
C.S. Agarwal. Vs State and Others

LPA No. 819 of 2010

Court: Delhi High Court

Date of Decision: July 29, 2011

Acts Referred:

Constitution of India, 1950 â€” Article 131(1), 132(1), 225, 226, 227#Criminal Procedure Code, 1973 (CrPC) â€” Section 154, 156(3), 173, 482#Delhi High Court Act, 1966 â€” Section 10, 5, 5(2)#Government of India Act, 1915 â€” Section 107, 108#Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) â€” Section 2#Penal Code, 1860 (IPC) â€” Section 120B, 406, 420

Citation: (2011) 8 AD 265 : (2011) 125 DRJ 241 : (2011) 6 ILR Delhi 701

Hon'ble Judges: Suresh Kait, J; M.L. Mehta, J; A.K. Sikri, J

Bench: Full Bench

Advocate: Sandeep Sethi, Siddharth Luthra and Arvind Nigam, Ramjana Roy Gawai, P.K. Dubey, Abhishek Kr. Rai, Kunal Sood, Shailesh Suman, Anurag Yadav, Arshadeep Singh, Vasudha Sen and Madhur Jain, in LPA No. 819 of 2010, Sakal Bhushan and Sumit Gupta, in LPA No. 825 of 2010, for the Appellant; K.T.S. Tulsi and Ramesh Gupta, Rajinder Singh, Gaurav M. Librahem and Lalit Choudhary for the Respondent No. 3, Ranjit Kapoor, ASC, for the Respondent

Final Decision: Dismissed

Judgement

A.K. Sikri, J.

C.S. Agarwal, the Appellant in LPA No. 819 of 2010, had filed Writ Petition (Crl.) No. 57 of 2010 invoking the

jurisdiction of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure seeking

appropriate writ for quashing the FIR No. 264/2009 dated 23.12.2009 lodged against him and others by the Economic Offences Wing, Crime

and Railways, Delhi under Sections 420/406/120-B of the Indian Penal Code. The said writ petition has been dismissed vide orders dated

11.11.2010 passed by the learned Single Judge of this Court and against that order LPA No. 819 of 2010 has been preferred by C.S. Agarwal.

2 Another accused in the said FIR is D.K. Jain. He has also filed LPA No. 825 of 2010 challenging the same judgment, inter alia, on the ground

that some of the observations in the said orders are prejudicial to him and therefore, he is also an aggrieved party. The Respondents took a

primary objection to the maintainability of these LP As contenting the judgment of the learned Single Judge was passed in exercise of criminal

jurisdiction and a Letters Patent Appeal against such an order is clearly barred by Clause 10 and Clause 18 of the Letters Patent Constituting the

High Court of Judicature at Lahore, which is application to the Judicature of High Court of Delhi as well.

3 The Division Bench heard the matter on this aspect and vide orders dated 14.01.2011 deemed it appropriate to refer the matter to the Full

Bench making following reference for consideration:

22. Accordingly, we make following reference for consideration the Full Bench:

Whether the writ petition filed under Article

226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing a FIR amount to invoking "original

jurisdiction" or these proceedings are to be treated as invoking "criminal jurisdiction

4. This is how the matter came to be heard by this Bench and the arguments were heard on the aforesaid reference. We may point out at this stage

itself that if the answer to the reference is that Shri C.A. Agarwal, by means of the aforesaid W.P.(Crl.) No. 57 of 2010 had invoked ""original

jurisdiction"" the Letters Patent Appeal would be competent. On the other hand, if those proceedings are to be treated as invoking ""criminal

jurisdiction"", then the consequence would be that intra-Court appeal, by means of present Letters Patent Appeal is barred by Clause 10 invoking

Letters Patent Constituting the High Court of Judicature at Lahore, which parties agree, is applicable to the High Court of Delhi as well. The

Division Bench while making the reference has distinctly stated the factual matrix of the events which led C.S. Agarwal to file the aforementioned

writ petition. In order to understand the arguments of both the parties, we are reproducing the facts as stated by the Division Bench in its order

dated 14.01.2011:

Mr. C. S. Aggarwal, director of M/S Rockman Projects Limited (referred to as "RPL"), made a representation, for the purpose of securing

investment, to Mr. Sameer Kohli, director M/S Kohli Housing and Development Pvt. Ltd(in short KHPDL) that the RPL is intending to develop

one SEZ on 250 acres land, which is owned by the RPL, situated on Delhi-Jaipur Highway at village Shidhrawali, Gurgaon, Haryana and for this

project the Petitioner has received in-principal approval dated 22.08.2006 from the Government of India. On the basis of this representation, after

being got convinced by the Petitioner that he has full authority, supported by the Board resolution dated 14.05.2007, to enter into commercial

deals on behalf of RPL, Respondent No. 3 agreed to buy 74% shares worth Rs. 185 crores in the Special purpose vehicle (SPL) formed for this

purpose. Respondent No. 3 was told that when the final notification regarding SEZ will be received by the company, it will transfer the land to the

