

IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CIVIL APPELLATE JURISDICTION
CIRCUIT BENCH, JALPAIGURI
APPELLATE SIDE

RESERVED ON: 10.01.2024

DELIVERED ON: 06.03.2024

PRESENT:

THE HON'BLE MR. JUSTICE SURYA PRAKASH KESARWANI

AND

THE HON'BLE JUSTICE RAI CHATTOPADHYAY

MAT NO. 3 OF 2024

With

IA NO. CAN 1 OF 2024

THE SUPERINTENDENT OF POLICE, COOCH BEHAR AND ORS.

VERSUS

MALATI BARMAN AND ORS.

Appearance:

Mr. Jayjit Chowdhury, Ld. Addl. Adv. Gen.

Mr. Subir Kumar Saha, Adv.

Mr. Nabankur Paul, Adv.

.....for the Appellants/State

Mr. Sayak Chakraborti, Adv.

Mr. Wrickbrata Roy, Adv.

Ms. Riya Agarwal, Adv.

.....for the Respondents



JUDGMENT

(Per : Surya Prakash Kesarwani, J.)

1. Heard Sri Jayjit Chowdhury, learned Additional Advocate General assisted by Sri Nabankur Paul, learned Counsel for the State/appellant and Mr. Sayak Chakraborti, learned Counsel for the respondents/writ petitioners through video conferencing.

FACTS

2. Briefly stated the facts of the present case are that the respondents/writ petitioners have lodged a First Information Report No. 257 of 2023 dated 07.07.2023 under Sections 448/323/325/326/307/34 Indian Penal Code read with Sections 25(1-A)/27 of the Arms Act, P. S. Sahebganj, District-Coochbehar in which 14 persons are named, as under;-

1. “ Nijam Sarkar S/O Shahjahan Sarkar.
2. Chanchal Kr. Roy, S/O-Chandicharan Roy of Kalmati, PS: Sahebganj, Dist.-CoochBehar.
3. Raju Barman, S/O- Bablu Barman of Jaigirbalabari, PS: Sahebganj, Dist.-Cooch Behar.
4. Shibendra Nath Barman S/O-Sharat Ch.Barman of Kalmati, PS: Sahebganj, Dist.- Cooch Behar.
5. Dipak Roy S/O Binod Ch Roy of Kalmati, PS: Sahebganj, Dist.-Cooch Behar.
6. Rafikul Islam Mallik, S/O-Fajlu Haque Mallik of Kalmati, PS: Sahebganj, Dist.- Cooch Behar.



7. *Maynal Sekh S/O-Sammad Sekh of Kalmati, PS: Sahebganj, Dist.-Cooch Behar.*
8. *Chaleman Sekh S/O- Abdul Kader Sekh of Kalmati, PS: Sahebganj, Dist.-Cooch Behar.*
9. *Jaharul Islam S/O-Abusafiyan of Kalmati, PS: Sahebganj, Dist.-Cooch Behar.*
10. *Moni Barman S/O-Pisu Barman of Kalmati, PS: Sahebganj, Dist.-Cooch Behar.*
11. *Mahebab Hoque @ Rafikul Haque S/O- Unknown of ward no. 16 Dinhata, PSDinhata, Dist.-Cooch Behar.*
12. *Ajjar Rahaman S/O Nahed Ali of Ward No. 16, Dinhata, PS-Dinhata, Dist-Cooch Behar.*
13. *Bhabaranjan Barman @ Kamal @ Dankar, S/O. Nalani Kanta Barman of Trimohini, PS: Sahebganj, Dist.-Cooch Behar.*
14. *Bishal Barman, S/O-Rashikanta Barman of Kalmati, PS: Sahebganj, Dist.- Cooch Behar.”*

3. The writ petitioner/informant is the wife of the one of the injured victim, namely, Milan Barman. According to her, there is total inaction by the State Police, therefore, she filed a writ petition being WPA 2849 of 2023 (Malati Barman-vs.-The State of West Bengal & Ors) praying for the following reliefs:-

“a. A writ of or in the nature of Mandamus, do issue, commanding the respondents their men, agents, assigns, subordinates and/or representatives to transmit what steps have been taken till date or file a progress report in connection with Dinhata Police Station F.I.R No. 257 of 2023



dated 07.07.2023;

- b. A writ of or in the nature of mandamus, do issue, commanding the respondents their men, agents, assigns, subordinates and/or representatives directing the transfer of investigation of Dinhata Police Station F.I.R. No. 257 of 2023 dated 07.07.2023 to be transferred to and to be conducted by the Central Bureau of Investigation so that efficacious justice is met out;*
- c. A writ of or in the nature of Mandamus directing the respondent authorities to show cause as to why the above made prayers should not be granted or allowed and if no cause is shown then the rule be made absolute;*
- d. A writ of or in the nature of Certiorari, do issue, commanding the respondents their men, agents, assigns, subordinates and/or representatives to transmit all records pertaining to this instant case unto this Hon'ble Court so that conscionable justice be done;*
- e. Rule NISI in terms of prayer as stated above;*
- f. Ad-interim orders in terms of prayers (a), (b), (c), (d) & (e) as stated above;*
- g. Such other orders and/or orders, direction and/or directions as Your Lordship deems fit and proper in the interest of justice;"*

4. In the aforesaid writ petition, the Learned Single Judge has passed two orders in WPA 2849 of 2023 dated 15.12.2023 and 16.12.2023 which are reproduced below:-



