REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4288 OF 2017
(arising out of S.L.P. (Civil) No. 15362 of 2016)

Ram Kishan Fauji ... Appellant

Versus

State of Haryana and Ors. ... Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The Chief Secretary to the Government of Haryana in exercise of power under Section 8(1) of the Haryana Lokayukta Act, 2002 (for brevity, "the Act") made a reference to the Lokayukta, Haryana to enquire into the allegations, namely, (i) whether the allegations of bribery levelled in the alleged Compact Disc (CD) are correct, (ii) whether Change

of Land Use (CLU)/Licence was granted in pursuance of these allegations, and (iii) whether by such act, any illegality was committed. The said reference was registered as Complaint No. 773 of 2013 in the office of the Lokayukta, Haryana.

3. Acting on the reference made by the Chief Secretary, the office of the Lokayukta issued a public notice requesting the public in general to send any such material including Video Compact Disc (VCD) connected with the subject in issue. Apart from the public notice, communications were sent to various departments of the Government, television channels and newspapers for furnishing all materials to find out the allegations of corruption against the persons who have been named in the complaint.

4. As the facts would unfold, the Lokayukta, Haryana, issued notice to the appellant in exercise of power under Section 14 of the Act to offer his explanation. In pursuance of the said communication, the appellant filed a reply and the Lokayukta granted him time to place on record his evidence in the form of an affidavit. When the matter stood

thus, on 16.01.2014, two persons allegedly conducted a sting operation and filed their affidavits before the Lokayukta. The appellant, in the meantime, got the CD examined from M/s Truth Labs, Bangalore and also got the forensic examination of the audio and a report was submitted on 20.01.2014 opining, as averred, that the audio and video recording in the earlier CD was not continuous and the recording did not appear to be authentic. Be that as it may, on weighing the material brought on record, the Lokayukta thought it appropriate to recommend for registration of FIR for offences punishable under the provisions of the Prevention of Corruption Act, 1988 (for short, "the 1988 Act") and investigation by a senior competent officer of impeccable integrity.

5. At this stage, it is necessary to mention that the appellant had preferred Civil Writ Petition No. 4554/2014 (O&M) praying for issue of a writ in the nature of certiorari for quashing of the impugned orders dated 20.01.2014 and 11.02.2014 passed by the respondent No. 2 whereby it had recommended registration of a case against the petitioner therein under the provisions of the 1988 Act and further for

issue of a writ or direction in the nature of mandamus restraining the respondent No. 1 from initiating any consequential proceeding on the basis of the impugned orders. The grounds asserted for the assail were that there was no verification of the genuinity of the alleged VCD and that the action taken was perverse, illegal, arbitrary and violative of the provisions of the Act.

6. The High Court, vide order dated 14.03.2014, directed the respondent State to inquire into the authenticity of the CD in question and file a status report in the Court and further directed that the State shall be bound by the judgment of ***Lalita Kumari v. Govt. of Uttar Pradesh and others***[1] with reference to the preliminary enquiry to be conducted in respect of corruption cases. A reply was filed before the High Court on 03.12.2014 and FIR No. 10/2014 was registered at P.S. State Vigilance Bureau, Panchkula on 04.12.2014 under Sections 7 and 8 of the 1988 Act. Certain other documents were brought on record before the learned Single Judge of the High Court and eventually. vide

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1 (2014) 2 SCC 1

judgment dated 27.02.2015, the learned Single Judge referred to various aspects such as the facts that led to the complaint before the Lokayukta, the findings of the Lokayukta, the initial endeavour by the High Court to gather details of the authenticity of the CD, the contradictory report submitted by the writ petitioner from private laboratory, he fresh report from Central Forensic Science Laboratory (CFSL) to quell the contradiction, the law relating to the admissibility of evidence of electronic record and, thereafter, it recorded its conclusion on the issues pertaining to the authenticity of the CD, credible information for bribery, direction for filing of complaint by the Lokayukta, the report of the Lokayukta, the imputations made against the petitioner, *prima facie* proof, the jurisdiction of the Lokayukta to cause an inquiry and, ultimately, came to hold as follows:-

> "I have undertaken this examination only to conclude all the issues which were urged before me. The observations as regards the untenability invoking the provision of Section 9 does not obtain relevance to us, for, we have already found the report to be seriously flawed in every respect both as regards the competence of the Lokayukta to order a registration of a complaint after he found the reference in the negative that there was

> no case made for allegations of corruption and that also the evidence of CD which was taken to be the basis for a further investigation itself could not be relied on, for, it lacks the basic element of authenticity."

7. Being of this view, it proceeded to deal with the registration of the complaint on the recommendation of the Lokayukta and, in that regard, opined that:-

> "The learned counsel for the State would submit that the investigation has proceeded subsequent to the impugned order passed. A FIR has been registered on 04.12.2014, that is, after the writ petition was filed, when the issue of the authenticity of the CD was very much open for consideration. Indeed, I had stayed the further proceedings when I passed an order on 19.12.2014 directing the CD to be sent along with the memory chip to the CFSL, Hyderabad. If the investigation is purported to be taken by lodging a FIR, consequent on the directions given by the order which is now quashed, it shall also be quashed."