SPV. In pursuant to this agreement, one MoU dated 18th June 2007 was signed and advance payment of Rs. 40 crores was made by the

Respondent No. 3 on the condition that either this advance will be refunded back to him or the land of 250 acres would be transferred in favour of

him in case the SEZ notification is not received by 31st December 2008. This amount was to be utilized for the purpose of consolidation and

procurement of more land. Subsequently, an amount of Rs. 3 crores was further given to the Petitioner by Respondent No. 3 and he entered into a

Shareholder agreement and an FDI investor Xander with RPL on 19th February 2008, which was to come into effect only if the SEZ notification

has been received by 31st December 2008. However no notification could be received by RPL by 31st December 2008; instead on the same

day, Mr. D. K. Jain, the other director of RPL, issued a public notice revoking all authority given to the Petitioner to act on behalf of RPL. In

September 2009, the Petitioner published a counter public notice claiming thereby that RPL had 99 years lease agreement with D. K. Jain's land

owing company for 250 acres of land and also had an agreement to sell in his favour for the entire land.

After the expiration of the deadline of 31st December 2008, Respondent No. 3 demanded back his money but all of his efforts in this direction

went into vain. During the investigation, carried on by the Respondent on its own, he came to know that it was falsely represented to him that RPL

had 250 acres land and instead only 170 acres of land was available. Even the authority, which issued approval letter, was provided with wrong

information on this account that the applicant fulfills the criteria of having a minimum of 250 acres of land for the purpose of development of SEZ. It

was also revealed to the Respondent No. 3 that no such payment was made by the Petitioner herein for the purpose of purchasing more land as

agreed between the parties in the MoU and subsequently represented by the Petitioner herein to the Respondent No. 3. Under these

circumstances, the Respondent No. 3 filed a complaint dated 12.10.2009 at Hauz Khas police station. He also lodged a similar complaint dated

14.10.2009 with Dy. Commissioner of Police, Economic Offences Wing Crime and Railways, Delhi, in pursuant to which a FIR No. 266/09

dated 23.12.2010 was registered against the Appellant herein under Sections 420/406/120-B of the Indian Penal Code.

The Appellant Sh. C.S. Aggarwal, by way of W.P. (Cr.) No. 57 of 2010 filed under Article 226 of the Indian Constitution r/w Section 482 Code

of Criminal Procedure challenged the registration of the aforesaid FIR and sought quashing of the same. However, Learned Single Judge of this

High Court found no merit in that petition and dismissed the same vide order dated 11.11.2010 on the ground that the investigation done by the

EOW clearly indicates that the Petitioner had, from the very beginning, a dishonest intention to cheat the Respondent No. 3. Feeling aggrieved by

the dismissal of his writ petition, the Appellant Sh. C.S. Aggarwal has preferred the Letter Patent Appeal under Clause 10 of the Letter Patent Act

of the Punjab and Lahore High Court which is applicable to the Delhi High Court. Sh. D.K. Jain has also filed LPA raising the grievance that even

when he was not a party to the writ proceedings, the learned Single Judge had made observations prejudicial to his interest at his back.

5. Before we analyze the respective contentions it would be appropriate to mention at the outset that the Delhi High Court was constituted not by

the Letters Patent but by the Delhi High Court Act, 1966 (in short "the DHC Act"). The counsels have proceeded on the premise that the Letters

Patent as applicable to the erstwhile Punjab and Lahore High Courts are applicable to the Delhi High Court. Section 5 of the DHC Act confers

original jurisdiction to the Delhi High Court while Section 10 thereof confers appellate jurisdiction. These provisions read as follows:

5. Jurisdiction of High Court of Delhi.-

(1) The High Court of Delhi shall have, in respect of the territories for the time being included in the Union territory of Delhi, all such original,

appellate and other jurisdiction as, under the law in force immediately before the appointed day, is exercisable in respect of the said territories by

the High Court of Punjab.

(2) Notwithstanding anything contained in any law for the time being in force, the High Court of Delhi shall also have in respect of the said

territories ordinary original civil jurisdiction in every suit the value of which exceeds rupees twenty lakhs.