“Order dated 15.12.2023:-

In respect of one F.I.R. where 11 persons have been named as the accused, only two persons have been arrested so far. It has been submitted by the learned advocate for the petitioner that in this police inaction case, the police is taking side of one political party which is in power in the State and others are a rival party which is in power in the Union, Central Government. However, without going into this allegation, I direct the Superintendent of Police, Cooch Behar to instruct his subordinates forthwith to arrest the other accused persons by this night and if most of the unarrested persons are not arrested by this night, the Superintendent of Police has to appear personally before this court tomorrow (16.12.2023) at 11 a.m. when this matter will be taken up for further hearing. Mr. Nabankur Paul, learned advocate for the State is directed to communicate this order forthwith, as the order has been passed in his presence, to the Superintendent of Police. There is one typographical mistake. The respondent no.3 is Officer in-charge of Sahebganj Police Station and not of Dinhata Police Station. One new advocate-on-record Ms. Riya Agarwal has appeared in this matter who has filed her Vokatnama. The Investigating Officer is of Sahebganj and the Case No. is 257 of 2023. Learned advocate for the State is directed to communicate the correct case number to the Superintendent of Police.

Order dated 16.12.2023:-



After the order passed yesterday two persons namely, Chaleman Sekh and Jaharul Islam, have been arrested by police. Other ten persons out of total fourteen FIR named accused have not been arrested up till now. Accordingly, the Superintendent of Police, District of Cooch Behar namely, Dutiman Bhattacharjee is present in Court today personally. His further personal appearance is dispensed with until further orders. However, this Court expects by January 19, 2024 the other accused persons would be arrested by the police. This matter is marked as heard-in-part. Let the matter appear before me on 19th January, 2024 at 12 noon, when all parties and also the Superintendent of Police Cooch Behar are granted liberty to appear via video conference. However, if any party wants to appear physically there would be no impediment in that. The new advocate-on-record, Ms. Riya Agarwal, has appeared by filing Vokatnama in the department against Entry No. A-938.”

5. Aggrieved with the afore-quoted two orders passed by the Learned Single Judge in the afore-noted writ petition, the appellants/respondents have filed the present appeal.
6. On 09.01.2024, this appeal was heard by this Court on preliminary objection raised by the learned Counsel for the respondents/writ petitioners and the following questions were framed for consideration on preliminary objection as to the



maintainability of the appeal;-

- (i) *Whether a Letters Patent Appeal under Clause 15 of the Letters Patent read with the provision of Chapter VIII of the Appellate Side Rules of the High Court at Calcutta shall lie only against “judgment” and not against “interim orders/interlocutory orders”?*
- (ii) *Whether against the impugned interim orders dated 15.12.2023 and 16.12.2023 passed by the learned Single Judge in WPA/2849/2023 (Malati Barman-Vs.- State of West Bengal & Ors.) the present Intra Court Appeal (Letters Patent) is maintainable?*

Submissions:

7. Learned Additional Advocate General representing the appellants, submits as under;-

- (i) The impugned orders are judgments within the meaning of Clause 15 of the Letters Patent. Reliance is placed upon the Apex Court judgment in (a) **Shah Babulal Khimji-vs.- Jayadeb D. Kania & Anr.**, reported in **(1981) 4 SCC 8 (paras 106, 115 and 123)**, (b) **P.S. Sathappan (Dead) By LRS.-vs.-Andhra Bank Ltd. & Anr.**, reported in **(2004) 11 SCC 672 (paras 6, 17, 108 and 109)** and (c) Allahabad High Court judgment in **Prof. Y.C. Simhadri, V.C., B.H.U, Varanasi & Ors.-vs.-Deen Bandhu**



Pathak, reported in **2001 SCC Online All 572**,
(paras 18-23).

- (ii) To arrest an accused is solely the discretion of the police under Section 41 of the Code of Criminal Procedure (for short “Cr. P.C.”), therefore, the impugned order directing for arrest of the accused persons, amounts to taking away the statutory discretion conferred upon the police under Section 41. It is a judgment within the meaning of Clause 15 of the Letters Patent. Reliance is placed upon the judgment of the Apex Court in **Arnesh Kumar-vs.-State of Bihar & Anr.** Reported in **(2014) 8 SCC 273 (paras 5 and 6)** and **M. C. Abraham & Anr.-vs.-State of Maharashtra & Ors.**, reported in **(2003) 2 SCC 649 (para 14)**.
- (iii) For inaction of the police or for an overt act, it is the duty of the High Court to discourage to entertain the writ petition under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. Therefore, the Learned Single Judge has committed a manifest error of law and exceeded his jurisdiction to pass the impugned orders under Article 226 of the



Constitution of India. Reliance is placed upon the judgment of Apex Court in **Sakiri Vasu-vs.- State of Uttar Pradesh & Ors.**, reported in **(2008) 2 SCC 409 (paras 11, 25, 26 and 27)**.

- (iv) In view of the provisions of Section 154 and Section 156 (3) Cr. P.C, the High Court has no power to interfere with the investigation and instead the Magistrate concerned has the power to monitor the investigation in the event an aggrieved person approaches the Magistrate concerned with the complaint of inaction of the Investigating Officer or improper investigation. Directions in the impugned order is in breach of the powers provided under Section 154 and 156 (3) of the Cr. P.C. Therefore, such directions without disclosing any reasons for the need of arrest of the accused persons, is certainly a final decision and thus, amounts to judgment which is not sustainable in law.
- (v) Innocent person under the influence of the impugned order cannot be arrested and if they are arrested then it shall not only be the breach of statutory provisions of Cr. P.C., resulting an usurpation of police power under Section 41 Cr.