8. While so stating, the learned Single Judge ruled that if there is any other material or information of corrupt practice against the writ petitioner, the State shall be at liberty to carry out the investigation as per law.

9. The aforesaid order came to be assailed in LPA No. 1426 of 2015. The Division Bench, by order dated 15.12.2015, without issuing notice to the present appellant,

condoned the delay of 85 days in filing the appeal and stayed the operation of the judgment passed by the learned Single Judge. The appellant filed CM No. 3930/LPA of 2015 for vacation of the said interim order and the Division Bench declined to vacate the interim order and made it absolute on 12.05.2016 by the impugned order and after admitting the LPA, passed the following order:-

> "However, with a view to ensure absolute objectivity in the ongoing investigation and to rule out any possibility of alleged prejudice against respondent No.1, the Director General of Police, Haryana is directed to re-constitute a Special Investigation Team comprising three senior IPS officers who originally do not belong to the State of Haryana.
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> Liberty is granted to the parties to seek out-of-turn hearing of the appeal after the investigation is over."

10. Questioning the sustainability of the order passed by the Division Bench, Dr. Rajeev Dhawan, 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.

11. Mr. Sanjay Kumar Visen, learned counsel appearing for the respondent State, resisting the aforesaid submission, would contend that the writ petition was registered as a civil writ petition for the purpose of issuing a writ of certiorari and the exercise of jurisdiction by the High Court is civil in nature and, therefore, the jurisdiction exercised is civil jurisdiction that invites interference in intra-court appeal. That apart, contends Mr. Visen that the exercise of power of the learned Single Judge is strictly under Article 226 of the Constitution of India and, hence, an intra-court appeal deserved to be entertained by the Division Bench. It is further submitted by him that the Lokayukta is a quasi-judicial body and when, at its instance, action is taken for inquiry, it has to come within the ambit and scope of civil jurisdiction and not criminal jurisdiction. Learned counsel for the State has stressed on the status of Lokayukta and for that matter has commended us to the

authority in ***Justice Chandrashekaraiah (Retd.) v. Janekere C. Krishna & others***[2].

12. First, we intend to advert to the position of the Lokayukta or Upa-Lokayukta as has been dealt with in ***Justice Chandrashekaraiah*** (supra). In the said case, Radhakrishnan, J. ruled that Lokayukta and Upa-Lokayukta act as quasi-judicial authorities, but their functions are investigative in nature. Scrutinising the provisions enshrined under Sections 9, 10 and 11 of the Karnataka Lokayukta Act, 1984, he opined that the said authorities, while investigating the matters, are discharging quasi-judicial functions, but the nature of functions is investigative. The learned Judge, while deliberating on the consequence of the report, ruled thus:-

> "The Governor of the State, acting in his discretion, if accepts the report of the Lokayukta against the Chief Minister, then he has to resign from the post. So also, if the Chief Minister accepts such a report against a Minister, then he has to resign from the post. The Lokayukta or Upa-Lokayukta, however, has no jurisdiction or power to direct the Governor or the Chief Minister to implement his report or direct resignation from

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2 (2013) 3 SCC 117

> the office they hold, which depends upon the question whether the Governor or the Chief Minister, as the case may be, accepts the report or not. But when the Lokayukta or Upa-Lokayukta, if after the investigation, is satisfied that the public servant has committed any criminal offence, prosecution can be initiated, for which prior sanction of any authority required under any law for such prosecution, shall also be deemed to have been granted."

13. In the concurring opinion, Lokur, J. posed the question whether the Lokayukta is a quasi-judicial authority. The argument on behalf of the State was that Upa-Lokayukta is essentially required to investigate complaints and enquire into the grievances brought before it and, therefore, he may be exercising some quasi-judicial functions, but that does not make him a quasi-judicial authority. The said submission was advanced to highlight the proposition that when the Upa-Lokayukta is not a quasi-judicial authority, the opinion of the Chief Justice of the High Court of Karnataka would not have primacy in the appointment and consultation process. After adverting to the powers and functions of Upa-Lokayukta, it has been held that:-

"105. Section 14 of the Act enables the Upa-Lokayukta to prosecute a public servant and if such an action is taken, sanction to prosecute the public servant shall be deemed to have been granted by the appropriate authority."

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"107. The broad spectrum of functions, powers, duties and responsibilities of the Upa-Lokayukta, as statutorily prescribed, clearly bring out that not only does he perform quasi-judicial functions, as contrasted with purely administrative or executive functions, but that the Upa-Lokayukta is more than an investigator or an enquiry officer. At the same time, notwithstanding his status, he is not placed on the pedestal of a judicial authority rendering a binding decision. He is placed somewhere in between an investigator and a judicial authority, having the elements of both. For want of a better expression, the office of an Upa-Lokayukta can only be described as a sui generis quasi-judicial authority."

"108. .....The final decision rendered by the Upa-Lokayukta, called a report, may not bear the stamp of a judicial decision, as would that of a court or, to a lesser extent, a tribunal, but in formulating the report, he is required to consider the point of view of the person complained against and ensure that the investigation reaches its logical conclusion, one way or the other, without any interference and without any fear. Notwithstanding this, the report of the Upa-Lokayukta does not determine the rights of the complainant or the person complained against. Consequently, the Upa-Lokayukta is neither a court nor a tribunal. Therefore, in my opinion, the Upa-Lokayukta can best be

> described as a sui generis quasi-judicial authority."