10. Powers of Judges.-

(1) Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by Sub-section (2) of Section 5 on that

Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2) Subject to the provisions of Sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice,

single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers, shall, with

the necessary modifications, apply in relation to the High Court of Delhi.

6. In addition to the appeals that can be filed u/s 10 of the DHC Act, three more categories of appeals lie to this Court.

Thus the following four categories constitute appellate jurisdiction of the Delhi High Court:

- a. Firstly, appeals u/s 10 of the DHC Act but they are limited only to those judgments referable to Section 5(2) thereof.
- b. Secondly, appeals under the Code of Civil Procedure.
- c. Thirdly, appeals under different statutes, which itself provides for an appeal.

d. Fourthly, appeals under Clause 10 of the Letters Patent.

7. Here we are concerned only with the fourth category. Clause

10 of the Letters Patent 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 the exercise of the power of Superintendence under the provisions of

Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any

Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall

lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant of 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.

8. This clause clearly prohibits maintainability of an intra-court appeal if the impugned judgment is passed in exercise of:

Revisional Jurisdiction The power of superintendence Criminal Jurisdiction

9. Similarly, Clause 18 of the same Letter Patent provides that no appeal would lie from any sentence or order passed or made by the courts of

original jurisdiction.

10. Since reference was made to Clauses 15, 17 and 18, we deem it proper to reproduce those Clauses as well:

15. Ordinary original criminal jurisdiction of the High Court - 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 the Punjab and Delhi as the Chief Court of the Punjab

had such criminal jurisdiction over immediately before the publication of these present.

17. Extraordinary original criminal jurisdiction -

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.

18. No appeal from High Court exercising original jurisdiction Court may reserve points of law - And we do further ordain that 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 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.

11. Keeping in mind the aforesaid provision, we have to answer the question as to whether the judgment passed by the learned Single Judge in the

writ petition filed by C.S. Agarwal was in exercise of "criminal jurisdiction".

12. As is clear from the reading of the Reference order of the Division Bench (which was the position maintained before us as well), the counsel for

the parties on both the sides are at ad idem that when a writ petition is filed originally in the jurisdiction of this Court, Letters Patent Appeal is

maintainable against the order passed by the learned Single Judge in such a writ petition. The parties have, joined, issues on the question as to

whether writ petition filed for quashing the FIR should be treated as invoking "criminal jurisdiction" of the High Court.

13. On the aforesaid issue, arguments were advanced by Mr. Sandeep Sethi, Mr. Siddharth Luthra and Mr. Arvind Nigam, learned Senior

Counsels appearing for the Appellants. On behalf of the Respondents Mr. K.T.S. Tulsi and Mr. Ramesh Gupta, learned Senior Counsels put forth

their submissions which were supplemented by Mr. Gaurav M. Librahem. Mr. Ranjit Kapoor, ASC appeared for the State, who also contested

the filing of LPA. We have given our thoughtful considerations to all these submissions.

14. We are not reproducing, at this juncture, the arguments advanced by the Counsels of both the sides. Instead, we would like to proceed with

our analysis of law and reasons in support of our view, viz., when writ petition is filed seeking quashing of FIR, Letters Patent Appeal would not be

maintainable against the order passed by the learned Single Judge in such a writ petition. However, we clarify that while giving our analysis, we

shall be touching upon each and every argument raised before us.

Clause 10 of the Letters Patent Appeal, as pointed out above, debars the filing of intra-court appeal against the order of the Single Judge passed in

exercise of revisional jurisdiction, the power of superintendence and the criminal jurisdiction. Since we are concerned with the case falling in the last

category, the exact words used in Clause 10 in this behalf are ""not being a sentence or order passed or made in exercise of criminal jurisdiction of

one Judge or the said High Court"" The contention of the Appellants is that the impugned order has to be a sentence or order in exercise of

criminal jurisdiction. It is argued that in the present case, FIR is registered against the Appellants u/s 154 of Code of Criminal Procedure. The

matter is still at the stage of investigation. No report/Challan is filed u/s 173 of the Code of Criminal Procedure by the Investigating Agency so far.

In the absence of any such report/Challan u/s 173 of the Code of Criminal Procedure, the Criminal Court of competent jurisdiction has yet to take

cognizance of the matter. At this stage itself, when the matter is still under investigation, C.S. Agarwal felt aggrieved by the very act of registration

of FIR on the part of the Investigating Agency, i.e., Police Authorities. It is for this reason, the prayer made in the writ petition is to quash the FIR.