P.C but shall also result in breach of rights of the persons directed to be arrested. Reliance is placed upon a judgment of the Apex Court in Special Leave to Appeal (Criminal) No. 4123 of 2021 (**Viswanath Biradar-vs.-Deepika & Ors.**) dated 11.06.2021, wherein the Apex Court has held that it is for the investigating agency to take a call as to when the accused is to be arrested.

(vi) Before passing the impugned order, the Learned Single Judge has not afforded any opportunity to file an affidavit in opposition. Therefore, the impugned orders having been passed without affording an opportunity to file objection, deserves to be set aside, particularly when the order passed by the Learned Single Judge was in excess of the jurisdiction and bad in law. Reliance is placed upon the Hon'ble Apex Court in M.C. Abraham & Anr. (supra) (para 14).

(vii) Investigation in the criminal case in question has almost been completed and the charge-sheet is likely to be filed shortly. The police has examined 15 (fifteen) witnesses under Section 161 Cr.P.C. two accused persons were arrested initially by the



police and two persons have been arrested pursuant to the impugned orders. In the incident in question four persons were injured and some of them received gunshot injury. Thus, out of 14 (fourteen) named accused persons four persons have been arrested.

(viii) Out of fourteen named accused persons four persons have been arrested as aforementioned, three accused persons, namely, Raju Barman, Ajijar Rahman and Bhaba Ranjan Barman were not found at the time and place of the occurrence of the offence as per call details record analysis. Therefore, they need not to be arrested.

(ix) The three accused persons, namely, Nijam Sarkar, Dipak Roy and Moni Barman were absconding and despite repeated efforts made by the police under Section 41 Cr.P.C., they could not be arrested. The petitioners proposed to move an application before the concerned magistrate for immediate issuance of warrant of arrest and in the event warrant of arrest is issued, then every effort shall be made to execute it within a week and in the case of non-execution of warrant, report shall be submitted



immediately and thereafter recourse under Section 82/83 Cr.P.C. shall be immediately taken and all steps including attachment shall be taken within the statutory time. The rest of the four accused persons have not been found involved in the aforesaid offence as per investigation carried.

8. Learned counsel for the respondent/writ petitioner submits as under;-

(i) The impugned order has been passed by the Learned Single Judge in exercise of criminal jurisdiction. Therefore, even if the impugned order/judgment, under Clause 15 of the Letters Patent is barred, therefore, the present appeal is not maintainable. Reliance is placed upon the judgment of the Hon'ble Supreme in **Ram Krishan Fauji vs. State of Haryana and Others reported in (2017) 2 SCC 533 (para 51 and 63)** and a Division Bench Judgment of this Hon'ble Court in MAT 993 of 2021 (**Suparna Kanjilal Chakrabrty vs. Suvendu Adhikari and Ors.**) decided on 17.11.2021.

(ii) The appeal is totally meritless in view of the



averments made in the writ petition which is pending disposal.

Discussions and Findings:

On Preliminary objection:

9. The respondent/petitioner has raised the preliminary objection on two grounds, **firstly**, that the impugned orders dated 15.12.2023 and 16.12.2023 have been passed by the Learned Single Judge in exercise of the criminal jurisdiction, and, **secondly**, in any case, the aforesaid impugned orders are not judgements.
10. Rule 2 under Chapter VIII of the Appellate Side Rules of the High Court at Calcutta provides that every appeal to the High Court under Clause 15 of the Letters Patent from a judgement of a judge sitting singly, on the Appellate Side of the High Court, shall be presented to Deputy Registrar, or such other officer as the Registrar may appoint, within 60 days from the date of the judgement appealed from, unless the court in its direction, on good cause shown, **shall** grant further time. **Clause 15 of the Letters Patent** provides as follows;-

*"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 Fort William in Bengal **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 the 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 judgements 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.

11. Thus as per Clause 15 of the Letters Patent an appeal shall not lie to the High Court of Judicature at Calcutta from judgment of a Learned Single Judge in exercise of Criminal Jurisdiction. The phrase “in exercise of Criminal Jurisdiction” used in clause 15 of the Letters Patent has not been defined. However, this phrase has been explained by the Hon’ble Supreme Court in ***Ram Kishan Fauji vs. State of Haryana & Ors reported in (2017) 5 SCC 533 (paras 56,61,62)*** wherein Hon’ble Supreme



Court interpreting clause 15 of Letters Patent of Chartered High Court, dealt with the controversy as to whether the Learned Single Judge has exercised “Civil Jurisdiction” or “Criminal Jurisdiction” and held as under;-

*“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 [CIT v. Ishwarlal Bhagwandas, (1966) 1 SCR 190 : 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.”

(Emphasis Supplied)

12. As per law settled by the Hon’ble Supreme Court the **phrase “Criminal Jurisdiction”** used in clause 15 of the Letters



Patent, is not to be construed in a 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. 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. **Therefore, when the respondent/petitioner filed the Writ Petition in question seeking relief with respect to investigation in a criminal case including direction for investigation by the Central Bureau of Investigation, the impugned orders passed by the Learned Single Judge directing for arrest of the accused persons, is certainly the orders passed in exercise of criminal jurisdiction.**

13. In the case of ***Shah Bablul Khimji Vs. Jayaben D. Kania & Anr. (1981) 4 SCC 8*** (para 106, 115, 119 and 120) Hon'ble Supreme Court considered Clause 15 of the Letters Patent of the Bombay High Court and held as under:-

"106. Thus, the only point which emerges from this decision is that whenever a trial Judge decides a controversy which affects



valuable rights of one of the parties, it must be treated to be a judgment within the meaning of the letters patent.

115. Thus, in other words ***every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.*** Similarly, orders passed by the trial Judge deciding question of admissibility or relevancy of a document also cannot be treated as judgments because the grievance on this score can be corrected by the appellate court in appeal against the final judgment.

