

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1143 of 2025

In
Criminal Writ Jurisdiction Case No.2295 of 2024

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Bhushan Prasad @ Shashi Kumar S/o Kishore Prasad @ Kishor Yadav,
Resident of village- Balwapar, P.S.- Aungari (Peer Bigha O.P), District-
Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The District Magistrate, Nalanda, Bihar.
3. The Superintendent of Police, Nalanda, Bihar.
4. The Sub-Divisional Officer, Hilsa, Nalanda, Bihar.
5. The Circle Officer, Ekangarsarai, Nalanda, Bihar.
6. The Station House Officer, Aungari, (Peer Bigha O.P), Bihar.
7. The Investigating Officer in Aungari, Pirbigha O.P., PS Case no 65 of 2024, Bihar.
8. Karu Prasad, S/o Late Sita Das, R/o Mohammadpur, Tola Balwapur, Post Officer Rasisa, PS Aungari (Peer Bigha O.P), Dist Nalanda.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjeev Kumar, Advocate Mr. Shyamal Prakash, Advocate
For the Respondent/s	:	Mr. Abbas Haider, SC- 6 Mr. Wasi Mohammad, AC to SC- 6
For the Resp. No.8		Mr. Sanjeet Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-02-2026

This Letters Patent Appeal has been filed by the
appellant-writ petitioner Bhushan Prasad @ Shashi Kumar
challenging the order dated 10.07.2025 passed by the learned
Single Judge in Cr.W.J.C. No.2295 of 2024.

2. The writ petitioner approached this Court by filing



the aforesaid writ petition seeking following reliefs:-

“i) To issue a writ in nature of Mandamus for a direction to the concerned respondents especially respondent Nos.3, and 6 to ensure the arresting the private respondent who is the accused of Aungari (Pirbigha O.P.) Police Station Case No. 65 of 2024 dated 24.08.2024 under Sections 190/191/126(2)/115(2)/118/109/ 351(3)/352/3(5) of the BNS, 2023 & 25(1-B)/26/27/35 Arms Act.

ii). To issue a writ in nature of Mandamus for a direction to the concerned respondents to provide security or to take any appropriate action to secure and protect the life and liberty of the petitioner and his family members.”

3. When the matter was taken up on 10.7.2025, the learned Single Judge passed the following orders:-

“3. The SHO of Aungari (Pirbigha OP), Police Station is directed to provide protection to the Circle Officer, Ekangersarai, Nalanda as on the application of the petitioner, the measurement is being done by the Circle Officer. Ekangersarai. Nalanda.

“4. The Circle Officer, Ekangersarai, Nalanda will fix a date for measurement and he will inform the petitioner as well as the SHO of Aungari Police Station, Nalanda, thereafter, the measurement shall be done. In case any person interferes in the process of measurement,



appropriate action shall be taken against him by the police.”

4. The learned counsel for the appellant contends that the impugned order is vitiated on account of violation of the principles of natural justice. There is no dispute that the appellant was respondent no.8 in the said writ petition and the order was passed on the very first date when the matter was listed “For Admission” without any notice to the appellant.

5. It is further submitted that the civil writ petition, bearing C.W.J.C. No. 3152 of 2024, is presently *sub judice* before this Court, in which the appellant was also a party. On these grounds, it is urged that the impugned order is liable to be set aside.

The learned counsel for the respondent no.8, however, submitted that C.W.J.C. No.3152 of 2024, which has been filed by him, has already been withdrawn on 15.07.2025, immediately after passing of the impugned order dated 10.07.2025 in Cr. WJC No.2295 of 2024.

6. A preliminary objection has been raised by the learned counsel appearing for the State as well as by the learned counsel for the respondent no.8, Karu Prasad, the petitioner in the writ-petition, on the ground that since the matter arises out of a criminal matter, in view of Appendix- E Clause 10 of the



Patna High Court Rules, the instant LPA is not maintainable.

“10. Appeal to the High Court from Judges of the Court.- And we do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the Judgement (not being a Judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of Appellate Jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of Revisional Jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of Criminal Jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High court or one Judge of any Division Court. Pursuant to Section 108 of the Government of India Act, made on or after the first day of February, One thousand nine hundred and twenty-nine, in the exercise of Appellate jurisdiction in respect of a decree or order made in the exercise of Appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the Judgment declares that the case is a fit one for appeal; but that the right of appeal from other judgments of Judges of the said High court or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council, as hereinafter provided.”

(Underline supplied by us)



7. On a plain reading of the aforementioned clause, it is clear that if an order has been passed by a learned Single Judge of the High Court in the exercise of criminal jurisdiction, a Letters Patent Appeal would not be maintainable.

8. The learned counsel for the appellant, on the other hand, placing reliance upon the decisions of the Hon'ble Supreme Court rendered in the case of *Ashok K. Jha & Ors. Vs. Garden Silk Mills Limited & Ors.* [(2009) 10 SCC 584] and *Ram Kishan Fauji Vs. State of Haryana & Ors.* [AIR 2017 SC 1535], contended that true nature and character of the order passed by the learned Single Judge is to be ascertained and under what provision, which has been mentioned while exercising power is not at all applicable. It is further argued that even though the learned Single Judge has mentioned in the order that he has exercised the power under Article 227 of the Constitution of India, that cannot take away the right of appeal against such judgment, if the Appellate Court found that the power, in fact, has been exercised under Article 226 of the Constitution of India. Therefore, the vital factor for determination of the maintainability of the intra-court appeal is the real nature of jurisdiction invoked by the party and the true nature of the order passed by the learned Single Judge.



