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W.A.No.1429 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on: 22.02.2024

Judgment pronounced on: **15.03.2024**

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA,
CHIEF JUSTICE**

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.1429 of 2023

M/s.Kotak Mahindra Bank Limited,
Rep. by its Authorized Representative
P.Thiyagarajan

.. Appellant

Versus

1. R.Selvaraj
2. The Banking Ombudsman,
Reserve Bank of India,
Rajaji Salai,
Chennai - 600 001.
3. M/s.Kotak Mahindra Bank Ltd.,
Saral Auto Loans - Chennai,
Rep. by its Manager,
No.3, 2nd Lane Beach, Parry's Corner,



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4. The Inspector of Police,
Bank Fraud Investigation,
Wing - Team - XXXI,
Central Crime Branch,
Chennai.

.. Respondents

Prayer : Writ Appeal under Clause 15 of the Letters Patent to set aside the order, dated 22.02.2023 passed in M.P.No.1 of 2014 in W.P.No.21836 of 2012.

For Appellant : Mr.Karthik, Senior Counsel
for Mr.E.K.Kumaresan

For Respondents : Mr.Manishankar, Senior Counsel
for Mr.A.Nagarajan, for R1

: Mr.C.Kathiravan,
Special Government Pleader,
for R4

: No Appearance for RR-2 and 3

JUDGMENT

(Judgment made by the Hon'ble Mr Justice D.Bharatha Chakravarthy)

This Writ Appeal is directed against the order of the learned Single

Judge, dated 22.02.2023 made in M.P.No.1 of 2014 in W.P.No.21836 of

<https://www.mhc.tn.gov.in/judis>



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2. In the said Miscellaneous Petition, the original writ petitioner had made a prayer that the Court would be pleased to cause an inquiry under Section 340 of the Code of Criminal Procedure, 1973 against the appellant herein and its officials and direct filing of complaint against them. The learned Single Judge passed an order directing the Registry to frame a complaint and file the same before the learned Chief Metropolitan Magistrate, Chennai. The operative portion of the order contained in paragraphs Nos.17 and 18 reads as hereunder :-

" 17. In light of the aforesaid discussion, I have no hesitation in directing the Deputy Registrar, Criminal Section, High Court, Madras to frame a complaint, in terms of Section 340 of Cr.P.C. for transmission to the Chief Metropolitan Magistrate, Chennai for framing appropriate charges and taking further action in accordance with law.

18. The on-going proceedings before the Chief Metropolitan Magistrate, Chennai are stated to be fixed on 23.02.2023. Let the Deputy Registrar, Criminal Section, High Court, Madras do the needful in terms of the present order within a period of four (4) weeks from date of receipt of a copy of this order."



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3. The brief facts which are relevant for the purpose of present appeal are that the original writ petitioner namely, *R.Selvaraj* filed W.P.No.21836 of 2012 challenging the order of the Banking Ombudsman, Chennai, dated 02.04.2012 in complaint No.201112006004997 and to quash the same and consequently, to direct the Kotak Mahindra Bank Limited to furnish full and final settlement of accounts in respect of the loan SA-118003. It is the case of the writ petitioner that he obtained a loan from the Bank for a sum of Rs.1,50,00,000/- on 27.07.2006. Thereafter, he was regularly paying the monthly installments and he paid a sum of Rs.23,10,352/- for seven months. At that time, in March 2007, he decided to pay the entire loan amount by selling his property. By the letter, dated 22.03.2007, the Bank confirmed that it would settle the account on payment of Rs.1,70,00,000/- and issued a No Due Certificate. Accordingly, vide D.D.No.015980, dated 26.03.2007, the said amount was paid and the original title deeds were also released and the mortgage was cancelled. The letter, dated 11.04.2007, acknowledging



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the full satisfaction of the above amount, was also issued. The writ petitioner requested the furnishing of the statement of accounts. However, the same was not furnished despite repeated representations and reminders. Upon calculation, the petitioner's auditor informed him that the Bank had collected an excess sum of Rs.28,26,294/-. Therefore, after making further representation, the writ petitioner approached the Banking Ombudsman. By the order, dated 02.04.2012, the complaint was rejected and hence the Writ Petition.

