



W.A.No.1899 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : **26.03.2024**
Pronounced on : **06.09.2024**

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.1899 of 2019
and C.M.P.No.12935 of 2019

S.Gugan ... Appellant

Vs.

1. The Commissioner of Customs
Sea Import / Vigilance - CHI-VIII Commissionerate,
Customs House,
Rajaji Salai, Chennai - 600 001.

2. The Additional Superintendent of Police
Central Bureau of Investigation,
Shastri Bhavan, Haddows Road,
Nungambakkam, Chennai - 600 006.

... Respondents

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act,
against the order made in W.P.No.3208 of 2018, dated 26.04.2018.

For Appellant : Mr.K.Gandhikumar
For Respondents : Mr.AR.L.Sundaresan, ASG
to assist the Court
Mr.A.P.Srinivas
Senior standing counsel for R1
Mr.K.Srinivasan
Spl.P.P. (For CBI cases) for R2

JUDGMENT



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R.SURESH KUMAR, J

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This Intra Court Appeal arise out of the order of the writ court, dated 26.04.2018 made in W.P.No.3208 of 2018.

2. The short facts which are required to be noticed for the disposal of this writ appeal reads thus :

(i) That the appellant was working as an Examiner in the Customs Department. Due to a alleged mis-declaration of goods where the goods were fully fitted Air Conditioner, whereas it has been declared as part of the Air Conditioner and imported to India through Chennai Port, there had been a revenue loss to the exchequer of the Customs Department.

(ii) The appellant being the Examiner along with few other officials who, according to the Department, had been instrumental for such a mis-declaration to happen as they have not properly examined or evaluated thereby it led to loss of exchequer. Therefore the Department decided to launch a prosecution against those officials including the appellant.

(iii) Therefore the Department wanted to get a sanction order under



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Section 19(1)(c) of the Prevention of Corruption Act, 1988 from the competent authority namely the Commissioner of Customs Import (Sea Port).

(iv) Such a sanction order for prosecution had been issued by the competent authority on 30.09.2013 which was under challenge in the writ petition filed by the appellant who stood as the writ petitioner before the writ court.

(v) The learned Judge heard the said writ petition and ultimately concluded on merits that, the decision taken by the competent authority to issue sanction for launching prosecution against the writ petitioner was justified and therefore he was pleased to dismiss the said writ petition through the impugned order.

(vi) Whether such a decision taken by the writ court is correct or not is the issue raised in this Intra Court Appeal. However in view of the order that is proposed to be passed in this appeal, we do not wish to go into the merits of the plea raised by the appellant as against the order impugned passed by the writ court, the reason would be explained hereunder.

3. At the initial stage of the hearing, the learned Senior standing counsel appearing for the first respondent has raised a preliminary objection



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as to the maintainability of the writ appeal.

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4. Since the learned Senior standing counsel appearing for the first respondents has raised such an objection by citing certain decisions of this Court as well as the Hon'ble Apex Court, we thought of requesting the Additional Solicitor General to assist the Court on the issue as to whether the writ appeal is maintainable or not and a legal position to that regard can be placed before this Court for consideration and appropriate decision.

5. Accordingly, Mr.AR.L.Sundaresan, learned Additional Solicitor General appeared and assisted the Court. We have also heard Mr.K.Gandhikumar, learned counsel appearing for the appellant and Mr.A.P.Srinivas, learned Senior standing counsel appearing for the respondent Department and Mr.K.Srinivasan, learned Special Public Prosecutor (For CBI Cases) appearing for the second respondent.

6. It is the contention of the respondents which was fortified by the submissions made by the learned Additional Solicitor General that, the Intra Court Appeal is not maintainable, for the reason that, the learned single



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Judge even though having exercised of his power under Article 226 of the Constitution in deciding the writ petition, since it relates to a criminal jurisdiction, the said order passed by the writ court even though under Article 226 of the Constitution cannot be treated to be an appealable order within the meaning of clause 15 of the Letters Patent.

7. In support of their contentions, the learned Additional Solicitor General has relied upon the following decisions :

(i) Ram Kishan Fauji v. State of Haryana, (2017) 5 SCC 533

(ii) Jasbir Singh v. State of Punjab (2022) 13 SCC 462

(iii) C.Shivasankaran v. Foreign Regional Registration officer & Ors, 2020 SCC Online Mad 2656

(iv) Ajay Kumar Bishnoi v. Inspector of Police & Ors, W.A.No.2167 of 2022, dated 12.10.2022.

(v) D.Kumar v. Raichand Daga & Ors, W.A.SR.44351 of 2020, dated 03.08.2020.

8. The learned Additional Solicitor General heavily relied upon the



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decision of the Hon'ble Supreme Court in Ram Kishan Fauji reported in (2017) 5 SCC 533 and made submissions stating that, the Hon'ble Supreme Court has discussed the issue elaborately and has ultimately held that, the two decisions made by the Gujarat and Delhi High Courts have correctly laid down the law, however the view expressed by the Full Bench of the High Court of Andhra Pradesh in the matter of Gangaram Kandaram v. Sunder Chikha reported in 2000 SCC Online AP 119 is incorrect.

9. The learned Additional Solicitor General would further submit that, after held so, the Hon'ble Supreme Court has declared in unequivocal terms that, the Letters Patent Appeal was not maintainable before the Division Bench, consequently the order passed therein is wholly unsustainable and accordingly it was set aside.