14. After so stating, the learned Judge referred to the opinions of Kania, CJI and Das, J. in ***Associated Cement Companies Ltd. v. P.N. Sharma***[3] and arrived at the following conclusion:-

> "As mentioned above, an Upa-Lokayukta does function as an adjudicating authority but the Act places him short of a judicial authority. He is much more "judicial" than an investigator or an inquisitorial authority largely exercising administrative or executive functions and powers. Under the circumstances, taking an overall view of the provisions of the Act and the law laid down, my conclusion is that the Upa-Lokayukta is a quasi-judicial authority or in any event an authority exercising functions, powers, duties and responsibilities conferred by the Act as a sui generis quasi-judicial authority.

15. The aforesaid pronouncement was rendered when the appointment of Upa-Lokayukta was challenged on the ground that one of the constitutional functionaries was not consulted. Emphasis was on the nature of the post held by Lokayukta or Upa-Lokayukta.

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3 AIR 1965 SC 1595

16. The aforesaid paragraphs would clearly show that neither the Lokayukta nor Upa-Lokayukta has any jurisdiction or authority to direct implementation of his report by the constitutional functionary but when after investigation, it is found that the public servant has committed any criminal offence, prosecution can be initiated for which prior sanction of any authority is required under any law for such prosecution and the same shall be deemed to have been granted.

17. Relying on the aforesaid judgment, it is submitted by Mr. Visen that when the posts held by Lokayukta and Upa-Lokayukta are quasi-judicial in nature, their functioning has to be given the same character and once they are clothed with such functioning and action taken by them is subject to challenge before the High Court under Article 226 of the Constitution seeking a writ of certiorari for quashment of the same, in that event, the adjudication has to be regarded as civil in nature. Elaborating further, he would submit that in the instant case, a civil writ was filed challenging the opinion and recommendation of the Lokayukta and, therefore, the jurisdiction sought to be

exercised is under Article 226 of the Constitution of India and resultantly, the order passed by the learned Single Judge is amenable to correction in intra-court appeal.

18. The maze needs to be immediately cleared. In the instant case, we are really not concerned with the nature of the post held by Lokayukta or Upa-Lokayukta. We are also not concerned how the recommendation of the said authorities is to be challenged and what will be the procedure therefor. As has been held by this Court, neither the Lokayukta nor Upa-Lokayukta can direct implementation of his report, but it investigates and after investigation, if it is found that a public servant has committed a criminal offence, prosecution can be initiated.

19. Having discussed as aforesaid, at this juncture, reference to Clause 10 of the Letters Patent (as applicable to erstwhile Punjab & Lahore High Courts) is absolutely apposite. It reads as follows:-

> "**10. Appeals 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 Lahore from the judgment (not being a judgment passed in the exercise of

> appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in 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."
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> [emphasis added]

20. 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.

21. Presently, we may fruitfully refer to Clauses 15, 17 and 18 that deal with criminal jurisdiction. Clause 15 that provides for ordinary criminal jurisdiction of the High Court reads as under:-

> "15. And We do further ordain that the High Court of Judicature at Lahore shall have ordinary original criminal jurisdiction in respect of all such persons within the Provinces of Punjab and Delhi as the Chief Court of the Punjab had such criminal jurisdiction over immediately before the publication of these presents."

22. Clauses 17 and 18, being pertinent, are extracted below:-

> "17. And We do further ordain that the High Court of Judicature at Lahore shall have extraordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any magistrate or other officer specially empowered by the Government in that behalf.
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> 18. And We do further ordain that <u>there shall be no appeal to the High Court of Judicature at Lahore from any sentence or order passed or made by the Courts of original criminal</u>

> jurisdiction which may be constituted by one or more Judges of the said High Court. But it shall be at the discretion of any such court to reserve any point or points of law for the opinion of the said High Court."
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> [underlining is ours]

23. 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 & Haryana High Court) is in *pari materia* to Clause 15 of the Letters Patent of the Chartered High Courts. The four-Judge Bench, in ***South Asia Industries Private Ltd v. S.B. Sarup Singh and others***[4], 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:-

> "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. 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

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4 (1965) 2 SCR 756

> 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."
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> [Emphasis added]

The Court in the said case after referring to number of authorities also observed:-

> "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 s. 108 of the Government of India Act, 1915, an appeal under s. 39 of the Act will be heard by a single Judge. Any judgment made by the single Judge in the said appeal will, under cl. 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, expressely 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 cl. 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."
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> [underlining is ours]

24. From the aforesaid authority, two aspects are absolutely clear. First, where an appeal is not excluded against the judgment of the High Court of a Single Judge,

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.