4. In the Writ Petition, a counter-affidavit was filed by the Bank specifically contesting that the claim of the petitioner is false. It was further stated that knowing fully well that the Bank would not be able to retrieve the account, the petitioner is seeking to reopen the loan account by making false claim only to unjustly enrich himself. The counter is also to effect that the amount collected by the Bank was towards foreclosure and other charges, and that the auditor's calculation is erroneous. However, pending the Writ



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Petition, the first respondent was called for meetings on 08.10.2012 and 22.12.2012.

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5. On 27.12.2012, the Bank deposited a sum of Rs.14,30,509/- in the account of the writ petitioner. Since the Bank did not respond to the letter of the writ petitioner dated 12.01.2013 asking for the basis of the said amount deposited, the writ petitioner filed a criminal complaint alleging misappropriation, cheating and falsification of accounts before the Inspector of Police, B1 North Beach Police Station on 11.02.2013. Since no case was registered, the writ petitioner approached this Court by way of CrI.O.P.No. 6547 of 2013. In the said Criminal Original Petition, a counter was filed. In the said counter, a stand was taken by the Bank that after obtaining a legal opinion, the Bank made an RTGS transfer of the credit balance of the petitioner of Rs.14,30,510/-. Subsequently, the Writ Petition filed in W.P.No.21836 of 2012 came to be dismissed by the learned Single Judge by the order dated 12.12.2022 holding that there was no error in the order of the



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Banking Ombudsman. Thereafter, the present Writ Miscellaneous Petition was filed.

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6. After hearing both the sides, the learned Single Judge compared the statements made in the counter-affidavit filed in the Writ Petition as well as in the Criminal Original Petition. The learned Single Judge found that the statements made in the counter-affidavit filed in the Writ Petition is *prima facie* false and incorrect when contrasted with the statements made in the counter-affidavit filed in CrI.O.P.No.6547 of 2013. The explanation, that the same was not intentional, was rejected and after detailed consideration of both the counter-affidavits and also the investigation report in the complaint lodged by the writ petitioner, the learned Single Judge concluded that the report fortifies the *prima facie* view that the Bank had committed perjury. In view thereof, considering the Sections 340 to 343 of the Code of Criminal Procedure and the nature of offence under Section 195 of the Indian Penal Code, the order, dated 22.02.2023 was passed. Aggrieved by which, the



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present appeal is filed.

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7. On 07.07.2023, notice to the respondents was ordered in the appeal.

Upon appearance, the respondents raised an issue regarding maintainability of the appeal. As such, both the sides learned Senior Counsel addressed the arguments on the issue of maintainability of the Letters Patent Appeal with an understanding that if only the appeal is found to be maintainable, further opportunity will be given to both the sides to contest the matter on merits.

8. *Mr.Karthik*, learned Senior Counsel for the appellant would submit that this is a fit case for interference by this Court. Firstly, by relying upon the judgment of the Hon'ble Supreme Court in *Amarsang Nathaji as himself and as Karta and Manager Vs. Hardik Harshadbhai Patel and Ors.*¹, he would submit that mere contradictory statements made in the judicial proceedings by itself are not sufficient to justify the prosecution for perjury. It must be a case where it should be expedient in the interest of

¹ (2017) 1 SCC 113



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justice to hold such an enquiry. When there were no further materials, only based on a *prima facie* opinion, the order was passed. He would also rely upon paragraph No.9.1 of the judgment of the Hon'ble Supreme Court in ***Chintamani Malviya Vs. High Court of Madhya Pradesh***² to contend that unless the statement made is a deliberate one on a matter of substance and only upon satisfaction that a conviction would reasonably be probable, the Court should exercise such a power.