10. The said decision of the Hon'ble Supreme Court where the law has been held so in Ram Kishan Fauji's case has been followed in three Division Bench Judgments of this Court, i.e., Ajay Kishan Bishnoi, D.Kumar and C.Shivasankaran's cases cited supra.



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11. Therefore placing heavy reliance on these decisions, the learned Additional Solicitor General would submit that, by Ram Kishan Fauji's case the Supreme Court since has declared the law in unequivocal term and the same is being followed subsequently in a number of decisions not only by this Court but also by various High Courts, it has become a settled legal position now that, as against the order passed by the single Judge of the High Court exercising jurisdiction under Article 226 of the Constitution in criminal matters, no Intra Court Appeal would lie under the Letters Patent.

12. Therefore the present appeal arise out of the order passed by the writ court, of course under Article 226 of the Constitution in a criminal matter, where the sanction order issued by the competent authority under the Prevention of Corruption Act since was questioned, the ultimate conclusion would be at the end of the prosecution if it is initiated pursuant to the said sanction order either the writ petitioner / appellant would be convicted or be acquitted. Therefore based on such an ultimate conclusion the litmus test to identify whether a particular matter is a criminal matter and the order passed therein is under criminal jurisdiction can very well be fit into the present facts of the case and therefore the order passed by the learned Judge which is



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impugned herein is also an order under Article 226 in a criminal matter by exercising the power under Article 226, therefore the Letters Patent Appeal would not lie, the learned Additional Solicitor General has elaborated and contended.

13. Per contra, Mr.K.Gandhikumar, learned counsel appearing for the appellant has invited our attention to the Madras High Court Writ Rules 2021, in short, the Writ Rules, where Rule (17)(3) has been relied upon by the learned counsel which reads thus :

"Writ Petitions (Crl.) shall be posted before the single Judge hearing petitions under Section 482 Cr.P.C or as directed by the Chief Justice."

14. Extending his arguments by relying upon Rule 17(3) of Writ Rules, the learned counsel would contend that, the writ petition criminal is a separate nomenclature under Rule 17(3) and such kind of matters are posted for hearing before the single Judge who heard the matter under Section 482 Cr.P.C or as directed by the Chief Justice. Therefore the learned counsel would submit that, the present case where the impugned order was passed by



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the learned Judge who had not passed an order in a writ petition (criminal), but he had passed such an order in a regular writ petition filed under Article 226 of the Constitution seeking for a writ of certiorari. Therefore the said writ petition since cannot be categorised as writ petition (criminal) within the meaning of Rule 17(3) of the Writ Rules, it cannot be construed that the learned Judge in disposing the said writ petition had exercised only the criminal jurisdiction under Article 226 of the Constitution. Therefore the Intra Court Appeal would lie under clause 15 of the Letters Patent.

15. The learned counsel appearing for the appellant would also make submissions that, this issue in fact had been considered by the Full Bench of the Andhra pradesh High Court in the said Judgment in Gangaram's case (*cited supra*).

16. Since the learned Judge while he was looking after the writ cases filed under Article 226 of the Constitution has entertained the present writ petition and has exercised his jurisdiction only under Article 226 of the Constitution for issuance or refuse to issuance of prerogative writ. The five types of prerogative writs, according to the learned counsel, are to be issued



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only under Article 226 of the Constitution. Therefore at no stretch of imagination it can be stated that, merely because the order impugned before the writ court was a sanction order issued by the competent authority for launching the prosecution, it cannot be treated as a criminal matter and therefore it cannot be stated that the learned Judge who dealt with the matter had exercised the criminal jurisdiction and hence the Letters Patent Appeal cannot be maintainable.

17. Contending further, the learned counsel appearing for the appellant submits that, the power exercised by the competent authority in issuing the sanction order is purely an administrative action and such an administrative orders, if it is passed by any authority under a statute, cannot be treated as an order passed by an authority exercising the investigating or policing power within the meaning of the provisions of the Code of Criminal Procedure. Therefore such an administrative action culminated in the sanction order passed by the competent authority can never be treated as an order arising out of a criminal jurisdiction or exercising power arising out of a criminal law and therefore the objection raised on behalf of the respondents with regard to the maintainability of the writ appeal is totally



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untenable and hence, the learned counsel would canvass that the Intra Court Appeal can very well be entertained as maintainable and justice may be rendered on the merits of the case.

18. We have given our anxious consideration to the rival submissions made by the learned counsel appearing for both sides including the learned Additional Solicitor General who appeared before this Court at our request to assist the Court.

19. Clause 15 of the Letters Patent of the Madras High Court 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 sentence or order passed or



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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 (one 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 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.”

20. Under Clause 15 of the Letters Patent, what kind of appeals would arise from Original Jurisdiction of the High Court to its appellate jurisdiction has been enumerated. The language used in the Statute is that, we do further



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ordain that an appeal shall lie to the said High Court of Judicature at Madras from the 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.....

21. There are exceptions which has been provided in (at clause 15) which it says that, a Judgment passed in exercise of Appellate Jurisdiction in respect of a decree or order in the exercise of the appellate jurisdiction by a Court subject to the superintendence of the said High Court, an order made in the exercise of revisional jurisdiction and 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.

22. Among these exceptions, the last exception is in the exercise of criminal jurisdiction, which means that if any order is passed in exercising of criminal jurisdiction, as against the said order, no Intra Court Appeal under clause 15 of Letters Patent would lie.