25. In this context, reference to the Constitution Bench judgment in ***Jamshed N. Guzdar v. State of Maharashtra and others***[5] would be apposite. In the said case, the controversy arose pertaining to the constitutional validity of the Bombay City Civil Court and Bombay Court of Small Causes (Enhancement of Pecuniary Jurisdiction and Amendment) Act, 1986 (Maharashtra Act 15 of 1987) (for short "the 1987 Act"), Maharashtra High Court (Hearing of Writ Petitions by Division Bench and Abolition of Letters Patent Appeals) Act, 1986 (Maharashtra Act 17 of 1986) (for short "the 1986 Act") and Madhya Pradesh Uchcha Nyayalaya (Letters Patent Appeals Samapti) Adhiniyam, 1981 (for short 'the Adhiniyam') by which State Legislatures had abolished the intra-court appeals provided under the

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5 (2005) 2 SCC 591

Letters Patent. It is apt to note here that the Full Bench of the Madhya Pradesh High Court, by majority opinion, had struck down the legislation abolishing Letters Patent Appeal as invalid.

26. The principal question that emerged for consideration related to the legislative competence of the State Legislatures in passing the above named enactments. The Constitution Bench held thus:-

> "73. … Entry 46 of List III relates to jurisdiction and power of all courts except the Supreme Court i.e. including the City Civil Court and High Court with respect to any matter in List III including the Civil Procedure Code in Entry 13. The contention that merely constituting and organising High Courts without conferring jurisdiction to deal with the matters on them does not serve any purpose, cannot be accepted. The Constitution itself has conferred jurisdiction on High Courts, for instance, under Articles 226 and 227. This apart, under various enactments, both Central and State, certain jurisdiction is conferred on High Courts. The High Courts have power and jurisdiction to deal with such matters as are conferred by the Constitution and other statutes. This power of "administration of justice" has been included in the Concurrent List after 3-1-1977 possibly to enable both the Centre as well as the States to confer jurisdiction on High Courts under various enactments passed by the Centre or the State to meet the needs of the respective States in relation to specific subjects. Thus, viewed from any angle, it is not possible to agree

that the 1987 Act and the 1986 Act are beyond the competence of the State Legislature.

74. We are, therefore, of the view that there is no merit in the contention that the State Legislature did not have competence to enact the two legislations, the constitutionality of which has been challenged before us."

And again:-

"88. The argument that the 1986 Act or the Adhiniyam encroaches upon the legislative power of Parliament, cannot be accepted, in the view we have taken that it was competent for the State Legislatures to pass law relating to general jurisdiction of the High Courts dealing with the topic "administration of justice" under Entry 11-A of List III. Assuming that incidentally the 1986 Act and the Adhiniyam touch upon the Letters Patent, the 1986 Act and the Adhiniyam cannot be declared either as unconstitutional or invalid applying doctrine of pith and substance having due regard to the discussion already made above while dealing with the legislative competence of the State in passing the 1987 Act."

27. On the aforesaid analysis, the Court set aside the judgment of the Full Bench of the High Court of Madhya Pradesh and dismissed the writ petitions filed by others challenging the 1986 Act and the 1987 Act. Thus, it has

been clearly held that the State Legislature has competence to amend the Letters Patent.

28. The purpose of referring to this judgment is that till a competent legislature takes away the power of the Letters Patent, the same can be exercised by the High Court. However, while exercising the power under the Letters Patent, it is imperative to see what is the nature of jurisdiction that has actually been provided in the Letters Patent. The exercise of jurisdiction has to be within the ambit and scope of the authority enshrined in the provision meant for intra-court appeal.

29. At this stage, we may refer to some of the pronouncements commended to us by the learned senior counsel for the appellant. In ***Commissioner of Income-Tax, Bombay & another v. Ishwarlal Bhagwandas and others***[6], the High Court of Bombay under Article 226 of the Constitution had quashed the orders passed by the Income Tax Officer and the Commissioner of Income Tax. Against the orders passed by

6 (1966) 1 SCR 190

the High Court, the Commissioner of Income Tax and the Income Tax Officer prayed for grant of certificate to the High Court and after grant of such certificate, appealed to this Court. At the commencement of hearing of the appeal, the learned counsel for the assessee raised a preliminary objection that the appeal filed by the revenue was incompetent because the High Court had no power under Article 133 of the Constitution to certify a proposed appeal against an order in a proceeding initiated by a petition for the issue of a writ under Article 226 of the Constitution inasmuch as the proceeding before the High Court was not "a civil proceeding" within the meaning of Article 133.

30. The Court referred to Article 133 of the Constitution and took note of the submission that the jurisdiction exercised by the High Court as regards the grant of certificate pertains to judgment, decree or final order of a High Court in a civil proceeding and that "civil proceeding" only means a proceeding in the nature of or triable as a civil suit and a petition for the issue of a high prerogative writ by the High Court was not such a proceeding. Additionally, it was urged that even if the proceeding for issue of a writ

under Article 226 of the Constitution may, in certain cases, be treated as a civil proceeding, it cannot be so treated when the party aggrieved seeks relief against the levy of tax or revenue claimed to be due to the State. The Court, delving into the nature of civil proceedings, noted that:-

> "The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof."

31. After so stating, the Court elucidated the nature of criminal proceeding and, in that regard, ruled thus:-

> "A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed."

32. Explicating the concept further, the Court opined that:-

> "The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief but upon the nature of the right violated and the appropriate relief which may be claimed."