119. Apart from the tests laid down by Sir White, C.J., the following considerations must prevail with the court:

“(1) That the trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the trial Judge. The courts must give sufficient allowance to the trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is ex



facie legally erroneous or causes grave and substantial injustice.

*(2) That the **interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.***

(3) The tests laid down by Sir White, C.J. as also by Sir Couch, C.J. as modified by later decisions of the Calcutta High Court itself which have been dealt with by us elaborately should be borne in mind.”

120. Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the trial Judge amounts to a judgment within the meaning of the letters patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant.

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, of the Code of Civil Procedure.

(4) An order rescinding leave of the trial Judge granted by him under clause 12 of the letters patent.



(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under Section 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under Order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under Section 92 of the Code of Civil Procedure.

(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under Section 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the plaintiff."

14. In the case of **P. S, Sathappan (Dead) by Lrs. Vs. Andhra Bank Ltd. & Ors. reported in (2004) 11 SCC 672** (paras 17,148) a Constitution Bench of Hon'ble Supreme Court



considered its judgement in Shah Bablul Khimji (Supra) and held as under;-

*“17. Thus in Shah Babulal Khimji case [(1981) 4 SCC 8] this Court was concerned with an order passed by a Single Judge on the original side of the High Court, which, if it amounted to a judgment, was admittedly appealable under clause 15 of the Letters Patent. The only question, therefore, which arose before this Court was whether the order of the learned Single Judge refusing to grant an injunction or appoint a receiver on the interlocutory application of the appellant was a judgment, and consequently whether an appeal against the order of the learned Single Judge to the Division Bench of the High Court was competent and maintainable under clause 15 of the Letters Patent. This Court took the view that **the word “judgment” in the Letters Patent should receive a much wider and more liberal interpretation than the word “judgment” used in the Code of Civil Procedure.** It was held that the **word “judgment” has undoubtedly a concept of finality in a broader and not a narrower sense.** Their Lordships came to the conclusion that the order passed by a Single Judge on the original side refusing to appoint a receiver and grant an injunction amounted to a judgment and was therefore appealable under clause 15 of the Letters Patent.*

Conclusion

148. The upshot of our decision would be:

(1) Finality clause contained in a statute, unless attached to an order passed in appeal, would not take away the right of appeal expressly provided for under the special statute.



(2) Letters Patent being a subordinate legislation has the force of law but the same is subject to an Act of Parliament.

(3) If an appeal is maintainable under sub-section (1) of Section 104 of the Code, no further appeal therefrom would be maintainable in terms of sub-section (2) thereof.

(4) A right of appeal being creature of a statute, it may provide for a limited right of appeal or limiting the applicability thereof.

(5) Clause 15 of the Letters Patent cannot override the bar created under Section 104 of the Code. Section 104(1) of the Code must be read with sub-section (2) of Section 104; and by reason thereof saving clause in relation to the Letters Patent would not be attracted. An attempt should be made to uphold a right of appeal only on harmonious construction of Sections 4, 104 and other provisions of the Code.

(6) However, when an appeal is provided for under a special Act, Section 104 of the Code shall have no application in relation thereto as it merely recognises such right but does not provide for a right of appeal.

(8) The judgment of this Court must be read as a whole and the ratio therefrom is required to be culled out from reading the same in its entirety and not only a part of it.

(7) If a higher status is given to a Letters Patent over a law passed by Parliament including the Code of Civil Procedure, the same would run contrary to the history of the Letters Patent as also the parliamentary Acts.”

(Emphasis Supplied)

15. In **Prof. Y. C. Simhadri, V.C., B.H.U., Varanasi & Ors. Vs. Deen Bandhu Pathak** 2001 SCC OnLine All 572 a Division Bench of Allahabad High Court had considered clause 10 of the Letters Patent and referred the judgement of this High Court *i.e.* Calcutta High Court in the Case of **Shorab Merwanji Modi Vs. Mansata Flim Distributors** reported in **AIR 1957 Cal 727**



and held that **an order passed by a Learned Single judge beyond his competence or jurisdiction to pass such order being void and none-est is appealable under the Letters Patent.**

16. In MAT 993 of 2021 (*Suparna Kanjilal Chakraborty Vs. Suwendu Adhikari and Ors.*) and others connected MATs' a Co-ordinate Bench of this Court considered the question of maintainability of an appeal under Clause 15 of Letters Patent against stay of proceeding in a criminal case and after detailed discussion concluded that appeal is not maintainable. The concluding portion of the aforesaid judgement of the Co-ordinate Bench in the Case of *Suparna Kanjilal Chakraborty* (Supra) is reproduced below;-

“Having heard the parties and having considered the materials placed, this Court arrives at the following findings:-

A) That the primary reliefs granted by the Hon'ble Single Bench pertain to the exercise of Criminal Jurisdiction;

B) That the alternate relief of transfer of investigation to the CBI has not been considered on merits at this stage by the Hon'ble Single Bench;

C) That the ratio of In Re: Ram Kishan Fauji applies apropos the facts of this case.

D) That the Letters Patent of the High Court at Calcutta hence act as a bar to filing an intra-Court appeal.

E) That the ratio of In Re: Gopal Kumar Agarwal rests on the point of grant of the relief of transfer of investigation and, such relief being alternate and not under



consideration by the impugned order, is hence not apropos the present factual scenario.

F) This Court has considered the demurrer on the touchstone of the nature of the jurisdiction exercised by the Hon'ble Single Bench and, not on the composition of the Hon'ble Single Bench sitting in Article 226 jurisdiction, by following the law laid down In Re: Ram Kishan Fauji.