23. This legal position is very explicit on a plain reading of clause 15



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of the Letters Patent.

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24. This position has been exhaustively discussed and a complete answer has been given by the Hon'ble Supreme Court in Ram Kishan Fauji's case.

25. Ram Kishan Fauji's case had arisen out of a Judgment of the Punjab and Haryana High Court, where the appellant filed a writ petition before the High Court seeking a writ of certiorari for quashing the order passed by the second respondent therein, whereby it had recommended registration of a case against the petitioner therein under the provisions of the Prevention of Corruption Act, 1988.

26. Ultimately the learned single Judge though proceeded to deal with the registration of the complaint on the recommendation of the Lok Ayuktha had opined that, if the investigation is purported to be taken by lodging an FIR consequent on the direction given by the order, it is now quashed it shall also be quashed, that means the order was quashed by the learned Judge. As against the said order passed by the learned Judge, the State of Haryana filed an Intra Court Appeal in L.P.A.No.1426 of 2015, where the single Judge



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order has been stayed by the Division Bench, which has subsequently been made absolute. Questioning the sustainability of the order passed by the Division Bench of the Punjab and Haryana High Court, the writ petitioner filed an SLP, where the counsel raised a singular contention that, the LPA preferred before the Division Bench was not maintainable inasmuch as the learned single Judge had exercised criminal jurisdiction. In this regard, on his behalf reliance was placed on certain authorities to which the Hon'ble Supreme Court had its deliberations in the said Judgment in Ram Kishan Fauji (*cited supra*).

27. Before the High Court of Punjab and Haryana, the Intra Court Appeal by way of LPA would lie under Clause 10 of the Letters Patent, where also the similar language that has been used in clause 15 of the Letters Patent of Madras High Court is available.

28. The following passages in the Judgment in Ram Kishan Fauji reported in (2017) 5 SCC 533 of the Hon'ble Supreme Court can be usefully pressed into service herein.

“18. On a plain reading of the aforesaid clause of the



Letters Patent, it is manifest that no appeal lies against the order passed by the Single Judge in exercise of criminal jurisdiction. Thus, the question that is required to be posed is whether the learned Single Judge, in the obtaining factual matrix has exercised criminal jurisdiction or not.

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21. It is worthy to mention here that Clause 10 of the Letters Patent establishing the Lahore High Court (which is applicable to the Hon'ble Punjab and Haryana High Court) is in pari materia with Clause 15 of the Letters Patent of the Chartered High Courts. The four-Judge Bench, in *South Asia Industries (P) Ltd. v. S.B. Sarup Singh* [*South Asia Industries (P) Ltd. v. S.B. Sarup Singh*, (1965) 2 SCR 756 : AIR 1965 SC 1442], speaking through Subba Rao, J. (as his Lordship then was) referred to Clauses 10 and 11 of the Letters Patent and, in that context, ruled : (AIR p. 1445, para 5)

“5. ...A plain reading of the said clause indicates that except in the 3 cases excluded an appeal lay against the judgment of a Single Judge of the High Court to the High Court in exercise of any other jurisdiction.



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As the clause then stood, it would appear that an appeal lay against the judgment of a Single Judge of the High Court made in exercise of second appellate jurisdiction without any limitation thereon. The effect of the amendment made in 1928, so far as is relevant to the present enquiry, is the exclusion of the right of appeal from a judgment passed by a Single Judge sitting in second appeal unless the Judge who passed the judgment grants a certificate that the case is a fit one for appeal.”

(emphasis supplied)

The Court in the said case after referring to number of authorities also observed : (AIR p. 1447, para 11)

“11. ... A statute may give a right of appeal from an order of a tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the powers conferred on it under Section 108 of the Government of India Act, 1915, an appeal under Section 39 of the Act will be



heard by a Single Judge. Any judgment made by the Single Judge in the said appeal will, under Clause 10 of the Letters Patent, be subject to an appeal to that Court. If the order made by a Single Judge is a judgment and if the appropriate legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a Single Judge under Clause 10 of the Letters Patent to the High Court. *It follows that, if the Act had not taken away the letters patent appeal, an appeal shall certainly lie from the judgment of the Single Judge of the High Court.*”

(emphasis supplied)

22. From the aforesaid authority, two aspects are absolutely clear. First, where an appeal is not excluded against the judgment of a Single Judge of the High Court, an appeal would lie to the Division Bench and second, if the appropriate legislature has expressly or by necessary implication not taken away a right of appeal, the appeal shall lie from the Single Judge under Clause 10 of the Letters Patent to the High Court.

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31. The aforesaid authority makes a clear distinction between a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (i) sentence, and (ii) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed.

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33. In the ultimate analysis, the two-Judge Bench in *Umaji Keshao Meshram case* [*Umaji Keshao Meshram v. Radhikabai*, 1986 Supp SCC 401] held that the petition filed by the appellant before the Nagpur Bench of the Bombay High Court was admittedly under



Article 227 of the Constitution and under the Rules of the High Court, it was heard by a Single Judge and under Clause 15 of the Letters Patent of that High Court, an intra-court appeal against the decision of the learned Single Judge was expressly barred.

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35. The Court in the said case [*Ashok K. Jha v. Garden Silk Mills Ltd.*, (2009) 10 SCC 584 : (2010) 1 SCC (L&S) 78] accepted the decision rendered in *Ramesh Chandra Sankla* [*Ramesh Chandra Sankla v. Vikram Cement*, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] and opined that a statement made by a learned Single Judge that he has exercised power under Article 227 cannot take away the right of appeal against such judgment if the power is otherwise found to have been exercised under Article 226. The vital factor for determination of the maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of the order passed by the learned Single Judge.

