2026:UHC:10718

IN THE HIGH COURT OF UTTARAKHAND

AT NAINITAL

CRIMINAL WRIT PETITION No.1510 of 2016

(Under Article 226 of the Constitution of India)

O.P. Saklani --Petitioner

Versus

Additional Sessions Judge 2nd, Dehradun (Special Judge Anticorruption, C.B.I., Dehradun) & Others.

--Respondents

Presence:-

Mr. M. C. Pant (through V.C.) along with Mr. S. K. Pandey, learned counsel for the petitioner.

2. Mr. Piyush Garg, learned Senior Advocate assisted by Mr. Vimal Saini and Mr. Kush Goswami, learned counsel for the CBI.

Hon'ble Siddhartha Sah, J. (oral)

By means of the present writ petition under Article 226 of the Constitution of India, the petitioner has sought the following reliefs:-

(i) Issue writ rule or direction in the nature of certiorari quashing the impugned order dated 26.08.2016 by which the anguish of respondent no.1 is itself reveals along with the further direction to the respondent no.2 to examine other witnesses without waiting the final outcome of further investigation and disposal of petition before Hon'ble High Court in the matter after calling the entire record from the respondents.

(ii) Issue writ rule or direction in the nature of prohibition to order to the respondent no.1 not to record further evidence pursuant to the impugned order in ST No.36/2014 pending before the Court of Additional Sessions Judge (IInd) and Special Judge Anti Corruption (CBI) passed by the respondent no.1 till the final outcome of the further investigation/Reinvestigation/Investigation denovo be come after calling the entire record from the respondents.

(iii) Issue writ rule or direction in the nature of mandamus for directing fresh Investigation/Reinvestigation/Investigation Denovo by directing to the CBI to depute an independent impartial team from Special Crime Branch of C.B.I. from Delhi or to constitute a SIT for fresh investigation to find out the truth in the matter under supervision/monitoring of Hon'ble Court, so the petitioner will get justice, without any unwarranted interference and pressure from S.P., S.B.I.-SP, Dehradun, Shri Sujeet Kumar.

(iv) To provide protection to the petitioner as he has grave apprehension and threat to his life on account of dubious working of the CBI and keeping in view the facts narrated in the petition.

(v) To award damages or compensation to the petitioner for the tortuous act and sham and malicious investigation at the hands of respondent no.2 and quantify the same and also direct to be recovered the same from the erring officer who are instrumental for the same.

(vi) To issue appropriate order for securing the protection to the live of petitioner and persons closely related to him.

2. The petitioner before this Court is the informant in FIR No.349 of 2012, which was lodged on 16.10.2012 under Section 302 IPC at Police Station Kotwali, Dehradun against unknown, alleging the murder of the petitioner's wife. The case was transferred to the CBI by virtue of an order dated 03.01.2013, passed by a Division Bench of this Court in Criminal Writ Petition No.1215 of 2012, “O.P. Saklani vs. State of Uttarakhand and others”.

3. In compliance with this Court's order, the CBI registered the case as RC 0072013S0005 at CBI Dehradun and started investigation into the murder of Smt. Pushpa Saklani. On conclusion of the investigation, the CBI filed a charge-sheet on 08.11.2013.

4. In the meantime, there were certain applications filed on behalf of the complainant/petitioner herein seeking further investigation, etc.. On 13.02.2014, the Special Judicial Magistrate, CBI, Dehradun rejected an application of the petitioner seeking further investigation in the murder case.

5. Vide order dated 15.11.2014, the District and Sessions Judge, Dehradun, allowed Revision No.158 of 2014, filed by the petitioner, set aside the order dated 13.02.2014 and directed the Special Judicial Magistrate, CBI, Dehradun, to issue appropriate directions to the CBI for further investigation into the issues raised by the petitioner.

6. Pursuant to the aforesaid revisional order dated 15.11.2014, the Special Judicial Magistrate, CBI, Dehradun vide order dated 10.12.2014 directed CBI to conduct further investigation against Shamim Alam Khan and others. The CBI commenced further investigation on 22.01.2015. On conclusion of further investigation, the CBI filed a supplementary report before the learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun on 31.07.2015, stating that no evidence worth prosecution had been found against the persons suspected by the petitioner, including Shamim Alam Khan.

