

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

**LPA-943-2022 (O&M)
Decided on : 04.01.2023**

Gulsnohar and another

.....Appellant(s)

Versus

State of Haryana and others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Akash Sheoran, Advocate for
Mr. Vishal Mittal, Advocate for the appellants.

Mr. Saurabh Mago, AAG, Haryana for respondent Nos.1 to 3.

Mr. Munfaid Khan, Advocate for respondent Nos.4 to 7 & 12.

G.S. Sandhawalia, J. (Oral)

Present Letters Patent Appeal is directed against the order of the learned Single Judge passed in CRWP No.9851 of 2022 dated 17.10.2022, whereby it has declined to issue any directions pertaining to the life and liberty of the writ petitioners who are claiming a threat perception on account of the fact that they had solemnized the marriage against the wishes of their families.

The learned Single Judge has found that the writ petitioner No.2 is married and having 3 children and writ petitioner No.1 is also married and both of them have not obtained divorce. It has further been observed that the earlier writ petition had been withdrawn without even waiting for the representation to reach the concerned quarter and the second petition has been filed thereafter. Resultantly, costs of Rs.5,000/- were imposed to be deposited with the Poor Patient Welfare Fund of PGIMER, Chandigarh.

The matter had come up on 27.10.2022, whereby the

appellant No.2 was directed to show his source of income and as well as to

create a fixed deposit receipt in favour of his three minor children and his first wife from his first marriage. In pursuance of the said directions affidavit has been filed by putting forth an undertaking that he would deposit a sum of Rs.50,000/- in the name of his three children and his first wife, if protection is granted to them and he is a Taxi Driver by profession and earning Rs.25,000/- per month. On the other hand it has been specifically mentioned that costs of Rs.5,000/- have also not been deposited on account of the fact that appellants are poor persons.

We are of the considered opinion that firstly on account of the non-deposit of the costs, the present appeal is not maintainable, as the order of the Court has not been complied with. Secondly the fact remains that the petition was preferred in the form of criminal writ petition and not in the form of civil writ petition and, therefore, office has raised an objection regarding the maintainability of the appeal. Nothing has been shown as to how the appeal is maintainable and only an endorsement has been made by the counsel to put up the matter before the Court on refilling the appeal.

A three Judge Bench of the Apex Court in **Ram Kishan Fauji Vs. State of Haryana and others, 2017 AIR (SC) 1535** has held that a letters patent appeal would only be maintainable if the learned Single Judge had been exercising powers in civil proceedings and then it would fall within the ambit of Clause 10 of the Letters Patent. It has been specifically held that an order passed by the learned Single Judge in exercise of Article 226 of the Constitution of India relating to criminal jurisdiction, cannot be made subject matter of intra court appeal and it

would be legally inappropriate to do so. Relevant portion of the said judgment reads as under:-

“61. 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. In this regard, an example can be cited. In the State of Uttar Pradesh, Section 438 CrPC has been deleted by the State amendment and the said deletion has been treated to be constitutionally valid by this Court in Kartar Singh v. State of Punjab[41]. However, that has not curtailed the extraordinary power of the High Court to entertain a plea of anticipatory bail as has been held in Lal Kamendra Pratap Singh v. State of Uttar Pradesh and others[42] and Hema Mishra v. State of Uttar Pradesh and others[43]. 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 legally inappropriate to think so.”

Thus, keeping in view the above we are of the considered opinion that the appeal itself being not maintainable and in view of the fact that the appellant No.1 herself was also married and never sought divorce from her husband cannot claim the benefit of protection, as this Court will not legitimize an illegal act of the parties by issuing directions for protection.

Resultantly, no case is made out to interfere in the order of the learned Single Judge and the appeal is hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

04.01.2023
Naveen

Whether speaking/reasoned :

Yes

Whether Reportable :

No