33. It further held that a civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status, etc.

34. 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.

35. In this regard, reference to ***Umaji Keshao Meshram & others v. Radhikabai & another***[7] would be fruitful. In the said case, the controversy arose whether an appeal lies under Clause 15 of the Letters Patent of the Bombay High Court to a Division Bench of two judges of that High Court from the judgment of a Single Judge of that High Court in a petition filed under Article 226 or 227 of the Constitution of India. The Court referred to the Letters Patent of Calcutta, Bombay and Madras High Courts which are *pari materia* in the same terms with minor variations that have occurred due to amendments made subsequently. The Court referred to the provisions of the Government of India Act, the Indian Independence Act, 1947 and the debates of the Constituent Assembly and observed that the historical evidence shows that our Constitution did not make a break with the past. It

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7 1986 (Supp.) SCC 401

referred to some earlier authorities and, eventually, came to hold that:-

> "92. The position which emerges from the above discussion is that under clause 15 of the Letters Patent of the Chartered High Courts, from the judgment (within the meaning of that term as used in that clause) of a Single Judge of the High Court an appeal lies to a Division Bench of that High Court and there is no qualification or limitation as to the nature of the jurisdiction exercised by the Single Judge while passing his judgment, provided an appeal is not barred by any statute (for example, Section 100-A of the Code of Civil Procedure, 1908) and provided the conditions laid down by clause 15 itself are fulfilled. The conditions prescribed by clause 15 in this behalf are: (*1*) that it must be a judgment pursuant to Section 108 of the Government of India Act of 1915, and (*2*) it must not be a judgment falling within one of the excluded categories set out in clause 15."

And again:-

> "100. According to the Full Bench even were clause 15 to apply, an appeal would be barred by the express words of clause 15 because the nature of the jurisdiction under Articles 226 and 227 is the same inasmuch as it consists of granting the same relief, namely, scrutiny of records and control of subordinate courts and tribunals and, therefore, the exercise of jurisdiction under these articles would be covered by the expression "revisional jurisdiction" and "power of superintendence". We are afraid, the Full Bench has misunderstood the scope and effect of the powers conferred by these articles. These two articles stand on an entirely different

footing. As made abundantly clear in the earlier part of this judgment, their source and origin are different and the models upon which they are patterned are also different. Under Article 226 the High Courts have power to issue directions, orders and writs to any person or authority including any Government. Under Article 227 every High Court has power of superintendence over all courts and tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. By no stretch of imagination can a writ in the nature of habeas corpus or mandamus or quo warranto or prohibition or certiorari be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. The power of superintendence conferred upon every High Court by Article 227 is a supervisory jurisdiction intended to ensure that subordinate courts and tribunals act within the limits of their authority and according to law (see *State of Gujarat* v. *Vakhatsinghji Vajesinghji Vaghela*[8] and *Ahmedabad Mfg. & Calico Ptg. Co. Ltd.* v. *Ram Tahel Ramnand*[9]). The orders, directions and writs under Article 226 are not intended for this purpose and the power of superintendence conferred upon the High Courts by Article 227 is in addition to that conferred upon the High Courts by Article 226. Though at the first blush it may seem that a writ of certiorari or a writ of prohibition partakes of the nature of superintendence inasmuch as at times the end result is the same, the nature of the power to issue these writs is different from the

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8 AIR 1968 SC 1481

9 (1973) 1 SCR 185

> supervisory or superintending power under Article 227. The powers conferred by Articles 226 and 227 are separate and distinct and operate in different fields. The fact that the same result can at times be achieved by two different processes does not mean that these two processes are the same."

36. In the ultimate analysis, the two-Judge Bench 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.

37. In this context, a reference to a two-Judge Bench decision in ***Ashok K. Jha and others v. Garden Silk Mills Limited and another***[10] would be profitable. The question that arose for consideration was whether an appeal under Clause 15 of the Letters Patent of the High Court of Bombay was maintainable from the judgment and order passed by the learned Single Judge in a special civil application. The

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10 (2009) 10 SCC 584

controversy had arisen from the dispute raised before the Labour Court. The matter travelled through the Industrial Court in appeal which was challenged before the High Court under Articles 226 and 227 of the Constitution of India. While dealing with the issue of maintainability, the Court referred to ***Umaji Keshao Meshram*** (supra), ***Kishorilal v. Sales Officer, District Land Development Bank***[11], ***State of Madhya Pradesh and others v. Visan Kumar Shiv Charan Lal***[12] and ***Sushilabai Laxminarayan Mudliyar and others v. Nihalchand Waghajibhai Shaha and others***[13] and ultimately held that:-

> "35. In *Visan Kumar Shiv Charan Lal* (supra) 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

11 (2006) 7 SCC 496

12 (2008) 15 SCC 233

13 1993 Supp (1) SCC 11

Single Judge has mainly or principally exercised his jurisdiction under Article 226 or Article 227 of the Constitution. In *Ramesh Chandra Sankla*[14] this Court held:

> "*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...."

38. The Court in the said case accepted the decision rendered in ***Ramesh Chandra Sankla*** (supra) and opined that a statement 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

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14 (2008) 14 SCC 58

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.