7. The petitioner filed an application under Section 319 CrPC before the Sessions Court on 19.10.2015 in Sessions Trial No.36 of 2014, seeking the summoning of Shamim Alam Khan as an accused. The learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun, vide order dated 01.03.2016, rejected the petitioner's application under Section 319 CrPC. The application no.208B dated 03.05.2016 was filed before the trial court seeking effective further investigation against Shamim Alam Khan and deputation of another CBI team from Delhi.

8. Vide order dated 31.03.2016, this Court passed an order in the connected Criminal Revision No.79 of 2016, filed against the rejection of the application under Section 319

CrPC, issued notice and directed that the cross-examination of PW1, the petitioner, be deferred in the meantime.

9. Vide order dated 05.12.2015, the learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun issued directions for further investigation on bank accounts and mobile location. Supplementary investigation was thereafter completed and a report was filed on 23.01.2016. On 26.08.2016, the learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun passed the impugned order which is the subject matter of the present petition, directing the prosecution to proceed with examination of witnesses other than PW1. Further, vide order dated 26.08.2016, the learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun directed that further investigation be conducted against one Constable Naveen Chandra. The said order also records that the petitioner's application under Section 319 CrPC, seeking to summon Shamim Alam Khan as an accused, had already been dismissed and that the said order had been challenged by the complainant before the Hon’ble High Court. It was further recorded that, in view of the aforesaid, the trial court had become functus officio so far as Shamim Alam Khan was concerned and that no direction for further investigation with regard to Shamim Alam Khan can be given by the trial court at that stage.

10. Learned counsel for the petitioner would further point out that, as on 26.08.2016, the result of the further investigation was pending consideration before the learned Magistrate.

11. Aggrieved by the aforesaid order dated 26.08.2016, passed by the learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun, in Sessions Trial No. 36 of 2014, titled 'State through CBI versus Basant Soni and others', the present writ petition has been filed, principally seeking quashing of the impugned order dated 26.08.2016 and other consequential reliefs.

12. At the outset, when the matter was taken up, learned Senior Counsel appearing for the CBI raised an objection as to the very maintainability of the writ petition, inasmuch as the impugned order dated 26.08.2016, being a judicial order, would not be amenable to the writ jurisdiction under Article 226 of the Constitution of India and, consequently, a writ of certiorari would not be maintainable. The learned counsel for the petitioner, however, sought a hearing on the issue of maintainability of the petition. Accordingly, the matter is before this Court today on the issue of maintainability of a writ of certiorari under Article 226 of the Constitution of India against a judicial order.

13. Learned counsel for the petitioner would submit that the writ petition under Article 226 of the Constitution of

India would be tenable in view of the judgment of the Hon'ble Supreme Court in the case of Godrej Sara Lee Limited vs. Excise and Taxation Officer-cum-Assessing Authority and others, (Civil Appeal No.5393 of 2010), and has referred to paras 4, 5 and 6 thereof, which are being extracted hereunder for ready reference:-

> *"4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the high courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The 4 power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the high court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the high courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed*

restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the high courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy 5 is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the high court under Article 226 has not pursued, would not oust the jurisdiction of the high court and render a writ petition "not maintainable". In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the high courts, 6 writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a high court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a high court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an

exceptional case has been made out for such entertainment would not be proper.