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38. In the ultimate eventuate, the three-Judge Bench answered the reference as follows : (*Radhey Shyam case* [*Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] , SCC p. 449, para 29)

“29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in *Surya Dev Rai* [*Surya Dev Rai v. Ram Chander Rai*, (2003) 6 SCC 675] is overruled.”

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40. As the controversy in *Jogendrasinhji Vijaysinghji case* [*Jogendrasinhji Vijaysinghji v. State of Gujarat*, (2015) 9 SCC 1 : (2015) 4 SCC (Civ) 275] related to further two aspects, namely, whether the nomenclature of the article is sufficient enough and further, whether a tribunal is a necessary party to the litigation, the two-Judge Bench proceeded to answer the same. In that context, the Court referred to the authorities in *Lokmat Newspapers (P) Ltd. v. Shankarprasad* [*Lokmat Newspapers (P) Ltd. v. Shankarprasad*, (1999) 6 SCC



275 : 1999 SCC (L&S) 1090] , *Kishorilal* [*Kishorilal v. District Land Development Bank*, (2006) 7 SCC 496], *Ashok K. Jha* [*Ashok K. Jha v. Garden Silk Mills Ltd.*, (2009) 10 SCC 584 : (2010) 1 SCC (L&S) 78] and *Ramesh Chandra Sankla* [*Ramesh Chandra Sankla v. Vikram Cement*, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] and opined that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. It further observed that barring the civil court, from which order as held by the three-Judge Bench in *Radhey Shyam* [*Radhey Shyam v. Chhabi Nath*, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, would depend upon various aspects. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and



imbricate. It was reiterated that it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The two-Judge Bench further clarified that the Division Bench would also be required to scrutinise whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. The delineation with regard to necessary party not being relevant in the present case, the said aspect need not be adverted to.”

29. At para 42, the Hon'ble Supreme Court has culled out the conclusions which are deducible from various Judgments which had been referred and considered.

"42. At this stage, it is extremely necessary to cull out the conclusions which are deducible from the aforesaid pronouncements. They are:

42.1. An appeal shall lie from the judgment of a Single



Judge to a Division Bench of the High Court if it is so permitted within the ambit and sweep of the Letters Patent.

42.2. The power conferred on the High Court by the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

42.3. A writ petition which assails the order of a civil court in the High Court has to be understood, in all circumstances, to be a challenge under Article 227 of the Constitution and determination by the High Court under the said article and, hence, no intra-court appeal is entertainable.

42.4. The tenability of intra-court appeal will depend upon the Bench adjudicating the lis as to how it understands and appreciates the order passed by the learned Single Judge. There cannot be a straitjacket formula for the same.

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45. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been



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exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra-court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdictions is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in *Hari Vishnu Kamath* [*Hari Vishnu Kamath v. Ahmad Ishaque*, AIR 1955 SC 233] does not render any assistance to the argument advanced by the learned counsel for the respondent State.

46. The crux of the present matter is whether the learned Single Judge has exercised “civil jurisdiction” or “criminal jurisdiction”. In that regard, Mr Visen has strenuously contended that the Lokayukta is a quasi-judicial authority and the proceeding being quasi-judicial in nature, it cannot be regarded as one relatable to criminal jurisdiction, but it may be treated as a different kind or category of civil proceeding. His argument is supported by the Full Bench decision of the High Court of Andhra Pradesh in *Gangaram Kandaram v. Sunder Chikha Amin* [*Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine



AP 119 : (2000) 2 An LT 448] . In the said case, a writ petition was filed for issue of a writ of mandamus to declare the action of the respondents in registering crimes under Sections 420 and 406 of the Penal Code against the writ petitioner in FIRs Nos. 14, 137 and 77 of 1997 as illegal and to quash the same. The learned Single Judge had allowed the writ petition by order dated 6-8-1997 and quashed the FIRs. The order passed by the learned Single Judge was assailed by the seventh respondent in intra-court appeal. The Full Bench posed the following question : (*Gangaram case* [*Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine AP 119 : (2000) 2 An LT 448] , SCC OnLine AP para 2)

“2. ... ‘... (ii) Whether appeal under Clause 15 of the Letters Patent of the Court lies against the judgment in such a case. In other words, whether a proceeding for quashing of investigation in a criminal case under Article 226 of the Constitution of India is a civil proceeding and the judgment as above is a judgment in a civil proceeding in exercise of the original jurisdiction of the Court for the purposes of appeal under Clause 15 of the Letters Patent.’ ”



47. Dwelling upon the said issue, the Court in *Gangaram Kandaram case* [*Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine AP 119 : (2000) 2 An LT 448] referred to the authority in *State of Haryana v. Bhajan Lal* [*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] wherein the Court had categorised certain aspects of the case as illustrations wherein power under Article 226 or the inherent power under Section 482 CrPC can be exercised. Be it noted, the Court gave a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases and further, the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. The Full Bench, after referring to the same, adverted to the authorities in *Rashmi Kumar v. Mahesh Kumar Bhada* [*Rashmi Kumar v. Mahesh Kumar Bhada*, (1997) 2 SCC 397 : 1997 SCC (Cri) 415] and *Rajesh Bajaj v. State (NCT of Delhi)* [*Rajesh Bajaj v. State (NCT of Delhi)*, (1999) 3 SCC 259 : 1999