39. In ***Radhey Shyam and another v. Chhabi Nath and others***[15], the issue arose with regard to the correctness of the decision in ***Surya Dev Rai v. Ram Chander Rai***[16] before the three-Judge Bench. The three-Judge Bench referred to ***Naresh Shridhar Mirajkar v. State of Maharashtra***[17] wherein this Court came to the conclusion that "Certiorari does not lie to quash the judgments of inferior courts of civil jurisdiction." It adverted to the authority in ***Surya Dev Rai*** (supra) copiously and weighed it in the backdrop of other authorities and compared it with the English law principles and ruled that:-

> "26. The Bench in *Surya Dev Rai* (supra) also observed in para 25 of its judgment that distinction between Articles 226 and 227 stood almost obliterated. In para 24 of the said

15 (2015) 5 SCC 423

16 (2003) 6 SCC 675

17 AIR 1967 SC 1

judgment distinction in the two articles has been noted. In view thereof, observation that scope of Articles 226 and 227 was obliterated was not correct as rightly observed[18] by the referring Bench in para 32 quoted above. We make it clear that though despite the curtailment of revisional jurisdiction under Section 115 CPC by Act 46 of 1999, jurisdiction of the High Court under Article 227 remains unaffected, it has been wrongly assumed in certain quarters that the said jurisdiction has been expanded. Scope of Article 227 has been explained in several decisions including *Waryam Singh* v. *Amarnath*[19], *Ouseph Mathai* v. *M. Abdul Khadir*[20], *Shalini Shyam Shetty* v. *Rajendra Shankar Patil*[21] and *Sameer Suresh Gupta* v. *Rahul Kumar Agarwal*[22]."

40. The ultimate conclusion arrived at in the said case is that:-

"27. ... 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[19] of the referring Bench that a writ of mandamus does not lie against a

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18 (2009) 5 SCC 616

19 AIR 1954 SC 215

20 (2002) 1 SCC 319

21 (2010) 8 SCC 329

22 (2013) 9 SCC 374

private person not discharging any public duty. Scope of Article 227 is different from Article 226."

41. The Court clarified the position by adding that:-

"28. We may also deal with the submission made on behalf of the respondent that the view in *Surya Dev Rai* (supra) stands approved by larger Benches in *Shail*[23], *Mahendra Saree Emporium (2)*[24] and *Salem Advocate Bar Assn. (2)*[25] and on that ground correctness of the said view cannot be gone into by this Bench. In *Shail* (supra), though reference has been made to *Surya Dev Rai* (supra), the same is only for the purpose of scope of power under Article 227 as is clear from para 3 of the said judgment. There is no discussion on the issue of maintainability of a petition under Article 226. In *Mahendra Saree Emporium (2)* (supra), reference to *Surya Dev Rai* (supra) is made in para 9 of the judgment only for the proposition that no subordinate legislation can whittle down the jurisdiction conferred by the Constitution. Similarly, in *Salem Advocate Bar Assn. (2)* (supra) in para 40, reference to *Surya Dev Rai* (supra) is for the same purpose. We are, thus, unable to accept the submission of the learned counsel for the respondent."

42. In the ultimate eventuate, the three-Judge Bench answered the reference as follows:-

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23 (2004) 4 SCC 785

24 (2005) 1 SCC 481

25 (2005) 6 SCC 344

> "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* (supra) is overruled."

43. Recently, in ***Jogendrasinhji Vijaysinghji v. State of Gujarat and others***[26] the Court was dealing with a batch of appeals that arose from the High Court of Gujarat as regards the maintainability of Letters Patent Appeal. The Court referred to the nine-Judge Bench decision in ***Naresh Shridhar Mirajkar*** (supra) and the three-Judge Bench decision in ***Radhey Shyam*** (supra) and ruled that a judicial order passed by the civil court can only be assailed and scrutinised under Article 227 of the Constitution and, hence, no intra-court appeal is maintainable.

44. As the controversy related to further two aspects, namely, whether the nomenclature of 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

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26 (2015) 9 SCC 1

authorities in ***Lokmat Newspapers (P) Ltd. v. Shankarprasad***[27], ***Kishorilal*** (supra), ***Ashok K. Jha*** (supra) and ***Ramesh Chandra Sankla*** (supra) 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*** (supra) 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

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27 (1999) 6 SCC 275

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.

45. We have referred to these decisions only to highlight that it is beyond any shadow of doubt that the order of civil court can only be challenged under Article 227 of the Constitution and from such challenge, no intra-court appeal would lie and in other cases, it will depend upon the other factors as have been enumerated therein.

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.

47. In the case at hand, learned counsel for the respondent State would submit that when a writ of

certiorari is issued, it is a prerogative writ and, therefore, an appeal would lie to the Division Bench. He has emphatically commended us to the pronouncement in ***Hari Vishnu Kamath v. Syed Ahmad Ishaque and others***[28]. In the said case, the Court has referred to the earlier decision in ***T.C. Basappa v. T. Nagappa***[29] and held that:-

> "… 'Certiorari' will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) 'Certiorari' will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The Court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the Court will not review findings of fact reached by the inferior Court or Tribunal, even if they be erroneous. This is on the principle that a Court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the Legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior Court were to re-hear the case on the evidence, and substitute its own findings in certiorari. These propositions -are well settled and are not in dispute."