In the backdrop of the above discussion and findings, this batch of analogous intra-Court appeals are held to be not maintainable.”

17. **A judgement has undoubtedly a concept of finality in a broader and not a narrower sense. The word “judgement” used in Clause 15 of the Letters Patent** should receive a much wider and more liberal interpretation than the word “judgement” used in the Code of Civil Procedure. Therefore, whenever a Trial Judge decides a controversy which affects valuable rights of one of the parties, it must be treated to be a judgement within the meaning of the Letters Patent. Every interlocutory order cannot be regarded as a judgement. **Only those orders would be judgements which decide matters of moment or affect vital and valuable rights** of the parties and which cause **serious injustice** to the party concerned. Therefore, an interlocutory order to be a judgement within the meaning of clause 15 of the Letters Patent must contain the traits and trappings of finality either when the order decides the question in controversy in an ancillary proceeding or in the suit



itself or in a part of the proceedings. Some illustrations of interlocutory orders which may be treated as judgement, has been given by the Hon'ble Supreme Court in the afore-quoted paragraph No. 120 (SCC) in the case of *Shah Bablul Khimji (Supra)*. In the present set of facts the accused persons have not filed the present appeal against whom the order to arrest was passed by the Learned Single Judge. The appellants are the Superintendent of Police Cooch Behar, Officer-in-charge, Sahebganj Police Station and the Investigating Officer, Sahebganj Police Station who themselves want to arrest accused persons as evident from own pleadings of the Appellants. Thus, the impugned orders for arrest of the accused persons do not affect any of the valuable rights of the appellants herein.

18. The relief sought and the pleadings made in the Writ Petition reveals that FIR being Police Station Case No. 257/2023 registered on 07.07.2023 under Sections 448/323/325/326/307/34 IPC read with Section 25 (1-A)/27 of The Indian Arms Act, 1959 was registered at the instance of the respondent/petitioner in which 14 persons were named accused. In the aforesaid incident several persons were injured including the husband of the petitioner/respondent and they were medically examined. Some injured persons have received fire arm injury. According to the petitioner/respondent the



police is protecting the accused persons who belong to the ruling party and as such the respondent/petitioner has filed the aforesaid Writ Petition praying for the reliefs afore-quoted. The reliefs have been sought in connection with criminal case being FIR No. 257 of 2023 dated 07.07.2023. By the impugned orders the Learned Single Judge has exercised the criminal jurisdiction while directing for arrest of the accused persons named in the aforesaid criminal case being FIR No. 257 of 2023 dated 07.07.2023. Clause 15 of the Letters Patent completely bars an appeal against an order passed by one judge in exercise of criminal jurisdiction. Therefore, **the appeal filed by the appellant herein is barred by Clause 15 of the Letters Patent.**

On Merits of the Case:-

19. We have held above that present appeal shall not lie under Clause 15 of the Letters Patent. Therefore, there is no need to discuss merits of the case, yet we proceed to discuss it in brief since learned counsel for the appellants has argued at length on merits against the impugned orders directing for arrest of the accused persons.



20. The respondent/petitioner being informant and wife of an injured has filed the WPA No. 2849 of 2023 praying for the reliefs afore-quoted against six respondents (i) The State of West Bengal, service through the Secretary, Department of Home and Hill Affairs (ii) The Superintendent of Police, Cooch Behar (iii) The Inspector-in-Charge, Dinhata Police Station (iv) The Investigating Officer of Dinhata Police Station (v) The Director, Central Bureau of Investigation (CBI) and (vi) The Superintendent of Police, The Central Bureau of Investigation (CBI), Kolkata Zone". Out of six respondents in the aforesaid Writ Petition, only the **Second** respondent, **Third** respondent and **Fourth respondent alone have filed the present appeal.** Thus only the Superintendent of Police, Cooch Behar, The Officer-in-charge, Sahebganj Police Station and the Investigating Officer, Sahebganj Police Station Case No. 257 of 2023 (appellant nos. 1, 2 and 3 herein) are allegedly aggrieved with the impugned orders for arrest of the accused persons, even though they admitted that out of total 14 named accused persons only 4 have been arrested and rest of the accused persons could not be arrested despite continuous holding raids, since the accused persons are still absconding to evade police arrest. For ready reference, **Ground nos. 6 and 7 of the Memorandum of Appeal and paragraph no. 6,9, 15 and 18 of**



CAN No. 1 of 2024 i.e. Affidavit of stay application filed by the appellants are reproduced below;-

“Memorandum of Appeal Grounds No. (VI) and (VII):-

“Vi. FOR THAT the Hon'ble Single Judge failed to appreciate that the concerned Investigating Officer arrested one FIR named accused person namely Mahabub Hoque @ Rafikul Hoque @ Mahabub Alam, son of Nazrul Hoque on 16.07.2023 and one Maynal Sekh @ Maynal Haque, son of SamadSekh on 10.12.2023 and also collected the injury report of the injured persons namely (i) Milan Barman, son of Ratna Barman, (ii) Arjun Barman, son of Ramesh Chandra Barman, (iii) Chandra Barman, son of Mahesh Barman and (iv) Narayan Barman, son of Sushil Barman and have also examined and recorded their statements under Section 161 of the Criminal Procedure Code.

VII. FOR THAT although two other persons namely Chaleman Sekh and Jaharul Islam have been arrested on 15.12.2023 but the Hon'ble Single Judge exceeded its jurisdiction by directing the appellants to arrest the other accused persons by January 19, 2024 without appreciating the fact that the Investigating Officer has been continuously holding raid in the area against the accused persons, involved in the alleged offence, but they are still absconding and/or evading police arrest.”