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SCC (Cri) 401], deliberated upon the maintainability of the appeal and, in that regard, stated thus : (*Gangaram Kandaram case* [*Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine AP 119 : (2000) 2 An LT 448] , SCC OnLine AP para 14)

“14. As per Clause 15 of Letters Patent, no appeal shall lie against the judgment of one Judge of the said High Court or one Judge of any Division Bench passed in exercise of appellate jurisdiction in respect of decree or order made in exercise of appellate jurisdiction by a court subject to the superintendence of the said High Court and not being an order made in exercise of the revisional jurisdiction and not being a sentence or order passed or made in exercise of power of superintendence of Section 107 of Government of India Act or in exercise of criminal jurisdiction. An appeal shall lie to the Division Bench under Clause 15 of Letters Patent from the judgment of one Judge of the High Court or one Judge of any Division Bench. *The appeal from judgments of Single Judges of the High Court shall lie to the Division Bench except the judgments*



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prohibited by Clause 15. The learned Single Judge while exercising the extraordinary jurisdiction under Article 226 quashed the criminal proceedings. In our view, the exercise powers under Article 226 of the Constitution by issuing a writ in quashing the FIR is not in exercise of criminal jurisdiction. No doubt against the order under Section 482 of the Criminal Procedure Code or against the proceedings under contempt of court, no appeal will lie under Clause 15 of Letters Patent, but against the judgments quashing the FIR is in exercise of the original jurisdiction of the Court under Article 226, writ appeal lies under Clause 15 of Letters Patent. Issuing a writ of mandamus or certiorari by the High Court under Article 226 pertaining to a criminal complaint or proceeding cannot be said to be an order passed in exercise of the criminal jurisdiction. Therefore, we hold that an appeal lies under Clause 15 of Letters Patent.”

(emphasis supplied)



48. According to Mr Visen, the learned counsel for the respondent State, the view expressed by the Andhra Pradesh High Court in *Gangaram Kandaram case* [*Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine AP 119 : (2000) 2 An LT 448] is absolutely defensible in law and, therefore, the appeal being maintainable, the order impugned in the present appeal does not warrant any interference.

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51. It is worthy to note that a series of decisions were cited on behalf of the appellants therein including a Full Bench judgment of the Gujarat High Court in *Patel Kashiram Lavjibhai v. Narottamdas Bechardas* [*Patel Kashiram Lavjibhai v. Narottamdas Bechardas*, 1978 SCC OnLine Guj 21 : (1978) 19 Guj LR 1047] wherein the Full Bench considered Articles 226 and 227 of the Constitution in the light of various decisions of this Court and deduced certain principles. The Division Bench in *Sanjeev Rajendrabhai Bhatt case* [*Sanjeev Rajendrabhai Bhatt v. State of Gujarat*, (2000) 1 Guj LR 206] distinguished the said decision on the ground that the Full Bench did not lay down as a proposition of law that LPAs would be maintainable even if an order



was passed by the learned Single Judge in exercise of criminal jurisdiction, for the case before the Full Bench related to right in land and the question was whether the power exercised by the learned Single Judge was under Article 226 or under Article 227 of the Constitution. Eventually, the Court referred to *Ishwarlal Bhagwandas* [*CIT v. Ishwarlal Bhagwandas*, (1966) 1 SCR 190 : AIR 1965 SC 1818] and opined thus : (*Sanjeev case* [*Sanjeev Rajendrabhai Bhatt v. State of Gujarat*, (2000) 1 Guj LR 206] , Guj LR pp. 232-33, paras 80-83)

“80. In our considered opinion, in the instant case, the proceedings can be said to be criminal proceedings inasmuch as, carried to its conclusion, they may result into imprisonment, fine, etc. as observed by the Supreme Court in *Narayana Row* [*CIT v. Ishwarlal Bhagwandas*, (1966) 1 SCR 190 : AIR 1965 SC 1818] .

81. From the totality of facts and circumstances, we have no hesitation in holding that the learned Single Judge has passed an order in exercise of criminal jurisdiction. At the cost of repetition, we reiterate what we have already stated earlier



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that the proceedings were of a criminal nature. Whether a criminal court takes cognizance of an offence or sends a complaint for investigation under sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 does not make difference so far as the nature of proceedings is concerned. Even if cognizance is not taken, that fact would not take out the case from the purview of criminal jurisdiction.

82. In our judgment, a proceeding under Article 226 of the Constitution arising from an order passed or made by a court in exercise or purported exercise of power under the Code of Criminal Procedure is still a “criminal proceeding” within the meaning of Clause 15 of the Letters Patent. A proceeding seeking to avoid the consequences of a criminal proceeding initiated under the Code of Criminal Procedure will continue to remain “criminal proceeding” covered by the bracketed portion of Clause 15 of the Letters Patent.”

Being of this view, the Division Bench ruled that as Clause 15 of the Letters Patent



expressly bars an appeal against the order passed by a Single Judge of the High Court in exercise of criminal jurisdiction, LPAs are not maintainable and, accordingly, dismissed the same.

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 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.

