



WA(MD)No.1330 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

W.A.(MD)No.1330 of 2023
and CMP(MD) No.10050 of 2023

Super Saravana Stores
represented by its Managing Director,
Super Saravana Stores
Melur Road
Mattuthavani
Madurai 625 107

... Appellant

Vs.

- 1.Henri Tiphagne
- 2.The District Magistrate and District Collector
Madurai, Madurai District
- 3.The Revenue Divisional Officer,
Madurai District
Madurai.
- 4.The Tahsildar,
Madurai East Taluk
Madurai District
- 5.The Commissioner of Police,
Madurai City, Madurai 625 002.



WA(MD)No.1330 of 2023

WEB COPY

6.The Commissioner of Corporation,
Madurai Corporation
Madurai. 625 002.

7.The Deputy Commissioner of Police (Traffic)
Madurai City, Madurai 625 002.

8.The District Officer,
Fire and Rescue Department,
District collector Office Campus,
Madurai 625 020.

9.The Superintending Engineer
Public Works Department
Tallakulam
Madurai 625 002.

10.Meenakshi Mission Hospital and Research Centre,
Represented by its Manager,
Melur Road, Uthangudi,
Madurai. 625 107

11.The Director
Town and Country Planning
Chennai.

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against
the order dated 12.06.2023 in W.P.(MD) No.28841 of 2022.

For Appellant : Mr.P.Valliappan
Senior Counsel for
Mr.P.Thiyagarajan

For Respondents : Mr.Henry Tiphagne



WEB COPY
R7



WA(MD)No.1330 of 2023

party in person (R1)
Mr.A.Thiruvadi Kumar for R2 to R5 and

Additional Public Prosecutor
Mr.S.Vinayak
standing counsel for R6
Mr.J.Ashok for R8, R9 and R11
Additional Government Pleader

JUDGMENT

(Judgment of the Court was delivered by *M.S.RAMESH,J.*)

This appeal is preferred against the order of the learned Single Judge, passed in W.P.(MD) No.28841 of 2022 dated 12.06.2023, whereby the learned Single Judge had issued series of directions for identifying the existence of certain alleged public nuisances and for removal/rectification of such nuisances. This appeal is filed under Clause 15 of the Madras High Court Letters Patent.

2. The first respondent/party-in-person raised a preliminary objection with regard to the maintainability of this appeal contending that the order of the learned single Judge was passed in exercise of criminal jurisdiction and therefore, an intra Court appeal is barred in view of



WA(MD)No.1330 of 2023

Clause 15 of the Letters Patent.

WEB COPY

3. In response, the learned Senior counsel appearing for the appellant attempted to substantiate its maintainability by stating that the order in question dealt the issue in hand as a Public Interest Litigation and therefore, this appeal is maintainable.

4. The brief facts that led to the passing of the impugned order by the learned Single Judge are as follows:

The first respondent had given written petitions dated 12.12.2022 and 17.12.2022 to the Commissioner of Police, Commissioner of Madurai City Corporation and the Superintending Engineer of the Public Works Department under Section 133 of the Code of Criminal Procedure seeking for action against certain alleged nuisance created at Melur Road owing to traffic congestion and inconvenience to the public pedestrians owing to the unorganised facilities provided for parking at the appellant's stores as well as the 10th respondent's hospital premises.



WA(MD)No.1330 of 2023

WEB COPY

5. The writ petition was listed before the learned Single Judge, who exercised powers under Section 482 of the Code of Criminal Procedure in addition to hearing of writ petitions under Article 226 of the Constitution of India dealing with the criminal proceedings. Before the learned Single Judge, the maintainability of the writ petition in criminal jurisdiction was challenged, which was negated by holding that it is one under criminal jurisdiction and therefore, maintainable. The relevant portion of the orders reads as follows:

“14. The next contention raised on behalf of the ninth respondent that the present writ petition which contains so many allegations about the duty of the various departments of the Government cannot be treated as a Writ Petition (Crl.), that the suo motu action of this Court impleading the Director of Town and Country Planning, calling for reports from the Commissioner of Madurai Corporation about the planning permission and construction, from the District Officer, Fire and Rescue Department, are all beyond the purview of the subject roster assigned to this Bench and therefore, the ninth respondent is opposing the listing of the above writ petition before this Bench.