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28 AIR 1955 SC 233

29 AIR 1954 SC 440

48. It is propounded by Mr. Visen that a writ of certiorari can be issued on many a ground and when the learned Single Judge has issued a writ of the present nature in quashing the order of the Upa-Lokayukta, it has to be treated as an order under Article 226 of the Constitution of India. That apart, he urged that the issue whether it would be under Article 226 or 227 is to be determined by the Division Bench of the High Court.

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*** (supra)

does not render any assistance to the argument advanced by the learned counsel for the respondent-State.

50. 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 and others***[30]. 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 Indian Penal Code against the writ petitioner in FIR Nos. 14/97, 137/97 and 77/97 as illegal and to quash the same. The learned Single Judge had allowed the writ petition by order dated 06.08.1997 and quashed the FIRs. The order passed

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30 2000 (2) ALT 448 (F.B.)

by the learned Single Judge was assailed by the 7th respondent in intra-court appeal. The Full Bench posed the following question:-

> "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."

51. Dwelling upon the said issue, the Court referred to the authority in ***State of Haryana and others v. Bhajanlal and others***[31] 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

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31 AIR 1992 SC 604

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***[32] and ***Rajesh Bajaj v. State NCT of Delhi***[33], deliberated upon the maintainability of the appeal and, in that regard, stated thus:-

> "15. 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. <u>The appeal from judgments of single Judges of the High Court shall lie to the</u>

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32 1997 (2) SCC 397, 1997 SCC (Crl.) 415

33 1999 (3) SCC 259, 1999 SCC (Crl.) 401

> Division Bench except the judgments 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 Cr.P.C. 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."
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> [Emphasis added]

52. According to Mr. Visen, learned counsel for the respondent State, the view expressed by the Andhra Pradesh High Court is absolutely defensible in law and, therefore, the appeal being maintainable, the order impugned in the present appeal does not warrant any interference.

53. Dr. Dhawan, learned senior counsel, has commended us to two authorities – one by the Division Bench of Gujarat High Court and the other by the Full Bench of High Court of Delhi. In ***Sanjeev Rajendrabhai Bhatt v. State of***

Gujarat & others[34], two appeals being Special Criminal Application Nos. 6 and 24 of 1998 arose out of a common order passed by the learned Single Judge. The learned Single Judge, by the impugned order, upheld the preliminary objection raised on behalf of the State of Rajasthan that the High Court of Gujarat had no territorial jurisdiction in the matter as the proceedings were initially conducted in the Court of Chief Judicial Magistrate, Pali situated in Rajasthan. The maintainability of the objections on the ground of want of territorial jurisdiction was the subject matter of appeal before the Division Bench. The Court posed two questions and the primary one pertained to the maintainability of Letters Patent Appeal. For the aforesaid purpose, the appellate Bench thought it appropriate to pose the following two questions:-

> "First, whether an order passed by the learned single Judge can be said to have been made in the exercise of extraordinary powers under Article 226 of the Constitution or in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Secondly, whether the order passed by the learned single Judge can be said to have been passed in the exercise of criminal

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34 (2000) 1 Gujarat Law Reports 206

jurisdiction within the meaning of Clause 15 of the Letters Patent."

54. The Division Bench referred to ***Umaji Keshao Meshram*** (supra), adverted to the decisions in ***Supreme Court Bar Association v. Union of India and another***[35] and ***A.R. Antulay v. R.S. Nayak and another***[36] (as Article 21 was also raised as an issue) and came to hold that it would not be advisable to express final opinion on the question whether the petitions filed by the petitioners can be said to be under Article 226 or Article 227 of the Constitution. Proceeding on the other score, the Court analysed the various provisions of the CrPC, namely, Sections 109, 200, 202, sub-section (3) of Section 156 and various clauses of the Letters Patent, distinguished the decision in ***State of Gujarat v. Jayantilal Maganlal Patel***[37] and distinguished the same by holding that the

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35 1998 (4) SCC 409

36 AIR 1988 SC 1531

37 1995 (2) GLH 260

observations of the Division Bench cannot be construed to mean that when a petition is filed under Article 226 of the Constitution, L.P.A. would lie irrespective of the fact that such question might have arisen in exercise of criminal jurisdiction.

55. 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 & others***[38] 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 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

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38 1978 GLR 1047 (FB)

227 of the Constitution. Eventually, the Court referred to ***Ishwarlal Bhagwandas*** (supra) and opined thus:-

> "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*.
>
> 81. From the totality of facts and circumstances, we have no hesitation in holding mat 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 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."

56. 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.

57. 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*** (supra), 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.