Such a writ petition seeking quashing of the FIR when the matter is still at the stage of investigation is permissible under Article 226 of the

Constitution of India has held by the Apex Court in the case of State of Haryana and others Vs. Ch. Bhajan Lal and others, Of course, the scope

of such a jurisdiction is very limited and available only in exceptional circumstances to prevent abuse of any Court of otherwise secure the ends of

justice. Some incidences of such kind of cases were highlighted by the Supreme Court in the aforesaid judgments making it clear that the said list

was not exhaustive.

16. It was vehemently argued by the learned Counsel appearing on behalf of the Appellant that when such a power is exercised by the High Court

whether u/s 482 of Code of Criminal Procedure or under Article 226 of the Constitution of India and the registration of FIR is quashed, it amounts

to quashing of "criminal proceedings" as the consequence of registration of FIR is to initiate "criminal proceedings". According to the learned

Counsels, it is to be distinct from exercise of "criminal jurisdiction" which expression occurs in Clause 10 of Letters Patent Appeal. On this basis,

argument was that the order passed in such a petition is not in exercise of any "criminal jurisdiction", but relates to "criminal proceedings".

Advancing this proposition, it was also argued that the Letters Patent Appeal does not make any provision for writ jurisdiction. It only provides for

appeal under Clause 10 against certain categories of orders. Insofar as proceedings under Article 226 are concerned, the same are "original" and

"extraordinary" in nature.

17. There cannot be any quarrel about the nature of proceedings under Article 226 of the Constitution. In the case of State of Uttar Pradesh Vs.

Dr. Vijay Anand Maharaj, the Constitution Bench of the Apex Court had the occasion to explain the nature of proceedings under Article 226 of

the Constitution. That was a case where an assessment order was passed under the U.P. Agricultural Income Tax Act 1948 (3 of 1949). Those

assessments which were without jurisdiction were validated by U.P. Act 14 of 1956 giving, at the same time, right to the Assessee to review

orders made under U.P. Act, 1956. The assessment order made by the Additional Collector under the U.P. Act 3 of 1949 by challenging the writ

petition under Article 226 of the Constitution and the learned Single Judge of the Allahabad High Court had set aside the order on the ground that

the assessment was without jurisdiction. As pointed out above, all such assessments were validated by the U.P. Act 14 of 1956 with retrospective

effect. Since the power to review was given, an application for review made to the Single Judge who had passed an order under Article 226 of the

Constitution was filed which was dismissed on the ground that the U.P. Act 14 of 1956 did not apply to orders under Article 226. The Letters

Patent Appeal against this order was taken to a Division Bench, which was dismissed, inter alia, on the ground that order dismissing review

application was not a "judgment" within the meaning of High Court Rules and therefore, was not appealable.

Challenging this order of the Division Bench, State of U.P. had approached the Supreme Court. In the aforesaid backdrop, the question arose

about the nature of proceedings and the scope of jurisdiction under Article 226 of the Constitution. The Constitution Bench explained the nature of

proceedings under Article 226 in the following manner:

Article 226 confers a power on a High Court to issue the writs, orders, or directions mentioned therein for the enforcement of any of the rights

conferred by Part III or for any other purpose. This is neither an appellate nor a revisional jurisdiction of the High Court. Though the power is not

confined to the prerogative writs issued by the English Courts, it is modeled on the said writs mainly to enable the High Courts to keep the

subordinate tribunals within bounds. Before the Constitution, the chartered High Court, that is, the High Courts at Bombay, Calcutta and Madras,

were issuing prerogative writs similar to those issued by the King's Bench Division, subject to the same limitations imposed on the said writs. In

Venkataratnam v. Secretary of State, ILR 53 Mad 979 : (AIR 1938 Mad 896), a division Bench of the Madras High Court, consisting of

Venkatasubba Rao and Madhavan Nair, JJ., held that the jurisdiction to issue a writ of certiorari was original jurisdiction. In Ryots of Garabandha

v. The Zamindar of Parlakimedi (1), another division Bench of the same High Court, consisting of Leach, C. J., and Madhavan Nair J., considered

the question again incidentally and came to the same conclusion ""and held that a writ of certiorari is issued only in exercise of the original

jurisdiction of the High Court. In Ramayya v. State of Madras (2), a division Bench, consisting of Govinda Menon and Ramaswami Oounder, JJ.,

considered the question whether the proceedings under Article 226 of the Constitution are in exercise of the original Jurisdiction or revisional

jurisdiction of the High Court, and the learned Judges held that the power to issue writs under Article 226 of the Constitution is original and the

jurisdiction exercised is original jurisdiction. In Moulvi Hamid Hassan Nomani v. Banwarilal Boy (3), the Privy Council was considering the

question whether the original civil jurisdiction which the Supreme Court of Calcutta possessed over certain classes of persons outside the territorial

limits of that jurisdiction has been inherited by the High Court. In that context the Judicial Committee observed:

It cannot be disputed that the issue of such writs is a matter of original jurisdiction"".