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54. After so stating, the Full Bench referred to the Constitution Bench decision in *Ishwarlal Bhagwandas* [*CIT v. Ishwarlal Bhagwandas*, (1966) 1 SCR 190 : AIR 1965 SC 1818] and distinguished the Full Bench decision of the Andhra High Court in *Gangaram Kandaram* [*Gangaram Kandaram v. Sunder Chikha Amin*, 2000 SCC OnLine AP 119 : (2000) 2 An LT 448] and noted the decision of the Division Bench of the Gujarat High Court in *Sanjeev Rajendrabhai Bhatt* [*Sanjeev Rajendrabhai Bhatt v. State of Gujarat*, (2000) 1 Guj LR 206] and came to hold as follows : (*C.S. Agarwal case* [*C.S. Agarwal v. State*, 2011 SCC OnLine Del 3136 : (2011) 125 DRJ 241] , SCC OnLine Del paras 32-33)

“32. The test, thus, is whether criminal proceedings are pending or not and the petition under Article 226 of the Constitution is preferred concerning those criminal proceedings which could result in conviction and order of sentence.

33. When viewed from this angle, it is clear that if the FIR is not quashed, it may lead to filing of challan by the investigating agency, framing of charge and can result in



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conviction of order of sentence. Writ of this nature filed under Article 226 of the Constitution seeking quashing of such an FIR would therefore be “criminal proceedings” and while dealing with such proceedings, the High Court exercises its “criminal jurisdiction”.”

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



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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)

“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



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jurisdiction” and these letters patent appeals are not maintainable.”

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



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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.

57. In this regard, an example can be cited. In the State of Uttar Pradesh, Section 438 CrPC has been deleted by the State amendment and the said deletion has been treated to be constitutionally valid by this Court in *Kartar Singh v. State of Punjab* [*Kartar Singh v. State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899] .



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However, that has not curtailed the extraordinary power of the High Court to entertain a plea of anticipatory bail as has been held in *Lal Kamendra Pratap Singh v. State of U.P.* [*Lal Kamendra Pratap Singh v. State of U.P.*, (2009) 4 SCC 437 : (2009) 2 SCC (Cri) 330] and *Hema Mishra v. State of U.P.* [*Hema Mishra v. State of U.P.*, (2014) 4 SCC 453 : (2014) 2 SCC (Cri) 363] But that does not mean that an order passed by the Single Judge in exercise of Article 226 of the Constitution relating to criminal jurisdiction, can be made the subject-matter of intra-court appeal. It is not provided for and it would be legally inappropriate to think so."

30. Ultimately the Hon'ble Supreme Court in para 58 has held that, the High Courts of Gujarat and Delhi have correctly laid down the law and the view expressed by the High Court of Andhra Pradesh is incorrect.

31. Therefore the Full Bench Judgment of the High Court of Andhra Pradesh in Gangaram's case reported in 2000 SCC Online AP 119 was held to be a incorrect decision. Therefore no reliance can be placed on the said Full Bench Judgment of the High Court by the appellant.



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32. The ultimate conclusion reached by the Hon'ble Supreme Court in the said Ram Kishan Fuji's case was that, the Letters Patent Appeal was not maintainable before the Division Bench as the case in hand before the Supreme Court, where the writ petition was filed under Article 226 before the High Court for quashing of the recommendation of the Lokayukta. The said recommendation would have led to launching of criminal prosecution and as a factual matrix reveals FIR was registered and criminal investigation was initiated. Therefore it was the test adopted by the Hon'ble Supreme Court that, what is the ultimatum that would be reached in any criminal proceedings which is set in motion shall be a criteria to find out as to whether a particular proceedings amount to a criminal proceedings for the purpose of demarcating the same as to the issue relates to the criminal jurisdiction where if any order is passed by the writ court under Article 226 even then, Intra Court Appeal under clause 15 of the Letters Patent would not lie.

33. Therefore the Ram Kishan Fauji's case has given a complete quietus to the issue. The said decision has been followed by at least three Division Bench decisions of this Court. The first one is Ajay Kumar



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Bishnoi's case (*cited supra*), where the first Division Bench of this Court has held as follows:

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

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



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inappropriate to think so."

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

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



so as to enable the Registry to keep the same for record purpose, within 15 days from the date when the order copy is made ready."

9. Thirdly, in a recent judgment of our High Court in the case of Abirami vs. The Superintendent of Police, District Police Officer, Villupuram District and 5 others in W.A.Sr.No.92091/2021 dated 15.12.2021, repelling the similar contentions and the arguments advanced by the learned Counsel for the appellant therein, this Court has held as follows: "8. In the Writ Petition against which the Writ Appeal had been filed, the learned Judge was dealing with the subject as per roster, Writs (Criminal). Therefore, the arguments of the learned counsel for the appellant herein to number the Writ Appeal cannot at all be accepted, as it is against the principles of Clause 15 of Letters Patent Act and against the reported decision of Division Bench Rulings of this Court/High Court. Therefore, the Writ Appeal sought to be taken on file and urged that it is maintainable by the learned counsel is rejected."

Therefore, in view of the above settled legal position, when once a writ petition under Article 226 of the Constitution of India is filed to quash an FIR or to pass an order of Writ of Declaration to declare the FIR as null and void and non-est and invalid in the eye of law,



under the criminal jurisdiction as held by the Hon'ble Apex Court in the case of Ram Kishan Fauji vs. State of Haryana and others in Civil Appeal No.4288/2017, intra court appeal is not legally permissible.”

34. The second Division Bench Judgment is in D.Kumar's case, where also the First Bench of this Court by order, dated 03.08.2020, following the Ram Kishan Fauji's case and so many other decisions has ultimately held that, the writ appeal is not maintainable.