9. On the question of maintainability, he would rely upon the judgment of the Co-ordinate Bench of this Court in ***C.Sivasankaran Vs. Foreigner Regional Registration Officer and Ors.*** (W.A.SR.No.49793 of 2020), wherein this Court had examined all the relevant decisions including that of the judgment of the Hon'ble Apex Court in ***Ram Kishan Fauji Vs. State of Haryana and Ors.***³. By relying upon the said judgment, he would contend that it is not the provision of law under which the action which is

² (2018) 6 SCC 151

³ (2017) 5 SCC 533



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exercised would determine whether the proceedings are criminal in nature or not, but, the consequences of the order which is passed. He would submit that in this case, it would only result in forming of an opinion about the deliberate nature of the statements made and directing the Registry to make a complaint and forwarding to the learned Judicial Magistrate. The same is done in the exercise of its writ jurisdiction. Thus, the appeal would be maintainable. The learned Senior Counsel would also rely upon the following judgments with reference to the merits of the matter :-

S.No.	Judgment	Citation
1.	Aarish Asgar Qureshi Vs. Fareed Ahmed Qureshi and Anr.	(2019) 18 SCC 172
2.	Santokh Singh Vs. Izhar Hussain and Anr.	(1973) 2 SCC 406
3.	S.Aravind Peace Adhiban Vs. P.S.Minni Starina Evangelin	2023 SCC OnLine Mad 1710
4.	Chajoo Ram Vs. Radhey Shyam and Anr.	(1971) 1 SCC 774
5.	N.S.Nandiesha Reddy Vs. Kavitha Mahesh	2021 SCC OnLine SC 538
6.	Veerappa Shivappa Horadi Vs. Krishna Triyanbak Deshpande	1977 SCC OnLine Kar 25
7.	K.T.M.S.Mohd. and Anr. Vs. Union of India	(1992) 3 SCC 178
8.	M.S.Ahlawat Vs. State of Haryana and Anr.	(2000) 1 SCC 278
9.	T.Dhinakaran (minor) and Anr. Vs. V.Ranganathan and Ors.	2017 SCC OnLine Mad 30109



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10.	V.Baby Vs. Sekar and Anr.	2014 SCC OnLine Mad 11478
11.	Narendra Kumar Srivastava Vs. State of Bihar and Ors.	(2019) 3 SCC 318
12.	Kailash Mangal Vs. Ramesh Chand (Dead) through Legal Representative	(2015) 15 SCC 729
13.	Bandekar Brothers Private Limited and Anr. Vs. Prasad Vassudev Keni and Ors.	(2020) 20 SCC 1
14.	Tara Gulechha Vs. M/s.Idea Housing Corporation, Rep. by its Partner, Mr.Shankar Babu	Crl.O.P.Nos.11729 and 11842 of 2021

10. Per *contra*, Mr Manishankar, learned Senior Counsel for the first respondent would submit that since the order is passed entirely in the realm of criminal jurisdiction, the appeal under Clause 15 of the Letters Patent is not maintainable. In support of his contention, he would rely upon the judgment of the Co-ordinate Bench of this Court in **D.Kumar Vs. Raichand Daga and Ors.**⁴. He would rely upon another judgment of the Co-ordinate Bench of this Court in W.A.No.2167 of 2022, dated 12.10.2022 in **Ajay Kumar Bishnoi Vs. The Inspector of Police and Ors.**. To press home the proposition that even an appeal under Section 340 of the Code of Criminal Procedure is not maintainable as against the order of a Single Bench, the

⁴ 2020 SCC OnLine Mad 12156



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judgment of this Court in ***Laxmi Narayan Udyog Limited (In Liqn) and Anr. Vs. Omendra Kumar Chowdhury and Ors.***⁵ is relied upon. He would also place strong reliance on the judgment of the Hon'ble Supreme Court of India in ***Ram Kishan Fauji Vs. State of Haryana and Ors.***⁶.

11. In support of his submissions that the order of reference to file complaint is not an appealable order, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Surendra Gupta Vs. Bhagwan Devi (Smt) and Anr.***⁷ and ***Pritish Vs. State of Maharashtra and Ors.***⁸. For the proposition that at this stage of forwarding a complaint, there need not be any opportunity to the accused, the learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr.***⁹ and ***State of Punjab Vs. Jasbir Singh***¹⁰.

⁵ 2017 SCC OnLine Cal 9687

⁶ (2017) 5 SCC 533

⁷ (1994) 4 SCC 657

⁸ (2002) 1 SCC 253

⁹ (2005) 4 SCC 370

¹⁰ 2022 SCC OnLine SC 1240



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12. The preliminary question that has to be considered and decided is whether or not the present appeal under Clause 15 of the Letters Patent is maintainable.