WA(MD)No.1330 of 2023

WEB COPY

15. At the outset, the above contention of the ninth respondent, in the view of this Court, is ridiculous. First of all, the plea was not at all raised in the earlier hearings, but was canvassed in the final arguments. It is pertinent to note that on the basis of the allegations raised and the nature of the relief claimed, more particularly the allegation of the petitioner that he has suffered personally due to the public nuisances complained of, the above Writ Petition (Crl.) has rightly been posted before this Bench. During the hearing, considering the nature of the allegations and charges levelled and also the submission of the Counsel appearing for the Government Departments, this Court, suo motu impleaded the Director of Town and Country Planning, directed the Commissioner of Madurai Corporation and the District Officer of the Fire and Rescue department, to submit reports. When this Court was exercising its jurisdiction under Article 226 of the Constitution of India, it has the powers to add any other party whose presence is required for disposal of the case and to call for reports from any of the departments incidentally. When this Court was conducting an enquiry in the above writ petition, after having satisfied itself, prima facie that the Writ Petition is maintainable, is having every power and jurisdiction to implead any party or to call for report from any of the parties to the lis or from a third



WA(MD)No.1330 of 2023

WEB COPY

party, to find out the truth and to decide the issues involved in the lis. Hence, the very challenge of this Court's jurisdiction is not only improper, but not warranted, ill motivated and in bad taste.”

6. To further ascertain the nature of the writ petition, we had perused the materials before the learned Single Judge. The very prayer in the writ petition was for a consideration of the writ petitioner's representations dated 12.12.2022 and 17.12.2022 for removal of public nuisances. These two representations are actually petitions, which has been titled as “petitions filed under Section 133 Cr.P.C”. Incidentally Section 133 prescribes the procedure for passing conditional order for removal of nuisance by the District Magistrate or the Sub Divisional Magistrate or any other Executive Magistrate empowered by the State Government. The averments in the affidavit filed in support of the writ petition also emphasizes the writ petitioner's claim of public nuisance in the subject area and for removal of the same under the procedure contemplated under Section 133 Cr.P.C.



WA(MD)No.1330 of 2023

WEB COPY

7. The learned Judge had also taken note of these aspects and emphasized that the writ petition he was dealing with was one under criminal jurisdiction, which part of the order has been extracted hereinabove. Thus, we have no hesitation to hold that the writ petition before the learned Judge was one under exercise of criminal jurisdiction.

8. The next question that arises for consideration is as to whether an intra Court appeal would lie against an order of a learned Single Judge in exercise of his powers under criminal jurisdiction. The answer to this question is inherent under Clause 15 of the Madras High Court Letters Patent. For better understanding, the said clause is extracted hereunder:

"Clause 15. Appeal from the Courts of Original Jurisdiction to the High Court in its appellate jurisdiction: **And**. **We do further ordain that an appeal shall lie to the said High Court of Judicature at Madras 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



WEB COPY



WA(MD)No.1330 of 2023

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 Sec.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 Sec.108 of the Government of India Act, and that notwithstanding anything herein before 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 Sec.108 of the Government of India Act made (on or <http://www.judis.nic.in> 5 after the 1st day of February, 1929), 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 of Successors in Our or Their Privy Council as hereinafter provided."

(emphasis supplied)



WA(MD)No.1330 of 2023

WEB COPY

9. The aforesaid definition is self-explanatory and a plain reading of the same emphasizes the prohibition of an intra Court appeal against the order of a learned Single Judge, who exercises power of criminal jurisdiction.

10. To fortify our finding in this regard, we place reliance on the following case laws:

(i) In ***Ram Kishan Fauji v. State of Haryana and others*** [(2017) 5 SCC 533], the Hon'ble Supreme Court had held that the vital factor for determination of the maintainability of the intra Court appeal is the nature of jurisdiction invoked by the party and the true nature of the order passed by the learned Single Judge. It was further held that when there is a proceeding under Article 226 of the Constitution of India arising from an order made by a Court in exercise of power under the Code of Criminal Procedure, it would be a criminal proceedings within the meaning of the Letters Patent;



WA(MD)No.1330 of 2023

WEB COPY

(ii) A Coordinate Bench of this Court in the case of **S.768**
K.N.Pudur Primary Agricultural Cooperative Credit Society Ltd., v.
G.Balakrishnan and others passed in **W.A.SR.No.1941 of 2018 dated**
30.01.2018, had placed reliance on Ram Kishan Fauji's case (supra) and
taken a similar view in the following manner:

“9. Recently, a three-Judge Bench of the Supreme Court, in the decision reported in 2017 (5) SCC 533 (Ram Kishan Fauji Vs. State of Haryana), categorically held that it is manifest that no intra-Court appeal lies against the <http://www.judis.nic.in> order of the single Judge in exercise of the criminal jurisdiction. When there are proceedings under Article 226 of the Constitution of India arising from an order made by the Court in exercise of the power conferred under the Code of Criminal Procedure (Cr.P.C), it would be a criminal proceedings within the meaning of the Letters Patent. On a plain reading of the Letters Patent of the High Court of Judicature at Madras, it is clear that no appeal lies against the order passed by the learned single Judge in exercise of criminal jurisdiction. Further, the Court in a writ appeal pursuant to Clause 15 of the Letters Patent, exercises appellate jurisdiction and not a jurisdiction as conferred under Article 226 of the Constitution of India. When a power



WEB COPY



WA(MD)No.1330 of 2023

conferred under Article 226 of the Constitution of India is invoked at the instance of a litigant with regard to any criminal matter, it is deemed to have been exercised by the Court under Section 482 Cr.P.C. Hence, no intra-Court appeal is permissible. The Bench hearing the matters pertaining to Section 482 Cr.P.C. cannot exercise the jurisdiction under Article 226 of the Constitution of India, whereas the Bench hearing the matters exercising the extraordinary jurisdiction under Article 226 of the Constitution of India, is empowered to deal with the issues that may fall under Section 482 Cr.P.C. As the jurisdiction exercised in this case is one under Section 482 Cr.P.C., only appeal will lie to the Supreme Court and not before the Division Bench of the Court.”

(iii) Similar view was also taken by another Coordinate Bench in the case of ***C.Sivasankaran v. Foreigner Regional Registration Officer (FRRO) and others in W.A.No.SR49793 of 2020***, wherein, it has been held thus:

“16.... The sequence of facts, and the consequence towards which the writ petition is aimed at, clearly relate to criminal proceedings that have led to the issuance of the circular. This may involve the guarantee of liberty to a person under Article 21 of the Constitution, but the genesis of the action is connected with the criminal prosecutions pending



WA(MD)No.1330 of 2023

WEB COPY

against the appellant, the umbilical cord whereof has not yet snapped. The contention that it only involves civil rights of the appellant is, therefore, not correct because the relief revolves around consequences arising or likely to arise as a result of criminal prosecution.”

11. In both the decisions of the Coordinate Benches of this Court, the writ appeals filed under Clause 15 of the Letters Patent against the orders of the learned Single Judges in a writ petition under criminal jurisdiction were dismissed on the ground of maintainability of the writ appeal. To sum up, the foundation or the genesis of the case before the learned Single Judge arose from a petition made to the Government authority under Section 133 of the Code of Criminal Procedure for removal of encroachments and the learned Single Judge had also reiterated that the writ petition is in exercise of his criminal jurisdiction. Clause 15 of the Letters Patent prohibits an intra Court appeal against the order passed by the learned Single Judge exercising the powers of criminal jurisdiction.

12. This ratio is further fortified by the decisions of the Hon'ble Supreme Court as well as the Coordinate Benches of this Court, which



WA(MD)No.1330 of 2023

WEB COPY

have been extracted hereinabove. Hence, we are of the affirmed view that the present writ appeal is not maintainable. Accordingly, the writ appeal stands dismissed. Consequently connected Miscellaneous Petition is closed.

(M.S.R.,J.) (M.N.K.,J.)
14.08.2023

NCC : Yes / No
Index : Yes / No

Office to Note: Registry is directed to return the original order of the Writ Petition to the learned counsel for the appellant after retaining a photocopy of the same.

RR

To

- 1.The District Magistrate and District Collector
Madurai, Madurai District
- 2.The Revenue Divisional Officer,
Madurai District
Madurai.
- 3.The Tahsildar,
Madurai East Taluk
Madurai District
- 4.The Commissioner of Police,
Madurai City, Madurai 625 002.



WA(MD)No.1330 of 2023

WEB COPY

5. The Commissioner of Corporation,
Madurai Corporation
Madurai. 625 002.
6. The Deputy Commissioner of Police (Traffic)
Madurai City, Madurai 625 002.
7. The District Officer,
Fire and Rescue Department,
District collector Office Campus,
Madurai 625 020.
8. The Superintending Engineer
Public Works Department
Tallakulam
Madurai 625 002.
9. The Director
Town and Country Planning
Chennai.



WEB COPY



WA(MD)No.1330 of 2023

M.S.RAMESH, J.
AND
M.NIRMAL KUMAR, J.

RR

W.A.(MD)No.1330 of 2023

14.08.2023