58. The Full Bench of the High Court of Delhi in ***C.S. Agarwal v. State & others***[39] was dealing with a situation wherein a writ petition was filed before the High Court under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. seeking for appropriate writ for quashing of the FIR. As the writ petition was dismissed by the learned Single Judge, an intra-court appeal was preferred. A preliminary objection was taken by the respondents as regards the maintainability of the LPA contending that the judgment of the learned Single Judge was passed in exercise of criminal jurisdiction and the Letters Patent Appeal against such an order is barred by Clause 10 and Clause 18 of the Letters Patent constituting the High Court of Judicature at Lahore, which is applicable to the Judicature of High Court of Delhi. The Full Bench analysed Clause 10 of the Letters Patent and took note of what has been prohibited for entertaining any intra-court

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39 2011 (125) DRJ 241 (FB)

appeal. The Full Bench, analyzing various decisions, opined thus:-

> "... proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. A fortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can be said that the Single Judge was exercising his 'criminal jurisdiction' while dealing with such a petition filed under Article 226 of the Constitution."

59. After so stating, the Full Bench referred to the Constitution Bench decision in ***Ishwarlal Bhagwandas*** (supra) and distinguished the Full Bench decision of the Andhra High Court in ***Gangaram Kandaram*** (supra) and noted the decision of the Division Bench of Gujarat High Court in ***Sanjeev Rajendrabhai Bhat*** (supra) and came to hold as follows:-

> "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 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"."

60. Being of this view, the Full Bench opined that the Letters Patent Appeal was not maintainable. In this regard, 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 & Ors***[40] wherein the Division Bench, placing reliance on the Full Bench decision, has expressed the view that though the writ petitions were not filed for quashing of 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 of the Cr.P.C. and allowed the trial court to proceed on merits. In this factual backdrop, the Division Bench opined:-

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40 208 (2014) DLT 468 (DB)

> "…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 imitated under the Code of Criminal Procedure and concerned with rights in criminal law domain. We have thus no doubt that the learned single Judge, in dealing with the writ petitions was exercising "criminal jurisdiction" and these Letters Patent Appeals are not maintainable."

61. 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 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*** (supra), have laid emphasis on the seed of initiation of criminal proceeding, the consequence of a criminal proceeding and also the nature of relief sought before the Single Judge under Article 226 of the Constitution. The conception of 'criminal jurisdiction' as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 CrPC, there would be no space for an intra-court appeal, would create an anomalous, unacceptable and inconceivable situation. The provision contained in the Letters Patent does not allow or permit such an interpretation. When we are required to consider a bar or non-permissibility, we have to appreciate the same in

true letter and spirit. It confers jurisdiction as regards the subject of controversy or nature of proceeding and that subject is exercise of jurisdiction in criminal matters. It has nothing to do whether the order has been passed in exercise of extraordinary jurisdiction under Article 226 of the Constitution or inherent jurisdiction under Section 482 CrPC. 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***[41]. 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 Kamlendra Pratap Singh v. State of Uttar Pradesh and others***[42] and ***Hema Mishra v. State of Uttar Pradesh and others***[43]. But that does not mean that an order passed by the Single

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41 (1994) 3 SCC 569

42 (2009) 4 SCC 437

43 (2014) 4 SCC 453

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.

62. 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 is incorrect.

63. We will be failing in our duty if we do not take note of an authority cited by Mr. Visen. He has commended us to the Division Bench Judgment of the High Court of Punjab and Haryana in ***Adishwar Jain v. Union of India and another***[44]. In the said case, the question arose with regard to the maintainability of Letters Patent Appeal, for the Single Judge had dismissed the writ of Habeas Corpus. The Division Bench, dealing with the maintainability of LPA, referred to ***Umaji Keshao Meshram*** (supra) and extracted the following passage:-

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44 2006 Cri.LJ 3193

> "By Article 226 the power of issuing prerogative writs possessed by the Chartered High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High Courts. A series of decision of this Court has firmly established that proceeding under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil proceeding."

64. On the aforesaid basis, the Division Bench ruled that in a proceeding under Article 226 consisting of civil rights, the proceedings are civil in nature falling within the ambit of Clause 10 of the Letters Patent. In the said case, the detention was under the COFEPOSA Act. The Court observed that the said detention is purely preventive without any trial in a criminal court and the challenge to such detention is for the enforcement of a fundamental civil right and, therefore, a writ under Article 226 for issue of Habeas Corpus in such like matters cannot be considered as a proceeding under criminal jurisdiction even though the writ petition is identified as a criminal writ petition under the High Court Rules and others. The said decision has to be carefully appreciated. The nomenclature of a writ

petition is not the governing factor. What is relevant is what is eventually being sought to be enforced. The Division Bench observed that as there is a preventive detention, there is a violation of fundamental civil right. The said decision, as is noticeable, was rendered in a different context. We are only inclined to say that the said authority does not assist the proposition expounded by the learned counsel for the 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.

66. In view of the aforesaid prismatic reasoning, the irresistible conclusion is that the Letters Patent Appeal was not maintainable before the Division Bench and, consequently, the order passed therein is wholly unsustainable and, accordingly, it is set aside. However, as the State had been diligently agitating its grievance in a legal forum which it thought had jurisdiction, we grant liberty to the State to assail the order of the learned Single Judge in accordance with law.

67. Consequently, the appeal is allowed and the impugned order is set aside. However, liberty is granted to the State to

challenge the order of the learned Single Judge. There shall be no order as to costs.

.....J.
(Dipak Misra)

.....J.
(A.M. Khanwilkar)

.....J.
(Mohan M. Shantanagoudar)

New Delhi;
March 21, 2017.