35. The third decision is C.Shivasankaran's case reported in 2020 SCC Online Mad 2656, where also the First Division Bench having considered the Ram Kishan Fauji's case has held as follows :

“16. We have carefully perused the judgment and we find that the Apex Court came to the conclusion that the judgments of the Gujarat and Delhi High Court have correctly laid down the law on the subject. Taking a clue from the said observations, we find that the Look Out Circular that came to be the subject matter of challenge before the learned Singe Judge did arise out of the various criminal proceedings that were pending against the appellant. The prayer, therefore, in the writ



petition was clearly for a declaration that the Look Out Circular in the purported exercise of powers under Section 10B of the Passport Act, 1967 is arbitrary and an abuse of authority, vitiated by mala fides, and hence, should be declared to be without jurisdiction. The sequence of facts, and the consequence towards which the writ petition is aimed at, clearly relate to criminal proceedings that have led to the issuance of the circular. This may involve the guarantee of liberty to a person under Article 21 of the Constitution, but the genesis of the action is connected with the criminal prosecutions pending against the appellant, the umbilical cord whereof has not yet snapped. The contention that it only involves civil rights of the appellant is, therefore, not correct because the relief revolves around consequences arising or likely to arise as a result of criminal prosecution.

17. In our opinion, the issuance of a Look Out Circular is an exercise of authority under the Office Memorandum dated 27.10.2010 and such a circular can be issued in larger public interest, as already held by the learned Single Judge after taking into account the amendment in the said memorandum. The appellant's claim of immunity under the foreign passport, therefore, may not arise. His movement inside this



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country being put under surveillance for the purpose of his participation in the criminal prosecutions pending against him appears to be justified and, hence, the Look Out Circular is a consequence of the aforesaid antecedents of the involvement of the appellant in criminal cases. This being the position, the writ petition was instituted and was rightly placed before the learned Single Judge who was having the roster of dealing with writ petitions arising out of criminal matters. The letter and intent, as well as the crux of the background in which the writ petition was filed clearly relates to the criminal proceedings pending against the appellant and, therefore, the nature of the jurisdiction exercised by the learned Single Judge would be a writ in the criminal jurisdiction, hence a Letters Patent Appeal under Clause 15 of the Letters Patent of Madras High Court would not be maintainable.

18. The appeal is, accordingly, rejected as being not maintainable.”

36. It is further to be noted that, in the subsequent two recent decisions of the year 2023, Division Benches of the High Court of Telengana and High Court of Andhra Pradesh having considered various



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decisions including the decision of Ram Kishan Fauji, has held that, Intra Court Appeal would not be maintainable as against the order passed in a criminal proceedings. The following paragraph of the Division Bench of the Telengana High Court can be usefully referred hereunder :

“38.5. Thus, Supreme Court is clear in its enunciation that 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 which is relevant. After holding that High Courts of Gujarat and Delhi have correctly laid down the law and the view expressed by the Full Bench of the Andhra Pradesh High Court is incorrect, Supreme Court in the facts of that case has held that learned single Judge in exercise of jurisdiction under Article 226 of the Constitution of India had passed an order in a criminal proceeding; what matters is the nature of the proceeding and that is the litmus test.”

37. Similar view has been taken by the Division Bench of the Andhra Pradesh High Court in Union of India represented by Ministry of Defence



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and three others v. Lexus Technologies Pvt., Ltd., and another, where also a similar view has been expressed by the First Division Bench of the Andhra

Pradesh High Court. The relevant portion of the order reads thus :

“10. In the case of Ram Kishan Fauji (supra), the Apex Court had not accepted the view expressed by a full Bench of the Andhra Pradesh High Court, wherein it held that, when the power was exercised under Article 226 of the Constitution for quashing of a criminal proceeding, there was no exercise of criminal jurisdiction. A distinction was sought to be made between proceedings for quashing of the FIR under Section 482 of the Criminal Procedure Code and the powers exercisable by the High Court under Article 226 of the Constitution for quashing of criminal proceedings. The Apex Court, however, held the view so expressed by the full Bench of the composite High Court of Andhra Pradesh as incorrect. It was held:

"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,



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however, has held that when the power is exercised under Article 226 of the Constitution for quashing of a criminal proceeding, there is no exercise of criminal jurisdiction. It has distinguished the proceeding for quashing of FIR under Section 482 Cr.P.C 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, 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.



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It would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 Cr.P.C., 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 Cr.P.C.

58. In view of the aforesaid premised reasons, we hold that the High Courts of Gujarat and Delhi have correctly laid down the law and the view expressed by the Full Bench of the High Court of Andhra Pradesh



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is incorrect."

11. Be that as it may, following the ratio of the judgment in Ram Kishan Fauji (supra), we hold that the present writ appeals are not maintainable and are accordingly dismissed. No costs."

38. Having gone through the above decisions, especially the law laid down by the Hon'ble Supreme Court in Ram Kishan Fauji's case, we have no hesitation to hold that, the order which was impugned before the writ court is the order of sanction passed by the competent authority under section 19(1)(c) of the Prevention of Corruption Act, 1988. By virtue of the said sanction order if prosecution is launched, it may lead to its logical conclusion, where the writ petitioner / appellant either may be punished or may be acquitted. Therefore it is a clear case of criminal proceedings, that too arise out of a punitive law, namely the Prevention of Corruption Act, 1988. Hence at no stretch of imagination, it can be stated that, the order impugned before the writ court dated 30.09.2013 is an Administrative order.