The Calcutta High Court, in *Chairman, Budge Budge Municipality Vs. Mongru Mia and Others*, came to the same conclusion, namely, that the

jurisdiction exercised under Article 226 of the Constitution is original as distinguished from appellate or revisional jurisdiction; but the High Court

pointed out that the jurisdiction, though original, is a special jurisdiction and should not be confused with ordinary civil jurisdiction under the Letters

Patent. The Andhra High Court in *Satyanarayanamurthi v. 1. T. Appellate Tribunal (1)* described it as an extraordinary original jurisdiction. It is,

therefore, clear from the nature of the power conferred under Article 226 of the Constitution and the decisions on the subject that the High Court

in exercise of its power under Article 226 of the Constitution exercises original jurisdiction, though the said jurisdiction shall not be confused with

the ordinary civil jurisdiction of the High Court. This jurisdiction, though original in character as contrasted with its appellate and revisional

jurisdictions, is exercisable throughout the territories in relation to which it exercises jurisdiction and may for convenience, be described as

extraordinary original jurisdiction. If that be so, it cannot be contended that a petition under Article 226 of the Constitution is a continuation of the

proceedings under the Act.

(emphasis supplied)

18. This position was reiterated by the Supreme Court in the case of *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, taking

stock of the gamut of case law including the aforesaid Constitution Bench Judgment. The Court explained that even prior to the commencement of

the Constitution, Chartered High Courts were possessed with the power to issue prerogative writs, though in a much restricted form. The

provisions in the nature of Articles 226, 227 and 228 were incorporated in the Constitution with an intention to confer the enlarged power upon all

the High Courts and not merely three Chartered High Courts. In the process, certain significant observations were made explaining the scope of

Letters Patent Appeal dealing with the provisions of the Letters Patent of Calcutta High Court.

We would like to reproduce the same:

..... These several jurisdictions were conferred upon the High Courts by different clauses of the Letters Patent. Clause 14, however, specifically

provided for an intra-court appeal only from judgments ""in all cases of original civil jurisdiction"". The marginal note to Clause 14 was ""Appeal from

the Courts of original jurisdiction to the High Court in its appellate jurisdiction"". Jurisdictions other than ordinary and extra-ordinary civil

jurisdictions were conferred by clauses which followed Clause 14. For this reason, it was doubted at one time whether an intra-court appeal would

lie from the judgment of one Judge in the exercise of original testamentary jurisdiction but in the case of *Saroda Soonduree Dossee v. Tincowree*

Nundee [1884] Hyde's Reports 70, a Division Bench of three Judges of the Calcutta High Court by a majority held that such an appeal would lie.

The Letters Patent of 1865 followed the pattern of the Letters Patent of 1862. Clause 15 forms part of a group of clauses consisting of clauses 11

to 18 headed ""Civil Jurisdiction of the High Court"". Clause 12 deals with original jurisdiction as to suits and Clause 13 with extra-ordinary original

civil jurisdiction while Clause 14 deals with joinder of several causes of action. Though the marginal note to Clause 15 was the same as that to the

old Clause 14, a most material change was made in Clause 15 by providing that intra-court appeals would lie ""from the judgment (not being a

sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court."" The word

judgment"" in Clause 15 is not qualified in any way as to the jurisdiction in which it is given except that it should not be a sentence or order passed

or made in any criminal trial, thus excluding judgments given in the exercise of criminal jurisdiction. Criminal jurisdiction is provided for in clauses

22 to 29.....

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98. From what has been said above it must follow that when a Single Judge of a Chartered High Court decides a petition under Articles 226 or

227, his judgment is one given pursuant to Article 225 of the Constitution and is appealable under Clause 15 of the Letters Patent unless it falls

within one of the excluded categories.

99. 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 Article 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 this 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 the 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 AIR 1968 S.C. 1487, 1488, and *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramanand and Ors.*). 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 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

processes are the same.

100 Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that Article the person,

authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the

High Court is the order or judgment of a subordinate court or tribunal for the purpose of ascertaining whether in giving such judgment or order that

subordinate court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered

High Courts as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an

exercise of original jurisdiction (see *Mahomedalli Allabux v. Ismailji Abdulali*, *Raghunath Keshav Khadilkar v. Poona Municipality* and another,

Ryots of Garabandho and other villages v. Zamindar of Parlakimedi and another and *Moulvi Hamid Hasan Nomani v. Banwarilal Roy and others*

L.R. [1946-47] 74 I.A. 120, 130-31; s.c.= AIR 1947 P.C. 90, 98). In the last mentioned case which dealt with the nature of a writ of quo

warranto, the Judicial Committee held:

In their Lordships' opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or

later enactments falls within the description of ordinary original civil jurisdiction.