“Averments in paragraphs nos. 6, 9, 15 and 18 of CAN No. 1 of 2024:

*6. Your petitioners state that the investigating officer of the case collected mobile numbers of some of the FIR named accused persons and sent prayer for CDR, CAF and present tower location of the accused persons but that was of no help. **The investigating officer has been continuously holding raid in the area, against the FIR named accused persons who are still found absconding to evade police arrest to the unknown locations.** Further, after continuous and persistent raids*



held by the present investigating officer and her team, on 10.12.2023 the investigating officer arrested another FIR named accused person namely Maynal Sekh @ Maynal Haque, son of Samad Sekh of Lalmati, Police Station: Sahebganj, District: Cooch Behar and forwarded before Learned Additional Chief Judicial Magistrate, Dinhata 2nd Court, Cooch Behar.

9. Your petitioners state that although despite all endeavour the investigating officer was however able to arrest two FIR named accused persons but the Hon'ble Single Bench after hearing the parties on 16.12.2023 insisted that by January 19, 2024 the other accused persons have to be arrested by the Police.

Photostat copy of the order dated 16.12.2023 are annexed herewith and marked as "C"

15. Your petitioners submit that the Hon'ble Single Bench sitting in a prerogative Writ Jurisdiction failed to appreciate that whether an accused is liable to be arrested is totally based upon the decision of the investigating officer depending upon the material evidence collected during investigation after commission of the alleged offence.

*18. our petitioners submit that although two other persons namely Chaleman Sekh and Jaharul Islam have been arrested on 15.12.2023 but the Hon'ble Single Judge exceeded its jurisdiction by directing the appellants to arrest the other accused persons by January 19, 2024 without appreciating the **fact that the Investigating Officer has been continuously holding raid in the area against the accused persons, involved in the alleged offence, but they are still absconding and/or evading police arrest.**"*

21. From own pleadings and grounds taken in appeal by the appellants herein, it is evident that those accused persons who could not be arrested, are required to be arrested for fair and



effective investigation and the appellants want to arrest them but could not arrest despite holding continuous raids as they are absconding to evade police arrest. **Thus, the impugned orders merely enforce own decision of the investigating officer/the appellants herein for arrest rest of the accused persons/absconders. Under the circumstances filling of the present appeal, instead of arresting or taking all steps for arrest of rest of the accused persons as permissible under the law; indicates that although the accused persons are required for fair investigation but the appellants do not want to arrest them and for that reasons they have filed the present appeal so as to delay the arrest of the accused persons by using judicial forum as a tool.**

Fair investigation - rule of law:-

22. The criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping punitive course of law. These are important facets of the rule of law. Breach of rule of law amounts to negation of equality under Article 14 of the



Constitution of India. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must be right, just and fair and not arbitrary, fanciful or oppressive, vide **Menka Gandhi vs. Union of India** AIR 1978 SC 597 (para-7) **Vinubhai Haribhai Malviya and others vs. State of Gujrat and another** AIR 2019 SC 5233 (paras-16 and 17) and **Subramanian Swamy vs. C.B.I.** (2014) 8 SCC 682 **(para-86)**. Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. **The assurance of a fair trial is the first imperative** of the dispensation of justice, vide **Commissioner of Police, Delhi vs. Registrar, Delhi High Court, New Delhi** AIR 1997 SC 95 **(para-16)**.

23. **Fair and proper investigation is the primary duty of the investigating officer.** In every civilized society, the police force is invested with powers of investigation of a crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly. Proper result must be obtained by recourse to proper means, otherwise it would be an invitation to anarchy, vide **Rampal Pithwa Rahidas vs. State of Maharastra** 1994 Suppl. (2) SCC 73 **(para-37)**. Investigation must be fair and



effective and must proceed in the right direction in consonance with the ingredients of the offence and not in a haphazard manner more so in serious case. Proper and fair investigation on the part of the investigating officer is the backbone of rule of law vide **Sasi Thomas vs. State** (2006) 12 SCC 421 **(para-15 and 18)**.

24. For the purposes of investigation, offences are divided into two categories “cognizable” and “non-cognizable”. When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. **Investigation includes all the proceedings under the Cr.P.C. for the collection of evidence conducted by a police officer or by any person other than a Magistrate** (who is authorised by a Magistrate in his behalf). **Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender,”**



25. In the case of *State of Bihar & Anr. Vs. J.A.C. Sldanna & Ors.* reported in **(1980) 1 SCC 554** (Para 13) the Hon'ble Supreme Court held that there is a clear-cut and well demarcated sphere of activity in the field of **crime detection** and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. **It is the boundened of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence.** In the present set of facts as evident from pleadings and the grounds of appeal afore-quoted the investigating officer has found that an **offence has been committed. Therefore, it is his boundened duty to collect evidence for the purpose of proving the offence which includes arrest of the absconding accused persons for the purpose of collecting evidence. The pleadings and grounds afore-quoted leaves no manner of doubt that the investigating officer wants to arrest the rest of the accused for the purpose of collecting evidence. The impugned orders of the Learned Single Judge are not against the appellants but it intends to ensure fair investigation and rule of law to prevail.**



Section 41(1) (ba) CrPC empowers any police officer to arrest any person without an order from a Magistrate and without warrant. Section 41 of CrPC is reproduced below;-

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person-

(a) who commits, in the presence of a police officer, a cognizable offence;

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:-

(i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;

(ii) the police officer is satisfied that such arrest is necessary-

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever required cannot be ensured,



and the police officer shall record while making such arrest, his reasons in writing:

[Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.]

(ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;]

(c) who has been proclaimed as an offender either under this Code or by order of the State Government; or

(d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or

(e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or

(f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or

(g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or

(h) who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or



(i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

[(2) Subject to the provisions of section 42, no person concerned in a non-cognizable offence or against whom a complaint has been made or credible information has been received or reasonable suspicion exists of his having so concerned, shall be arrested except under a warrant or order of a Magistrate.]

27. **Pleadings in the stay affidavit and the grounds of appeal filed by the appellants herein, afore-quoted shows that appellants are satisfied that arrest of rest of the accused persons is necessary for fair investigation but they have shown their inability to arrest as rest of the accused persons could not be arrested despite holding raids and they are absconding. Therefore, argument of the Learned Additional Advocate General that impugned order for arrest of the accused person is usurpation discretionary power of police to arrest an accused, is self-contradictory.**

28. In the case of *Satender Kumar Antil Vs. Central Bureau of Investigation* and *Anr.* reported in **(2022) 10 SCC 51** (para 23 and 24) the Hon'ble Supreme Court has held as under;



“23. Section 41 under Chapter V of the Code deals with the arrest of persons. Even for a cognizable offence, an arrest is not mandatory as can be seen from the mandate of this provision. If the officer is satisfied that a person has committed a cognizable offence, punishable with imprisonment for a term which may be less than seven years, or which may extend to the said period, with or without fine, an arrest could only follow when he is satisfied that there is a reason to believe or suspect, that the said person has committed an offence, and there is a necessity for an arrest. Such necessity is drawn to prevent the committing of any further offence, for a proper investigation, and to prevent him/her from either disappearing or tampering with the evidence. He/she can also be arrested to prevent such person from making any inducement, threat, or promise to any person according to the facts, so as to dissuade him from disclosing said facts either to the court or to the police officer. One more ground on which an arrest may be necessary is when his/her presence is required after arrest for production before the court and the same cannot be assured.

*24. This provision mandates the police officer to record his reasons in writing while making the arrest. Thus, a police officer is duty-bound to record the reasons for arrest in writing. Similarly, the police officer shall record reasons when he/she chooses not to arrest. **There is no requirement of the aforesaid procedure when the offence alleged is more than seven years, among other reasons.**”*



(Emphasis Supplied)

29. Thus in view of the provision of Section 41 of CrPC and the facts admitted by the appellants herein in the grounds of appeal and the stay affidavit afore-quoted expressing need of arrest of the rest of the accused persons, we find no illegality in the impugned **orders of the Learned Single judge which merely seeks to enforce own decision of the appellants herein/investigating officer to arrest the accused persons for fair and effective investigation in the criminal case in question i.e. the Police Station Case No. 257 of 2023.**

Whether the High Court can direct for arrest of accused persons:-

30. Learned Additional Advocate General has much emphasised that the High Court has no power to direct for arrest of an accused in as much as this power is vested in police officers under Section 41 of CrPC and it is his discretion to arrest an accused person. In support of his submission he heavily relied upon a judgement of Hon'ble Supreme Court in *M.C. Abraham And Anr. Vs. State of Maharashtra & Ors. (2003) 2 SCC 649 (para 14)* which is reproduced below;-

“14 10-1-2002 and 11-1-2002 must be held to be orders passed by overstepping the parameters of judicial interference in such matters. In the first place, arrest of an



accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant. The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection.”

31. Learned Counsel for the appellants has also relied upon an order dated 11.06.2021 passed by the Hon'ble Supreme Court in the case of *Vishwanath Biradar Vs. Deepika & Ors.* (Special Leave to Appeal (Cr1.) No(s). 4123 of 2021) which is reproduced below;-



“UPON hearing the counsel the Court made the following

ORDER

The present Special Leave Petition is directed against an order passed by the High Court of Karnataka on 24.05.2021, whereby the anticipatory bail granted to the petitioner by VI Additional District and Sessions Judge, Dakshina Kannada, Mangaluru was quashed for the offences under Section 323 and Section 376 of IPC. The investigations were transferred to Corps of Detectives (COD) and that the Investigation Agency was directed to submit a final report not later than four months from the date of the order. There is another direction issued by the High Court which reads as under :

"The Investigating Officer is directed to take the accused into custody and produce him before the concerned jurisdictional Court."

We find that such direction to take the accused into custody is to beyond the jurisdiction of the High Court. Whether an accused is liable to be arrested is based upon the decision of the Investigating Officer depending upon the material collected during the investigation which may be conducted in a particular crime. It is for the Investigation Agency to whom the investigation has been entrusted to take a call as to when the petitioner is to be arrested. Therefore, the condition No.3 in the impugned order dated 24.05.2021 is set aside and quashed."

32. Both the above referred judgements/orders of Hon'ble Supreme Court relied by the Learned Additional Advocate General do not support the case of the appellants on facts. In the present set of facts the appellants/**investigating officer has himself taken decision/took a call to arrest rest of the accused persons who are absconding. Therefore, filling of the present appeal by the appellants praying to set aside the impugned orders of the Learned Single Judge, prima facie indicates the**



intent of the appellants that although arrest of the rest of the accused persons is necessary for fair and effective investigation but they really do not want to arrest them for the reasons best known to them and, thus, have been showing inaction from more than last six months which caused the Learned Single Judge to issue the direction for arrest so that rule of law may prevail.