5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh vs. Mohd. Nooh) had the occasion to observe as follows:

> *"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies 7 before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***"*

6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 (Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others) carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:

> *(i) where the writ petition seeks enforcement of any of the fundamental rights;*
>
> *(ii) where there is violation of principles of natural justice;*

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged."

and in particular has drawn the attention of the Court to the case of State of Uttar Pradesh vs. Mohammad Nooh, reported in (1957) 3 SCC 14, which has been referred in the judgment of Godrej Sara Lee Limited (supra). While drawing the attention of the Court to the aforesaid paras 4, 5 and 6 in the case of Godrej Sara Lee Ltd. (supra) and the Constitution Bench judgment in the case of Mohammad Nooh (supra), he would submit that the availability of an alternative remedy is not an absolute bar for maintaining a writ petition under Article 226 of the Constitution of India, and while referring to the judgment in the case of Mohammad Nooh (supra), he would submit that even against the proceedings and decisions of inferior courts, a writ of certiorari would be tenable.

14. Learned counsel for the petitioner has further referred to the judgment in the case of Zeba Khan vs. State of U.P. and others, reported in 2026 SCC OnLine SC 188, and has referred to paragraphs 34 and 35 thereof, which are extracted hereunder for ready reference:-

"34. The appellant has further sought a direction for transfer of the investigation in the present case to a special agency,

alleging the existence of a larger racket involving forged degrees and invoking considerations of public interest.

35. At the outset, it is pertinent to note that the investigation has already culminated in the filing of a chargesheet on 14.05.2025, and cognizance has been taken by the learned Magistrate vide order dated 26.05.2025."

He would submit that his third relief would be tenable even if this Court comes to the conclusion that the first relief is not maintainable.

15. While drawing the attention of the Court to Article 226 of the Constitution of India, he would further submit that the said Article is couched in very wide terms and has to be construed broadly. He would further submit that Article 226 is not limited to the issuance of the particular writs, but the powers thereunder can also be exercised by the High Court **"for any other purpose."**

16. Learned counsel for the petitioner has also relied upon a judgment in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & others, reported in (1998) 8 SCC 1, and he has referred to paras 14 and 15 thereof, which are being extracted hereunder for ready reference:-

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised

by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

and he submits that the powers of the High Court under Article 226 of the Constitution of India are plenary in nature and are exercisable not only for the enforcement of fundamental rights but also for any other purpose.

17. Per contra, learned Senior Advocate for the CBI would submit that judicial orders of the Court are not amenable to writ jurisdiction under Article 226 of the

Constitution of India. The remedy is by appeal or revision under Article 227 of the Constitution of India.

18. He has referred to and relied upon the judgments of the Hon'ble Supreme Court in the following cases: Neeta Singh and Others vs. State of U.P. and Others, reported in (2026) 6 SCC 817; Radhey Shyam and Another vs. Chhabi Nath and Others, reported in (2015) 5 SCC 423; and Naresh Shridhar Mirajkar and Others vs. State of Maharashtra and Another, reported in AIR 1967 SC 1. He would submit that the Hon'ble Supreme Court, in the case of Radhey Shyam (supra), has followed the larger Bench judgment in the case of Naresh Shridhar Mirajkar (supra).

19. Learned Senior Advocate for the CBI has referred to paras 6 and 7 in the case of Neeta Singh (supra), which are being extracted hereunder for ready reference:-

> *"6. The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the High Courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be*

approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in Naresh Shridhar Mirajkar v. State of Maharashtra [Naresh Shridhar Mirajkar v. State of Maharashtra, 1966 SCC OnLine SC 10 : AIR 1967 SC 1] and Rupa Ashok Hurra v. Ashok Hurra [Rupa Ashok Hurra v. Ashok Hurra, (2002) 4 SCC 388] , as well as the decision of a Bench of three Judges in Sadhana Lodh v. National Insurance Co. Ltd. [Sadhana Lodh v. National Insurance Co. Ltd., (2003) 3 SCC 524 : 2003 SCC (Cri) 762 : (2003) 114 Comp Cas 1]

7. Although Radhey Shyam [Radhey Shyam v. Chhabi Nath, (2015) 5 SCC 423 : (2015) 3 SCC (Civ) 67] dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a fortiori, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226."