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 decisions of this

Court has firmly established that a proceeding under Article 226 is an original proceeding and when it concerns civil rights, it is an original civil

proceeding (see, for instance, State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, Commissioner of income tax, Bombay and Anr. v. Ishwarlal

Bhagwandas and Ors. [1966] 1 S.C.R. 197 190, Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, Arbind Kumar Singh Vs.

Nand Kishore Prasad and Others, and Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others,

(Emphasis supplied)

19. No doubt, as per the aforesaid pronouncements explaining the nature of power conferred under Article 226 of the Constitution, the High court

in such proceedings exercises original jurisdiction. At the same time, it is also clarified that the said jurisdiction is not to be confused with the

original civil jurisdiction"" of the High Court. Further, 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.

20. For this reason, we cannot agree with the extreme position taken by the Appellants that the exercise of powers under Article 226 of the

Constitution would never tantamount to exercising criminal jurisdiction, irrespective of the nature of proceedings. We, further, are of the opinion

that if such a petition relates to criminal proceedings while dealing with this petition under Article 226 of the Constitution, the Court would be

exercising ""criminal jurisdiction"". In this context, it would be relevant to refer to the judgment of the Supreme Court in S.A.L. Narayan Row and

Another Vs. Ishwarlal Bhagwandas and Another, In that case, proceedings were initiated under the Income Tax Act, 1922. At the conclusion of

proceedings before the High Court under Article 226, a certificate for fitness was sought under Article 131(1)(c) read with Article 132(1) of the

Constitution. The question before the Apex Court was as to whether the proceedings before the High Court under Article 226 are ""civil

proceedings"". The Constitution Bench opined that whether the proceedings are civil or not depends upon the nature of the right violated and the

appropriate relief which may be claimed and not upon the nature of the Tribunal which is invested with authority to grant relief. In the process,

following pertinent observations were made which are apposite in our context:

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.

The Court was, thus, categorical that even in a petition under Article 226 of the Constitution when the High Court is exercising extraordinary

jurisdiction, the nature of proceedings, whether civil or criminal, would depend upon the nature of right violated and the nature of relief sought in the

said petition.

21. We are conscious of the judgment of the Full Bench of the Andhra High Court in the case of Gangaram Kandaram Vs. Sunder Chikha Amin

and others, It specifically held that exercise for powers under Article 226 of the Constitution of India by issuing a writ in quashing the FIR is not an

exercise under "criminal jurisdiction". Following discussion in this behalf from the said judgment is extracted below:

14. With regard to the second question as to whether the appeal under Clause 15 of Letters Patent of the Court lies against the judgment in such a

case. In other words, whether the proceedings for quashing of the investigation in a criminal case under Article 226 of the Constitution is a civil

proceeding and the judgment as above is judgment in a civil proceeding in exercise of the original jurisdiction of the Court for the purpose of

appeal under Clause 15 of Letters Patent.

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. The appeal from judgments of single Judges of the High Court shall lie to the 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 u/s 482 of Cr.PC 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.

22. The Appellants have placed strong reliance on the aforesaid judgments to buttress his submission that while exercising powers under Article

226 of the Constitution, the learned Single Judge was not exercising ""criminal jurisdiction"".

23. However a contrary view is taken by a Division Bench of the Gujarat High Court in the case of Sanjeev Rajendrabhai Bhatt v. State of Gujarat

[1999 Cri.LJ 3388]. In that case, the Gujarat High Court held that the Letters Patent Appeal against such order is not maintainable.

1 In identical circumstances, where the learned Single Judge had dismissed the petition filed under Article 226 of the Constitution seeking quashing

of the FIR registered under various provisions of the Indian Penal Code and NDPS Act, albeit, on the ground of want of territorial jurisdiction,

LPA was preferred by the writ Petitioner (accused in the said FIR). The maintainability of letters patent appeal was challenged. The Division

Bench proceeded to examine the issue of maintainability in the light of two questions: first, whether an order passed by the Single Judge could be

said to have been made in exercise of extraordinary powers under Article 226 of the Constitution or it was an exercise of supervisory jurisdiction

under Article 227 of the Constitution and second, whether the order passed by the learned Single Judge was the exercise of criminal jurisdiction

within the meaning of Clause 15 of the Letters Patent.