13. Clause 15 of the Letters Patent reads thus :-

"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 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 any thing 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 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



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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)

Therefore, the question to be decided is that whether or not the order of the learned Single Judge under the appeal is passed in exercise of criminal jurisdiction.

14. The issue has already been considered by the Hon'ble Supreme Court of India in ***Ram Kishan Fauji***'s case (cited *supra*). In the said matter, the *Lok Ayuktha* of the State of Haryana directed an investigation based on materials including a Video Compact Disc. The same was challenged in a Civil Writ Petition before the High Court. The learned Single Judge quashed the orders as also the consequential F.I.R lodged pursuant thereto. A Letters Patent Appeal was entertained in respect of the same and an interim stay was granted. The application for vacating the interim order was dismissed and



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the interim order was made absolute. The Hon'ble Supreme Court of India, after referring to its judgment in *Jamshed N. Guzdar Vs. State of Maharashtra*¹¹, held that till a competent legislation deals with the subject, the powers under the Letters Patent can be exercised by the High Court. The Hon'ble Supreme Court of India, in paragraph Nos.27 to 31, considered the difference between a civil proceeding and a criminal proceeding. The Hon'ble Supreme Court of India considered the judgment of the Gujarat High Court in *Sanjeev Rajendrabhai Bhatt Vs. State of Gujarat*¹² and held in paragraph No.52 as follows :-

" 52. From the aforesaid analysis, it is demonstrable that the Gujarat High Court has opined that relying on the authority of this Court in *Ishwarlal Bhagwandas* [*CIT v. Ishwarlal Bhagwandas*, (1966) 1 SCR 190 : AIR 1965 SC 1818], the issue whether the proceedings are civil or not would depend upon the nature of the right violated and the appropriate relief which might be claimed and not upon the nature of the tribunal which has been invested to grant relief. The Division Bench further opined that even if cognizance is not taken in respect of a criminal case, it would not take out the case from the purview of criminal jurisdiction. Thus, it has been held by the Division Bench that when there is a proceeding under Article 226 of the

¹¹ (2005) 2 SCC 591

¹² (2000) 1 Guj LR 206



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Constitution arising from an order made by a Court in exercise of power under the Code of Criminal Procedure, it would be a criminal proceeding within the meaning of Letters Patent."

15. The Hon'ble Supreme Court of India, thereafter, considered the judgment of the Delhi High Court in *C.S. Agarwal Vs. State*¹³ and held in paragraph No.55 as follows :-

" 55. Being of this view, the Full Bench in *C.S. Agarwal* case [*C.S. Agarwal v. State, 2011 SCC OnLine Del 3136 : (2011) 125 DRJ 241*] opined that the letters patent appeal was not maintainable. In this regard, the learned counsel for the appellant has also drawn our attention to the Division Bench judgment of the Delhi High Court in *Vipul Gupta v. State* [*Vipul Gupta v. State, 2014 SCC OnLine Del 434 : (2014) 208 DLT 468*] wherein the Division Bench, placing reliance on the Full Bench decision [*C.S. Agarwal v. State, 2011 SCC OnLine Del 3136 : (2011) 125 DRJ 241*] , has expressed the view that though the writ petitions were not filed for quashing of the FIR as in the case of the Full Bench decision, yet the learned Single Judge was exercising criminal jurisdiction, for the Lieutenant Governor of Delhi had agreed with the proposal not to press the application for withdrawal of the criminal case under Section 321 CrPC and allowed the trial court to proceed on merits. In this factual backdrop, the Division Bench opined : (*Vipul Gupta* case [*Vipul Gupta v. State, 2014 SCC OnLine Del 434 : (2014) 208 DLT 468*], *SCC OnLine Del pp. 290-91, para 14*)

¹³ 2011 SCC OnLine Del 3136
<https://www.mhc.tn.gov.in/judis>



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“14. ... Even though the challenge in the writ petitions was to a decision of Hon'ble the Lieutenant Governor but the said decision was relating to the prosecution already underway of the appellants and the direct effect of the dismissal of the writ petitions is of continuation of the prosecution which may result in imposition of sentences such as death, imprisonment, fine or forfeiture of property, of the appellants. We are thus of the view that this Court while dealing with the writ petitions was exercising its criminal jurisdiction. It cannot be also lost sight of that the writ petitions were intended to avoid the consequences of criminal proceedings initiated under the Code of Criminal Procedure and concerned with rights in criminal law domain. We have thus no doubt that the learned Single Judge, in dealing with the writ petitions was exercising “criminal jurisdiction” and these letters patent appeals are not maintainable.””