20. Learned Senior Advocate for the CBI has also referred to paras 13 and 27 in the case of Radhey Shyam (supra), which are being extracted hereunder for ready reference:-

"13. In Mirajkar [Naresh Shridhar Mirajkar v. State of Maharashtra, AIR 1967 SC 1 : (1966) 3 SCR 744] a nine-Judge Bench judgment, a judicial order of the High Court was challenged as being violative of fundamental right. This Court by majority held that a judicial order of a competent court could not violate a fundamental right. Even if there was incidental

violation, it could not be held to be violative of the fundamental right. Gajendragadkar, C.J., observed : (AIR pp. 11-12, paras 38-39 & 42)

"38. The argument that the impugned order affects the fundamental rights of the petitioners under Article 19(1), is based on a complete misconception about the true nature and character of judicial process and of judicial decisions. When a Judge deals with matters brought before him for his adjudication, he first decides questions of fact on which the parties are at issue, and then applies the relevant law to the said facts. Whether the findings of fact recorded by the Judge are right or wrong, and whether the conclusion of law drawn by him suffers from any infirmity, can be considered and decided if the party aggrieved by the decision of the Judge takes the matter up before the appellate court. But it is singularly inappropriate to assume that a judicial decision pronounced by a Judge of competent jurisdiction in or in relation to a matter brought before him for adjudication can affect the fundamental rights of the citizens under Article 19(1). What the judicial decision purports to do is to decide the controversy between the parties brought before the court and nothing more. If this basic and essential aspect of the judicial process is borne in mind, it would be plain that the judicial verdict pronounced by court in or in relation to a matter brought before it for its decision cannot be said to affect the fundamental rights of citizens under Article 19(1).

39. … Just as an order passed by the court on the merits of the dispute before it can be challenged only in appeal and cannot be said to contravene the fundamental rights of the litigants before the court so could the impugned order be challenged in

appeal under Article 136 of the Constitution, but it cannot be said to affect the fundamental rights of the petitioners. The character of the judicial order remains the same whether it is passed in a matter directly in issue between the parties or is passed incidentally to make the adjudication of the dispute between the parties fair and effective. On this view of the matter, it seems to us that the whole attack against the impugned order based on the assumption that it infringes the petitioners' fundamental rights under Article 19(1), must fail.

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42. It is true that the opinion thus expressed by Kania, C.J., in A.K. Gopalan [A.K. Gopalan v. State of Madras, 1950 SCC 228 : AIR 1950 SC 27 : (1950) 51 Cri LJ 1383 : 1950 SCR 88] had not received the concurrence of the other learned Judges who heard the said case. Subsequently, however, in Ram Singh v. State of Delhi [1951 SCC 331 : AIR 1951 SC 270 : (1951) 52 Cri LJ 904 : 1951 SCR 451] , AIR at p. 272 the said observations were cited with approval by the Full Court. The same principle has been accepted by this Court in Express Newspaper (P) Ltd. v. Union of India [AIR 1958 SC 578 : 1959 SCR 12] , AIR at p. 618 and by the majority judgment in Atiabari Tea Co. Ltd. v. State of Assam [Atiabari Tea Co. Ltd. v. State of Assam, AIR 1961 SC 232 : (1961) 1 SCR 809] , AIR at pp. 255-56."

27. Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view [Radhey Shyam v. Chhabi Nath, (2009) 5 SCC 616] of the referring Bench that a writ of mandamus does not lie against a private person not discharging

any public duty. Scope of Article 227 is different from Article 226."

and he would thus submit that writ of certiorari would not be maintainable under Article 226 of the Constitution of India in the present case.

21. Learned Senior Advocate for the CBI has referred to the judgment in the case of Rikhab Chand Jain vs. Union of India and Others, reported in 2025 SCC OnLine SC 2510, and has placed reliance upon paragraphs 6, 7 and 9 thereof, which are extracted hereunder for ready reference:-

"6. Since the appellant has been told off at the gates by the High Court [Reported as Rikhab Chand Jain v. Union of India, (2012) 16 GSTR 425 (Raj); 2011 SCC OnLine Raj 2799.] on the ground that he did not pursue the alternative remedy of appeal before the High Court under section 130 of the 1962 Act, what is central to our consideration is whether the High Court [Reported as Rikhab Chand Jain v. Union of India, (2012) 16 GSTR 425 (Raj); 2011 SCC OnLine Raj 2799.] was justified in refusing to entertain the writ petition of the appellant seeking a writ of certiorari.