While dealing with the first question, the Division Bench examined the nature of scope and ambit of Article 226 as well as Article 227 of the

Constitution in the light of various pronouncements of the Supreme Court. However, no final opinion was expressed on this question. In any case,

we are also not concerned with this aspect. Moreover, we have proceeded on the basis that C.S. Agarwal had filed petition under Article 226 of

the Constitution and the scope of that petition has already been examined above.

26. The Division Bench examined the second question in depth and opined that the order passed by the learned Single Judge was in exercise of

"criminal jurisdiction" as referred in Clause 15 of Letters Patent and therefore, LPA was not maintainable.

27. Referring to the judgment of the Constitution Bench in S.A.L.

Narayan Row And Anr. (supra), describing the nature of criminal proceedings, the Division Bench of Gujarat High Court treated such proceedings

in exercise of criminal jurisdiction giving the following rationale:

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 that the learned single Judge has passed an order in exercise of

criminal jurisdiction. At the cost of repetition, we reiterate what we have already stated earlier 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.

83 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, LP As are not maintainable and deserve to be dismissed only on that ground. We accordingly hold that the Letters Patent Appeals are

not maintainable at law and they are liable to be dismissed.

28. Respectfully agreeing with the aforesaid view, we express our inability to subscribe to the view taken by the Full Bench of the Andhra Pradesh

High Court.

29. It would be necessary to clarify here that it cannot be said that in any of the cases under Article 226 of the Constitution, the Court is exercising

"criminal jurisdiction". It would depend upon the rights sought to be enforced and the nature of relief which the Petitioner seeks in such

proceedings. For example, if a writ petition seeking writ of habeas corpus is filed, while dealing with such a petition, the Court is not exercising

criminal jurisdiction as no criminal proceedings are pending. In fact, the order of preventive detention is made without any trial under the criminal

law. Likewise, when a person is convicted and sentenced after the conclusion of criminal trial and such an order of conviction has attained finality

and he files writ petition under Article 226 of the Constitution challenging the orders of the Government refusing to grant parole while dealing with

such a petition, the Single Judge is not exercising criminal jurisdiction, as no criminal proceedings are pending.

30. Likewise, the proceedings under Income Tax Act filed under Article 226 will not involve criminal jurisdiction. The judgment of the Supreme

Court in the case of Dr. Vijay Anand Maharaj (supra) demonstrates this. The case arose out of assessment of income tax which was challenged by

way of writ petition under Article 226 of the Constitution of India. The said proceedings were held by the Constitutional Bench to be ""original

special jurisdiction"" or ""extraordinary original jurisdiction"" and cannot be confused with ""ordinary civil jurisdiction"".

31. For this reason, we are of the opinion that the Division Bench judgment of this Court in the case of Harwinder Singh v. Union of India [1994

(55) DLT 176] which dealt with habeas corpus petition is of no assistance to decide the controversy before us. Likewise, the judgment of Punjab

and Haryana High Court in the case of Adishwar Jain Vs. Union of India (UOI) and Another, holding LPA to be maintainable is also not relevant.

Again, that was a case of preventive detention.

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 or 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"".

34. It would be pertinent to point out that insofar as the present case is concerned, this view of ours becomes more formidable when we peruse

the nature of challenge that was laid by the Appellant C.S. Agarwal in the writ petition seeking quashing of the FIR. This petition was filed under

Article 226 of the Constitution read with Section 482 of the Code of Criminal Procedure. We are conscious of the judgment of the Supreme Court

in the case of State of Karnataka v. Pastor P. Raju [2006 (6) SCC 782] holding that power to quash an FIR is only under Article 226 of the

Constitution and not u/s 482 of Code of Criminal Procedure. At the same time, one has also to keep in mind the limited grounds on which

challenge can be predicated by filing writ petition under Article 226 of the Constitution to which proceedings are still at the stage of investigation

after registration of FIR [State of Haryana v. Bhajan Lal (supra)].

35. We would also like to point out the judgment of the Supreme Court in the case of MMTC v. Commissioner of Commercial Tax [2009 (1)

SCC 8] and that of the judgment of the Madhya Pradesh High Court in the case of Dr. Jaidev Siddha and Others Vs. Jaiprakash Siddha and

Others,

36. In the case of MMTC (supra), the Supreme Court held that for determining the real character of the impugned order, the Court may look at

the basic averments invoking the jurisdiction.