9. In the case of **Ashok K. Jha** (supra), the Hon'ble Supreme Court has been pleased to hold as follows:-

“35. In Visan Kumar Shiv Charan Lal [(2008) 15 SCC 233 : AIR 2009 SC 1999] this Court further held that the determining factor is the real nature of principal order passed by the Single Judge which is appealed against and neither mentioning in the cause-title of the application of both the articles nor granting of ancillary order thereupon by the Single Judge would be relevant and in each case the Division Bench must consider the substance of the judgment under appeal to ascertain whether the Single Judge has mainly or principally exercised his jurisdiction under Article 226 or Article 227 of the Constitution.

In Ramesh Chandra Sankla [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713] this Court held: (SCC p. 75, para 47)

“47. In our judgment, the learned counsel for the appellant is right in submitting that nomenclature of the proceeding or reference to a particular article of the Constitution is not final or conclusive. He is also right in submitting that an observation by a Single Judge as to how he had dealt with the matter is also not decisive. If it were so, a petition strictly falling under Article 226 simpliciter can be



disposed of by a Single Judge observing that he is exercising power of superintendence under Article 227 of the Constitution. Can such statement by a Single Judge take away from the party aggrieved a right of appeal against the judgment if otherwise the petition is under Article 226 of the Constitution and subject to an intra-court/letters patent appeal? The reply unquestionably is in the negative....”

36. If the judgment under appeal falls squarely within four corners of Article 227, it goes without saying that intra-court appeal from such judgment would not be maintainable. On the other hand, if the petitioner has invoked the jurisdiction of the High Court for issuance of certain writ under Article 226, although Article 227 is also mentioned, and principally the judgment appealed against falls under Article 226, the appeal would be maintainable. What is important to be ascertained is the true nature of order passed by the Single Judge and not what provision he mentions while exercising such powers.

37. We agree with the view of this Court in Ramesh Chandra Sankla [(2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706 : AIR 2009 SC 713] that a statement by a learned Single Judge that he has exercised power under Article 227, cannot take away right of appeal against such judgment if



power is otherwise found to have been exercised under Article 226. The vital factor for determination of maintainability of the intra-court appeal is the nature of jurisdiction invoked by the party and the true nature of principal order passed by the Single Judge.”

10. In the case of **Ram Kishan Fauji** (supra), the Hon’ble Supreme Court in para-10 has observed as follows:-

“10. Questioning the sustainability of the order passed by the Division Bench, Dr Rajeev Dhavan, learned Senior Counsel, has 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. He has placed reliance on certain authorities to which we shall refer to at the relevant place in the course of our deliberations.”

After discussing several judgments on the issue(s), the Hon’ble Supreme Court further held as follows:-

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

(a) 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.

(b) The power conferred on the High Court by



the Letters Patent can be abolished or curtailed by the competent legislature by bringing appropriate legislation.

(c) 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.

(d) 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.

49. 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 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, (1954) 2 SCC 881 : AIR 1955 SC 233] does not render any assistance to the argument advanced by the learned counsel for the respondent State.

65. In the case at hand, the writ petition was filed under Article 226 of the Constitution for quashing of the recommendation of the Lokayukta. The said recommendation would have led to launching of criminal prosecution, and, as the factual matrix reveals, FIR was registered and criminal investigation was initiated. The learned Single Judge analysed the report and the ultimate recommendation of the statutory authority and thought it seemly to quash the same and after quashing the same, as he found that FIR had been registered, he annulled it treating the same as a natural consequence. Thus, the effort of the writ petitioner was to avoid a criminal investigation and the final order of the writ court is quashment of the registration of FIR and the subsequent investigation. In such a situation, to hold that the learned Single Judge, in exercise of jurisdiction under Article 226 of the Constitution, has passed an order in a civil proceeding as the order that was challenged was that of the quasi-judicial authority, that is, the Lokayukta, would be conceptually fallacious. It is because what matters is the nature of the proceeding, and that is the litmus test.”



11. In view of the nature of the order, we are of the opinion that although some directions have been issued for measurement to be carried out by the Circle Officer, Ekangersarai, Nalanda, and the Station House Officer (SHO) to provide necessary protection to the Circle Officer in the event of any interference during the process of measurement, with further directions to the police to take appropriate action against the person, who causing such interference, the scope and effect of the said order require careful consideration.

12. In the factual scenario and particularly keeping in view the ratio laid down in the aforesaid two decisions regarding maintainability i.e. *Ashok K. Jha (supra)* and *Ram Kishan Fauji (supra)*, we are of the humble view that in view of the nature of jurisdiction invoked by the party, the Letters Patent Appeal is maintainable. However, since the appellant has not been prejudiced in any manner by the observations made by the learned Single Judge and there is no perversity in the said order, we are not inclined to interfere with the same.

13. Needless to say, the Circle Officer, Ekangersarai, Nalanda, while carrying out the measurement, shall allow both the appellant and respondent no. 8 to remain present. None of them shall cause any obstruction or hindrance in discharge of



the Circle Officer’s duties, as directed by the learned Single Judge.

14. It is expected that the concerned Circle Officer shall complete the entire exercise within a period of eight weeks from the date of receipt of the order.

15. Let a copy of this order be handed over to the learned counsel for the State, which shall be forwarded to the concerned Circle Officer.

16. With the aforesaid observation(s), the instant LPA stands disposed off.

(Sangam Kumar Sahoo, CJ)

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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