7. Decisions of this court are legion from which guidance can aptly be drawn as to when a writ petition ought to be entertained despite the party approaching the High Court not exhausting the alternative statutory remedy available to him/her/it. Insistence by the courts—both this court and the High Courts—of exhaustion of a statutory remedy provided by an enactment before invoking the writ jurisdiction of a High

Court under article 226 of the Constitution can be traced to one of several self-imposed restrictions, laid down by judicial precedents of this court. Unless, of course, any of the exceptions (challenge to an act/order grounded on (i) breach of a fundamental right; (ii) violation of natural justice principles; (iii) lack of jurisdiction; and (iv) unconstitutionality of a statute) is satisfied, that a writ court may refuse to entertain a writ petition does not admit of any doubt. This court relying on a host of decisions including State of U.P. v. Mohammad Nooh [1957 SCC OnLine SC 21; AIR 1958 SC 86.] and Titaghur Paper Mills Co. Ltd. v. State of Orissa [(1983) 53 STC 315 (SC); (1983) 142 ITR 663 (SC); (1983) 2 SCC 433; 1983 SCC (Tax) 131; 1983 SCC OnLine SC 102.] has, in Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority [(2023) 109 GSTR 402 (SC); 2023 SCC OnLine SC 95.] , reiterated that availability of an alternative statutory remedy does not oust the jurisdiction of a writ court. It was also explained how "entertainability of a writ petition" is a concept distinct from the concept of "maintainability of a writ petition".

9. While deciding whether to entertain a petition under article 226 bearing in mind the precedents in the field, a writ court ought to additionally notice the forum designated by the statute for the litigant to approach. This is necessary because the alternative forum that is provided by the statute has to be one which can dispense speedy and efficacious relief. However, as in the present case, if the statutorily designated alternative forum happens to be the High Court itself whose jurisdiction under article 226 is invoked and not any ordinary statutory functionary/Tribunal, refusal to entertain the petition should be the rule and entertaining it an exception."

22. He would further submit that the actual grievance of the petitioner is only against the order dated 26.08.2016 and other prayers are only an eyewash. Prayers for monitoring and for SIT or fresh investigation by a new team and compensation have no independent cause of action and are added only to bring a challenge to a judicial order within the writ jurisdiction and he would further submit that the writ petition would not be tenable.

23. Learned Senior Advocate for the CBI would submit that the judgment in the case of Mohammad Nooh (supra) was rendered in the context of departmental proceedings and would not be an authority for the proposition that judicial orders are amenable to writ jurisdiction under Article 226 of the Constitution of India.

24. In rejoinder, learned counsel for the petitioner would submit that even in the judgment in the case of Rikhab Chand Jain (supra), the observations of the Hon'ble Supreme Court are to the effect that, in normal circumstances, a writ petition under Article 226 of the Constitution of India would not be maintainable against judicial orders. However, he would submit that the present case is an exceptional one and, therefore, there is no bar to entertaining the writ petition under Article 226 of the Constitution of India.

25. Learned counsel for the petitioner has also made submissions to the effect that the availability of an alternative

statutory remedy is not an absolute bar to the exercise of writ jurisdiction under Article 226 of the Constitution of India.

26. Having heard learned counsel for the parties and upon perusal of the judgments cited on behalf of the parties, the question that falls for determination at this stage is whether a writ petition under Article 226 of the Constitution of India is maintainable against a judicial order, and, in the present case, against the impugned order dated 26.08.2016 passed by the learned Additional Sessions Judge 2nd, Dehradun/Special Judge, Anti-corruption (CBI), Dehradun, in ST No.36 of 2014.