39. The said order dated 30.09.2013 being the sanction order under section 19(1)(c) of the Prevention of Corruption Act is a proceedings under



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the penal law, therefore it can only be construed as a criminal proceedings.

In this context, if the test that has been enunciated by the decision of the Hon'ble Supreme Court in Ram Kishan Fauji is applied to the facts of the case, the ultimate conclusion would be in the said proceedings, which has been set in motion by the sanction order, would be the end of the criminal proceedings by way of conviction or acquittal.

40. If the sanction order is set aside on merits by the writ court exercising its power under Article 226 of the Constitution, the criminal proceedings has come to an end abruptly at the initial stage itself, that would amounts to quashing of an FIR or quashing of a complaint.

41. Therefore such kind of proceedings can never be treated as a civil proceedings or an administrative action, instead, it can only be considered as a criminal proceedings. If a litigant comes before this Court to set aside or quash the criminal proceedings like the sanction order as has been made in the present case, such a proceedings can very well be construed only as a criminal proceedings even though it is dealt with under Article 226 of the Constitution.



42. Therefore such kind of proceedings if it is concluded either by allowing the writ petition or dismissing the writ petition as has been done in the present case through the impugned order, such a proceedings is nothing but a conclusion of a criminal proceedings ofcourse by exercising power under Article 226 of the Constitution. Therefore the exemption that has been provided under clause 15 of the Letters Patent to state that, any proceedings in the exercise of criminal jurisdiction is also one of the exception where there would be no Intra Court Appeal under clause 15 of the Letters Patent.

43. If that being so, it is amply clear that, the order passed by the learned Judge which is impugned herein in exercising his power under Article 226 of the Constitution in the present facts and circumstances of the case is certainly a criminal proceedings exercising the criminal jurisdiction and therefore as against the said impugned order, no Intra Court Appeal under clause 15 of the Letters Patent would lie.

44. The arguments advanced by the learned counsel appearing for the appellant that, under Rule 17(3) of the Writ Rules 2021 if the writ petition is categorised as a criminal writ petition and entertained by a Judge who



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exercise the jurisdiction under Section 482 of the Criminal Procedure Code, then only such kind of writ petition can be treated as a criminal proceedings against which no Intra Court Appeal under clause 15 of the Letters Patent would lie and in all other cases such Intra Court Appeal would lie, therefore in this case also since it has not been categorised as writ petition criminal, there has been no bar in preferring the writ appeal by way of Letters Patent Appeal under clause 15 is justifiable is completely under the misconception of the facts as well as law.

45. The reason being that, it is for the convenient sake, the roster is fixed for a Judge to decide certain category of cases. Based on the roster alone, the nature of the lis cannot be conclusively decided. That is the reason why a very exhaustive discussion has been made by the Hon'ble Supreme Court in Ram Kish Fauji's case as to how it should be evaluated as to a particular proceedings is a criminal proceedings or civil proceedings for the purpose of entertaining an Intra Court Appeal by way of Letters Patent Appeal under clause 15 of Letters Patent and in the particular case under clause 10 of the Letters Patent before the Punjab and Haryana High Court.



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46. Pari materia clause 15 of the Letters Patent of the Madras High Court is having the same provision as that of clause 10 of the Letters Patent applicable to Punjab and Haryana High Court, therefore the exemption given by having the word in clause 10 of the Letters Patent that in the exercise of criminal jurisdiction such kind of matters cannot be appealed by way of LPA is a law that would be applicable for this Court also as clause 15 of Letters Patent For High Court of Madras is also having the similar provision.

47. Therefore quoting Rule 17(3) of the Writ Rules 2021 of this Court would no way helpful to the learned counsel appearing for the appellant to canvass the point that based on the Writ Rules 2021 alone categorisation can be made.

48. Therefore based on the well settled principles of law which has been fortified by many number of decisions, where at least three Division Benches of this Court have taken a consistent view, ofcourse by following the Hon'ble Supreme Court decision in Ram Kishan Fauji and there has been the latest decision of two Division Benches, one from the High Court of Andhra Pradesh and another from High Court of Telengana, such a settled legal position cannot be diluted. Therefore the submissions made by the

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learned counsel appearing for the appellant are to be rejected, accordingly are rejected and the submissions made by the learned Additional Solicitor General and the learned Senior standing counsel appearing for the first respondent is to be accepted.

49. Resultantly, the instant Writ Appeal arise out of the order of the writ court, dated 26.04.2018 made in W.P.No.3208 of 2018 is not maintainable. Accordingly it is liable to be dismissed, hence it is dismissed as not maintainable. However, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

The assistance rendered by Mr.AR.L.Sundaresan, the learned Additional Solicitor General is appreciable.

(R.S.K., J.) (K.B., J.)
06.09.2024

Index : Yes
Speaking order
Neutral Citation : Yes
tsvn

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To

1. The Commissioner of Customs
Sea Import / Vigilance - CHI-VIII Commissionerate,
Customs House,
Rajaji Salai, Chennai - 600 001.

2. The Additional Superintendent of Police
Central Bureau of Investigation,
Shastri Bhavan, Haddows Road,
Nungambakkam, Chennai - 600 006.



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**R.SURESH KUMAR, J.
and
K.KUMARESH BABU, J.**

tsvn

**Judgment
in
W.A.No.1899 of 2019**

06.09.2024