in law, was refused.



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2. Learned Counsel appearing for the appellant assailing the reasons given by the learned Single Judge contended that when the appellant was a Managing Director of a Company by name M/s.Tecpro Systems Limited, the said Company had a longstanding business relationship with the defacto complainant company M/s.Khusheel International Coatings since 2004. From the year 2013, due to meltdown in the infrastructure Industry, M/s.Tecpro Systems Limited was facing severe financial crunch. Therefore, an application under Section 7 of the IBC was filed by Edelweiss Asset Reconstruction Company which entered into the Corporation Insolvency Resolution Process (CIRP) on 07.08.2017 and finally, the RP also came to be appointed. The Board of Directors in which the appellant was the Managing Director came to be suspended and moratorium was declared by NCLT. Before the NCLT, the claim of the defacto complainant was rejected. Finally, a criminal complaint was filed before the Economic Offence Wing, New Delhi, only to harass the appellant/petitioner who is no more in the management or Board of the M/s.Tecpro.

3. Learned Counsel for the appellant further contended that when



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the criminal proceedings initiated by the defacto complainant is only to settle the dispute which is purely civil in nature and there was no any criminality involved, the petitioner/appellant was advised to file a Writ Petition for the aforesaid relief. But when the matter was taken up by the learned Single Judge, disproving with the prayer made by the petitioner/appellant that the writ petition to declare the FIR in Crime No.104 of 2017 dated 10.06.2017 registered by the 2nd respondent is ill-conceived and not maintainable, dismissed the said Writ Petition. The said view, he pleaded, is against the various decisions and judgments referred by this Court as well as the Apex Court.

4. In support of his contention, learned Counsel for the appellant taking reliance from a decision of the Apex Court in **Navinchandra N. Majithia vs. State of Maharashtra and others** reported in (2000) 7 **Supreme Court Cases 640** argued that a Division Bench of this Court in W.A.(MD) No.1018/2017 in its judgment dated 29.11.2018 (*M/s.Coastal Energen Private Limited rep. by Authorized Signatory, 7th Floor, Buhari*

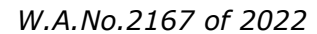


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Towers, 4, Moores Road, Chennai-2 and 5 others vs. The State of West Bengal rep. by its Secretary, Kolkatta and 3 others) has held that the Writ Petition filed under Article 226 of the Constitution of India is maintainable. However, referring to the term 'cause of action', which is unknown to the Criminal Procedure Code, it has also been held that the maintainability of intra-court appeal against the order of this Court allowing or dismissing a writ petition or any other criminal proceedings exercising the criminal jurisdiction of this Court is made as an issue before this Court and while accepting the case that the Writ Appeal is maintainable, the Division Bench of this Court has made it clear that any order passed by a learned Single Judge dealing with a writ petition filed under Article 226 of the Constitution of India relating to any relief touching upon the quashing of an FIR is also held to be appealable before a Division Bench of this Court. Therefore, the view expressed by the learned Single Judge in this case is liable to be set aside, it is pleaded.

5. Again referring to yet another decision of the Apex Court in



No.4288/2017, learned Counsel for the appellant contended that the Apex Court has also held that the vital factor for determination of the intra court appeal is the nature of jurisdiction invoked by the parties and the true nature of the order passed by the learned Single Judge. In the present case, he added that the petitioner/appellant has invoked the jurisdiction of the High Court under Article 226 of the Constitution of India for the simple reason that the entire cause of action has arisen only in Chennai, but the FIR alone has been filed in New Delhi. Therefore, this being a peculiar circumstance, the petitioner/appellant was advised not to invoke the 482 Cr.P.C. jurisdiction and he has, therefore, rightly approached this Court under Article 226 of the Constitution of India. Hence, the view expressed by the learned Single Judge in dismissing the writ petition making the writ petitioner remedy less is liable to be interfered with.

6. Heard the learned Additional Public Prosecutor appearing for



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the 1st respondent.

7. At the outset, we are unable to find any merit for approaching this Court by the writ petitioner/appellant. The reasons being that firstly, the very same issue has already been elaborately considered by a Three Judge Bench of the Hon'ble Apex Court in the case of *Ram Kishan Fauji vs. State of Haryana and others in Civil Appeal No.4288/2017* wherein while dealing with a similar and identical issue, the Apex Court has held that an order passed by the learned Single Judge in exercise of the power conferred under Article 226 of the Constitution of India relating to criminal jurisdiction cannot be made as the subject matter of intra court appeal because it is not provided for and it would be legally inappropriate to think so. The relevant portion is given as under :

"61. ...But that does not mean that an order passed by the Single Judge in exercise of Article 226 of the Constitution relating to criminal jurisdiction, can be made the subject matter of intra-court appeal. It is not provided for and it would be



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legally inappropriate to think so."

8. Secondly, when an identical issue came up for consideration before this Court, a Division Bench of this Court in W.A.Sr.No.1941/2018 (*S.768 K.N.Pudur Primary Agricultural Co-operative Credit Society Limited rep. by its President, K.Morur, Kadaiyampatti Taluk, Salem District vs. G.Balakrishnan and 3 others*) in paragraph 13 has held thus:

"13. In view of the above observations and discussion so made, de-hors the query raised by the Registry with regard to the delay in filing the appeal and the appellant-Society not being impleaded as a party to the writ proceedings and that in any event, there is a delay in preferring the writ appeal, and that the leave to file appeal is also sought for, we are of the view that the Writ Appeal is not maintainable against the order passed under Criminal Jurisdiction by the learned single Judge under Article 226 of the Constitution of India. Accordingly, the Registry is directed to return the original papers, if any, to the



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learned counsel for the appellant, after substituting the same by way of photocopy, so as to enable the Registry to keep the same for record purpose, within 15 days from the date when the order copy is made ready."

9. Thirdly, in a recent judgment of our High Court in the case of *Abirami vs. The Superintendent of Police, District Police Officer, Villupuram District and 5 others in W.A.Sr.No.92091/2021 dated 15.12.2021*, repelling the similar contentions and the arguments advanced by the learned Counsel for the appellant therein, this Court has held as follows:

"8. In the Writ Petition against which the Writ Appeal had been filed, the learned Judge was dealing with the subject as per roster, Writs (Criminal). Therefore, the arguments of the learned counsel for the appellant herein to number the Writ Appeal cannot at all be accepted, as it is against the principles



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of Clause 15 of Letters Patent Act and against the reported decision of Division Bench Rulings of this Court/High Court.

Therefore, the Writ Appeal sought to be taken on file and urged that it is maintainable by the learned counsel is rejected."

Therefore, in view of the above settled legal position, when once a writ petition under Article 226 of the Constitution of India is filed to quash an FIR or to pass an order of Writ of Declaration to declare the FIR as null and void and non-est and invalid in the eye of law, under the criminal jurisdiction as held by the Hon'ble Apex Court in the case of *Ram Kishan Fauji vs. State of Haryana and others in Civil Appeal No.4288/2017*, intra court appeal is not legally permissible.

10. In the result, the Writ Appeal fails and the same is accordingly



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dismissed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

(T.R.,A.C.J.) (D.K.K, J.)

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