27. On one hand, learned counsel for the petitioner would place reliance on the judgment in the case of Godrej Sara Lee Limited (supra), wherein reference has been made to the Constitution Bench judgment in the case of Mohammad Nooh (supra), and he has argued that the writ petition under Article 226 of the Constitution of India would be maintainable, particularly in view of the fact that Article 226 is couched in very wide terms and extends to '**any other purpose'.**

28. Learned Senior Advocate for the CBI would submit that the judgment in the case of Mohammad Nooh (supra) was rendered in the context of departmental proceedings and would not be an authority for the proposition that judicial

orders are amenable to writ jurisdiction under Article 226 of the Constitution of India.

29. Learned counsel for the petitioner has also relied upon a judgment in the case of Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & others, reported in (1998) 8 SCC 1, and he has referred to paras 14 and 15 thereof and he submits that the powers of the High Court under Article 226 of the Constitution of India are plenary in nature and are exercisable not only for the enforcement of fundamental rights but also for any other purpose.

30. On the other hand, learned Senior Advocate for the CBI has sought to counter the submissions made by learned counsel for the petitioner and submits that judicial orders passed by courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India, and that the remedy would lie only by way of statutory appeal or revision, or under Article 227 of the Constitution of India.

31. The judgments referred to by learned Senior Advocate for the CBI, namely, Neeta Singh (supra), Radhey Shyam (supra) and Naresh Shridhar Mirajkar (supra), categorically deal with the aforesaid issue. In fact, in the case of Radhey Shyam (supra) referring to the nine-Judge Bench judgment in the case of Naresh Shridhar Mirajkar (supra), it has been held that a judicial order passed by a competent court cannot violate a fundamental right. It has further been

held in the case of Neeta Singh (supra) that although the judgment in Radhey Shyam (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged by way of a writ petition under Article 226 of the Constitution of India, a judicial order passed by a criminal court also cannot be challenged in such writ jurisdiction.

32. Learned counsel for the petitioner has also made a reference to the judgment in the case of Mohammad Nooh (supra) and he would submit that it is a Constitutional Bench judgment. However, the judgment in the case of Naresh Shridhar Mirajkar (supra) is a judgment rendered by a larger Bench of nine Judges, wherein this aspect has been clarified in the judgment in the case of Radhey Shyam (supra). It has categorically been held, relying upon the nine-Judge Bench judgment in Naresh Shridhar Mirajkar (supra), that a judicial order passed by a competent court cannot violate a fundamental right.

33. A bare perusal of applications 200-B and 208-B filed by the petitioner in Sessions Trial No.36 of 2014 would further reveal that the third relief sought in the writ petition is almost identical to the reliefs sought in the said applications. Therefore, by and large, the writ petition assails a judicial order. It is, thus, quite clear that, in essence, not

only has the judicial order dated 26.08.2016 been challenged, but the other prayers are also an attempt to bring the reliefs within the ambit of Article 226 of the Constitution of India by couching them in different language. Thus, it is evident that the present writ petition has been filed challenging a judicial order, and a writ of certiorari has been sought for quashing the same.

34. After going through the judgments of the Hon'ble Supreme Court relied upon by both the parties and considering the same, this Court is of the considered opinion that, in view of the judgments of the Hon'ble Supreme Court in the cases of Neeta Singh (supra), Radhey Shyam (supra) and Naresh Shridhar Mirajkar (supra), judicial orders passed by criminal courts cannot be assailed by way of a writ petition under Article 226 of the Constitution of India. It would not be open to a litigant to invoke the writ jurisdiction under Article 226 of the Constitution of India instead of availing the appropriate statutory remedies available under the CrPC and the BNSS.

35. In such view of the matter, this Court comes to the conclusion that the petitioner could not have invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India, however, it would be open to the petitioner to avail the appropriate remedy under the aforesaid provisions of the CrPC/BNSS, if so advised. It is also made

clear that the observations made herein above are confined only to the issue of maintainability of the writ petition and all the contentions on the merit shall remain open.

36. In view of the foregoing discussion, the writ petition is, accordingly, dismissed holding that the writ petition is not maintainable. However, keeping it open for the petitioner to avail the alternative statutory remedy as indicated hereinbefore.

(Siddhartha Sah, J.)
21.11.2026

Akash