37. In Dr. Jaidev Siddha v. Jaiprakash Siddha (supra), the High Court followed the said principle observing as under:

17. From the aforesaid enunciation of law it is quite vivid and luminiscent that the pleadings in the writ petition, nature of the order passed by the

learned Single Judge, character and the contour of the order, directions issued, nomenclature given, the jurisdictional prospective in the

constitutional context are to be perceived. It cannot be said in a hyper technical manner that an order passed in a writ petition, if there is assail to

the order emerging from the Inferior Tribunal or Subordinate Courts has to be treated all the time for all purposes to be under Article 227 of the

Constitution of India. Phraseology used in exercise of original jurisdiction under Article 226 of the Constitution in Section 2 of the Act cannot be

given a restricted and constricted meaning because an order passed in a writ petition can tantamount to an order under Article 226 or 227 of the

Constitution of India and it would depend upon the real nature of the order passed by the learned Single Judge. To elaborate; whether the learned

Single Judge has exercised his jurisdiction under Article 226 or under Article 227 or both would depend upon various aspects and many a facet as

has been emphasized in the aforequoted decisions of the Apex Court. The pleadings, as has been indicated hereinabove, also assume immense

significance. As has been held in the case of Surya Dev Rai (supra), a writ of certiorari can be issued under Article 226 of the Constitution against

an order of a Tribunal or an order passed by the Subordinate Court. In quintessentially, it cannot be put in a straitjacket formula that any order of

the learned Single Judge that deals with an order arising from an Inferior Tribunal or the Subordinate Court is an order under Article 227 of the

Constitution of India and not an order under Article 226 of the Constitution. It would not be an overemphasis to state that an order in a writ

petition can fit into the subtle contour of Articles 226 and 227 of the Constitution in a composite manner and they can co-exist, overlap

or imbricate. In this context it is apt to note that there may be cases where the learned Single Judge may feel disposed or inclined to issue a writ to

do full and complete justice because it is to be borne in mind that Article 226 of the Constitution is fundamentally a repository and reservoir of

justice based on equity and good conscience. It will depend upon factual matrix of the case.

38. Keeping in mind the aforesaid considerations, let us scan through the averments by C.S. Agarwal in his writ petition.

The FIR in question lodged by the Respondent No. 3 alleges cheating and misappropriation on the part of the Appellants. In the first para of the

writ petition, it is alleged that the Economic Offences Wing, Delhi has registered the FIR in a mala fide and illegal manner when the Court of

Metropolitan Magistrate, Patiala House Courts, New Delhi was seized of the matter wherein the Police officials itself had filed a status

report/action taken report concluding that the transaction between the parties is of civil nature. The Petitioner has also impugned order dated

14.01.2010 passed by the Court of Shri Ravinder Singh, M.M., in CC No. 264/2009 alleging that the learned Judge has adopted illegal

procedure in violation of directions given by this Court in the matter of Dr. Rajni Patriwala v. Dr. D. Mohan and Anr. [2009 (3) JCC 1896]. Thus,

in any case, a part of the writ petition relates to quashing the order passed by the learned Metropolitan Magistrate in the criminal proceedings.

Even other relief seeking quashing of the FIR is primarily on the ground that it is a civil matter and therefore, Economic Offences Wing should not

have registered the FIR and registration of such an FIR is colourable exercise of power. In support of this plea, it was argued that essential

ingredients of the offence in respect of various provisions under which FIR was registered were not made out. The perusal of the order of the

learned Single Judge would reflect that the entire matter was argued from criminal law perspective with regard to illegality of investigation entered

upon by the Police on registration of FIR. The learned Single Judge has gone into the allegations made in the FIR on the basis of which it is prima

facie concluded that those allegations, if found correct, would constitute the offence of cheating and misappropriation. We are not commenting

upon the correctness or otherwise of the order passed by the learned Single Judge. What we emphasize is that this would clearly show that the

entire matter is looked into from the criminal law perspective and while dealing with the matter the learned Single Judge was exercising "criminal

jurisdiction".

39. We find force in the submission of Mr. Tulsi, learned Senior Counsel for the Respondent that the decision of the Constitutional Bench of the

Supreme Court in the case of I.S.A.L. Rao (supra) cited by the learned Senior Counsel for the Petitioner does not support his contention in any

way. All that is held in the said judgment by the Supreme Court is that the proceeding for the recovery of tax and interest was a civil proceeding. It

was further clarified in para 8 of the said judgment that the character of proceeding does not depend on the nature of Tribunal but on the nature of

right violated. Enforcement of civil right and seeking quashing of investigation of criminal offences punishable under penal statute are totally

different.

40. We are, thus, of the considered opinion that the learned Single Judge was exercising criminal jurisdiction while dealing with the writ petition of

C.S. Agarwal filed under Article 226 of the Constitution. As a consequence, the LP As are barred and not maintainable. Accordingly, we dismiss

these appeals with costs.