33. In the case of *Babubhai Jamnadas Patel Vs. State of Gujarat & Ors.* reported in (2009) 9 SCC 640 (para 41, 49, 51) Hon'ble Supreme Court recognised the **power of the High Courts to monitor an investigation into an offence when it is satisfied that either the investigation is not being proceeded with or is being influenced by interested persons;** and held as under;-

“41. There is little doubt that normally investigation of offences is the function of the investigating agencies and the courts do not ordinarily interfere with the same. But, at the same time the High Court is vested with such powers, though the same are invoked only in cases where extraordinary facts are involved, necessitating such monitoring by the courts. In the circumstances, we are only required to see whether such an extraordinary fact situation exists in this case which warranted such a course of action to be adopted by the High Court.

49. The various decisions cited by Mr Dave endorse the view that when required not only could the High Court or this Court direct the investigating agencies to conduct the investigation in a fair and unbiased manner, but that in exercise of its powers under Article 142 of the Constitution, the Supreme Court could also issue



directions for enforcement of fundamental rights and to ensure that complete justice was done to the parties.

51. There is, therefore, no doubt that in appropriate cases, the courts may monitor an investigation into an offence when it is satisfied that either the investigation is not being proceeded with or is being influenced by interested persons.”

34. *In Violence in Kakhimpur Kheri (Uttar Pradesh) Leading to Loss of Life, In Re* reported in **(2022) 9 SCC 337** (Para 6) the Hon’ble Supreme Court reiterated the law laid down in *Babubhai Jamnadas Patel* (supra) and held that the **Supreme Court and the High Courts are the “sentinels of justice” that ensure that the rule of law and constitutional guarantees of a fair and impartial investigation into alleged criminality, are upheld.**
35. In *Bharati Tamang Vs. Union of India & Ors.* Reported in **(2013) 15 SCC 578** (Para 33, 41.3) Hon’ble Supreme Court reiterated the necessity of **courts to be alive to the situations where genuine grievances were brought to its notice for redressal** and held, as under;-

“33. We also wish to refer to some of the decisions relied upon by Mr Rohatgi learned Senior Counsel for the petitioner as to how far the grievances of the petitioner can be redressed in this proceedings. In the famous decision of Zahira Habibulla H. Sheikh [Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158 : 2004 SCC (Cri) 999] , this Court has expressed its strong view as to the necessity of courts to be alive to the situations where genuine grievances were brought to its notice for



redressal. Paras 54 and 56 are relevant for our purpose and the relevant portions therein read as under : (SCC pp. 192-93)

“54. ... When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

56. ... **‘The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.’** [Ed. : As observed in *Jennison v. Baker*, (1972) 2 QB 52 at p. 66 H : (1972) 2 WLR 429 : (1972) 1 All ER 997 (CA).]

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.”

The above principles make the position clear to the effect that in the administration of justice, lethargic action of courts may result in failure of justice and, therefore, when deficiency in investigation or prosecution is visible or can be perceived by lifting the veil that thereby tried to hide the realities, the court should deal with the



same with the iron hand appropriately within the framework of law.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.”

(Emphasis Supplied)

36. In *Zahira Habibullah Sheikh & Anr Vs. State of Gujarat & Ors.* Reported in **(2004) 4 SCC 158** (Para 54, 56 and 63) Hon'ble Supreme Court has held as under;-

“54. Though justice is depicted to be blindfolded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administer justice and not to ignore or turn the mind/attention of the court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. When an ordinary citizen makes a grievance against the mighty administration, any indifference, inaction or lethargy shown in protecting his right guaranteed in law will tend to paralyse by such inaction or lethargic action of courts and erode in stages the faith inbuilt in the judicial system ultimately destroying the very justice-delivery system of the country itself. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.

56. As pithily stated in *Jennison v. Baker* [(1972) 1 All ER 997 : (1972) 2 QB 52 : (1972) 2 WLR 429 (CA)] : (All ER p. 1006d)

“The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope.”

Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. It should be ensured that they do not wield such powers which under the Constitution has to be held only in trust for the public and society at large. If deficiency in investigation or prosecution is



visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (See Shakila Abdul Gafar Khan v. Vasant Raghunath Dhoble [(2003) 7 SCC 749 : 2003 SCC (Cri) 1918] .)

63. As was observed in *Ram Bihari Yadav v. State of Bihar* [(1998) 4 SCC 517 : 1998 SCC (Cri) 1085] if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the law-enforcing agency but also in the administration of justice in the hands of courts. The view was again reiterated in *Amar Singh v. Balwinder Singh* [(2003) 2 SCC 518 : 2003 SCC (Cri) 641] .”

(Emphasis Supplied)

37. Thus, it is necessary for courts to be alive to the situations where genuine grievances were brought to its notice for redressal. **The law should not be seen to sit by limply, while those who defy it go free and those who seek its protection loose hope. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand appropriately within the framework of law. Courts have to ensure that accused persons are punished and that the might or authority of the State are not used to shield themselves or their men. If deficiency in investigation or prosecution is**



visible or can be perceived by lifting the veil trying to hide the realities or covering the obvious deficiencies, courts have to deal with the same with an iron hand, appropriately within the framework of law. It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. If primacy is given to designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of people would be shaken not only in the law-enforcing agency but also in the administration of justice in the hands of courts. Applying these principles as settled by the Hon'ble Supreme Court in the afore-noted judgements, we find on facts of the present case that the learned Single Judge has neither committed any illegality nor exceeded his power to direct for arrest of the accused persons in as much as the said direction is the result of the own decision of the investigating officer to arrest the accused persons for the purpose of investigation but the accused persons are avoiding their arrest and absconding.

38. For all the reasons afore-stated the **appeal is dismissed as not maintainable**. Interim order is vacated forthwith.



39. Urgent certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SURYA PRAKASH KESARWANI, J.)

I agree

(RAI CHATTOPADHYAY, J)