16. Thereafter, it rendered its finding in paragraph No.56 as follows :-

" **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



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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."

17. The Letters Patent of Bombay, Madras and Calcutta being *pari materia*, is also considered. Thus, it can be seen that while no hard and fast

rule can be laid down, it is held that it is not the concerned jurisdiction in



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which the power is exercised while passing the order that should be considered, but the nature of the rights violated and the outcome i.e., the relief being granted which should be considered.

18. The judgment of the Hon'ble Supreme Court of India was considered by a Co-ordinate Bench of this Court in **C.Sivasankaran's** case (stated *supra*). After considering the same, the Intra-Court appeal arising out of the Writ Petition which was filed challenging the lookout circular to serve the purpose of participation in the pending criminal proceedings was held to be not maintainable. In **D.Kumar's** case (cited *supra*) again an order directing to register a case based on the complaint and to provide Police protection passed in exercise of Article 226 of the Constitution of India was held to be not maintainable. Similarly, in **Ajay Kumar Bishnoi's** case (cited *supra*), a Co-ordinate Bench held that if the prayer for Writ of Declaration to declare the F.I.R as null and void was refused, no appeal under Clause 15 of the Letters Patent is maintainable.



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19. Even though the Writ Petition was filed challenging the order of the Banking Ombudsman, the same is not the subject matter of the appeal. The Miscellaneous Petition itself is filed under Section 340 of the Code of Criminal Procedure, 1973. The application was filed complaining of the commission of the offence of perjury. The order resulted in the forwarding of the complaint to the learned Chief Metropolitan Magistrate, Chennai. If it is taken on file, will lead to the prosecution of the appellant and upon being found guilty would result in punishment. Therefore, (i) being the exercise of jurisdiction under the Code of Criminal Procedure, (ii) the infraction of rights complained in the nature of commission of offence of perjury; (iii) the consequence being forwarding of a criminal complaint under Section 341 of the Code of Criminal Procedure; and (iv) the outcome being prosecution and on proof, the conviction and sentence to the appellant upon being found guilty, would all leave no doubt in our minds that the entire exercise of power is completely within the realm of criminal jurisdiction. As such, the



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appeal under Clause 15 of the Letters Patent is not maintainable.

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20. Section 341 of the Code of Criminal Procedure reads as follows :-

" **341. Appeal.** - (1) Any person on whose application any Court other than a High Court has refused to make a complaint under subsection (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of subsection (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision."

Thus, it can be seen that while an appeal is provided to the higher Court, to which, the Court forwarding an application under Section 340 of the Code of Criminal Procedure is subordinate, application of the provision is expressly excluded when the complaint under Section 340 of the Code of Criminal Procedure is forwarded by the High Court.

21. A Division Bench of the Calcutta High Court in *Laxmi Narayan*



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Udyog Limited (In Liqn)'s case (cited *supra*) considered the very question in detail and held that the appeal, being a creature of a statute, has to be specifically provided and in the absence of an express provision, more specifically, when the High Court is excluded from the operation of the provision, held that intra-Court appeal is not maintainable even under Section 341 of the Code of Criminal Procedure. Accordingly, we answer the question that the present appeal is not maintainable.

22. In the result, this Writ Appeal is dismissed as not maintainable. All other contentions of the parties are kept open to be decided in appropriate proceedings. There shall be no order as to costs. Consequently, C.M.P.No.13919 of 2023 is closed.

(S.V.G., CJ.)

(D.B.C., J.)

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Index : yes

Speaking order

Neutral Citation : yes

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1. The Banking Ombudsman,
Reserve Bank of India,
Rajaji Salai,
Chennai - 600 001.
2. M/s.Kotak Mahindra Bank Ltd.,
Saral Auto Loans - Chennai,
Rep. by its Manager,
No.3, 2nd Lane Beach, Parry's Corner,
Chennai.
3. The Inspector of Police,
Bank Fraud Investigation,
Wing - Team - XXXI,
Central Crime Branch,
Chennai.

**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.**

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