

(2013) 02 MAD CK 0067
In the Madras High Court
Case No : Criminal Appeal No. 17 of 2012

A. Vimala

APPELLANT

Vs

K. Ramanujam, IPS Director General of Police

RESPONDENT

Date of Decision : 13-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 144, 195, 195(1), 195(1)(a), 195(1)(a)(i)

Penal Code, 1860 (IPC) — Section 172, 173, 174, 175, 176

Citation : (2013) 2 CTC 765

Hon'ble Judges : V. Ramasubramanian, J; M.M. Sundresh, J

Bench : Division Bench

Advocate : T. Jaishankar, for the Appellant; P.H. Arvind Pandian, Additional Advocate General and Mr. S. Shanmuga Velayutham, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramasubramanian, J.—This criminal appeal has been filed against an order passed by a learned Judge of this Court on 28.10.2011 in an

application filed by the appellant herein u/s 195(1)(b) of the Code of Criminal Procedure, read with Article 226 of the Constitution. By the said

order impugned in this appeal, the learned Judge rejected the prayer of the appellant to initiate an enquiry into the offences allegedly committed by

the sole respondent u/s 188 of the Indian Penal Code. We have heard Mr. T. Jaishankar, learned counsel for the appellant.

2. This case has had a chequered history, which is, at once, interesting as well as agonising. The narration of all the historical facts, though painful,

is necessary, in order to highlight the manner in which there has been an abuse of the process of court and the manner in which, the system is

sought to be ridiculed. Therefore, the history of this litigation is recorded as follows:

(a) The appellant is a Burma repatriate. She and her husband own a house at No. 116/1, E.H. Road, Sharma Nagar, Vyasarpadi, Chennai 600

39. Their next door neighbour, by name Alaguvel Nadar, started putting up a construction in the first floor of his property. Since the proposed

construction was likely to result in the window of the bedroom of the appellant's house being shut and her easementary right to light and ventilation

likely to be infringed, the appellant and her husband protested;

(b) According to the appellant, her next door neighbour was a powerful person in the locality, who wielded lot of influence with the police. The

protest by the appellant, about the construction put up by her neighbour, appears to have led to a scuffle on 26.9.2004;

(c) In the scuffle, the appellant is stated to have suffered some injuries leading to the registration of a complaint in Crime No. 741 of 2004 against

the neighbour of the appellant. But a counter complaint in Crime No. 766 of 2004 was lodged against the appellant, her husband and all the

members of her family, at the instance of the neighbour;

(d) In the FIR in Crime No. 741 of 2004, a closure report was sought to be filed by the police, as though there was a mistake of fact. Upon

receiving notice of the filing of the closure report, the appellant filed a protest petition before the V Metropolitan Magistrate, Chennai.

Consequently, the closure report was rejected by the learned Magistrate and further investigation was also ordered;

(e) However, further investigation was not carried out, forcing the appellant to file Crl.O.P. No. 8405 of 2005 on the file of this Court for the

transfer of investigation;

(f) In the meantime, the appellant also lodged a complaint against the erring police officials, with the Commissioner of Police on 04.5.2006 and

followed it up with a petition in Crl. O.P. No. 18492 of 2006. The said petition was disposed of on 16.6.2007, after taking on record, an Action

Taken Report filed by the Assistant Commissioner, with a direction to the prosecution to move a petition before the trial Court u/s 319 of the

Code of Criminal Procedure, in the pending criminal case C.C. No. 5972 of 2006;

(g) However, the appellant again filed a petition in Crl. O.P. No. 11684 of 2007

seeking alteration of charges, for the inclusion of the offences

under Sections 354 and 509, IPC. The same was disposed of on 24.4.2007, directing the Public Prosecutor to take action u/s 216 of the Code;

(h) Thereafter, the trial in the criminal case commenced and the appellant, who was the de facto complainant, had a tiff with the Assistant Public

Prosecutor handling the case. A complaint was lodged by the appellant against the Assistant Public Prosecutor, who was also a lady. The appellant

also filed Crl.O.P. No. 4167 of 2008 on the file of this Court for a direction to appoint a different Public Prosecutor. When the said petition came

up, the Assistant Public Prosecutor recused herself and the Director of Prosecutions appointed another Assistant Public Prosecutor;

(i) When the trial in the criminal case C.C. No. 5972 of 2006 continued, the appellant filed the next petition in Crl. O.P. No. 22571 of 2007 for a

direction to the prosecution to take steps to mark the oral evidence of eight eye witnesses recorded at the time of hearing of the protest petition

against the original closure report. The said petition was disposed of by this Court with a direction to the trial Court to complete the trial within six

months;

(j) However, the police officers who received summons in C.C. No. 5972 of 2006, after further investigation, came up before this Court by way

of Crl. O.P. No. 2652 of 2009 challenging the summons issued by the trial Court. A learned Judge ordered notice in the said Crl. O.P. No. 2652

of 2009 and also granted an interim stay of further proceedings in the trial of the criminal case. Upon coming to know of the same, the appellant

filed an application and got herself impleaded in Crl. O.P. No. 2652 of 2009. She also filed a vacate stay petition. But, it appears that the vacate

stay petition neither got numbered, nor returned, for about six months. However, another petition in Crl. M.P. No. 4 of 2009 filed by the appellant

for taking action against the police officers for committing perjury got numbered. But, it did not get listed for a long time;

(k) Eventually, the miscellaneous petitions were posted for hearing before one learned Judge. But, the counsel for the appellant filed a memo

requesting the miscellaneous petitions to be posted before the same Judge who had earlier granted interim stay of further proceedings in Crl. M.P.

No. 1 of 2009 in Crl. O.P. No. 2652 of 2009. This was on the ground that a

perjury had been committed before the learned Judge who granted stay of the trial, by not bringing to his notice, an earlier order. Therefore, the miscellaneous petitions were posted before the same learned Judge who first passed orders of stay in the main petition;

(l) But, for reasons which we could not decipher, the said learned Judge recused himself, resulting in the matter being posted before another Judge;

(m) Objecting to the posting of the matter before another learned Judge, the counsel for the appellant filed a memo in USR No. 321/2010

requesting the Court to post all those miscellaneous petitions in CrI. O.P. No. 2652 of 2009 before a Division Bench, in order to decide the

question as to whether a perjury petition can be heard by another Judge or not. The request was conceded and it was posted before a Division

Bench. But, after the Division Bench started hearing the case, the roster changed and it came to be listed before yet another Division Bench.

Subsequently, the petitions were posted before one of the two Judges constituting the Division Bench, on the ground that it was a matter to be

heard by a single Judge;

(n) When the learned single Judge was about to pass orders in CrI. O.P. No. 2652 of 2009, the counsel for the appellant filed a memo dated-

15.9.2010, objecting to the disposal by the said learned Judge. Therefore, that learned Judge recused himself, leading to the petition being posted

before yet another learned Judge;

(o) While the long list of criminal petitions narrated above were getting tossed from Bench to Bench, the appellant gave a representation dated

15.7.2010 to the Registrar General of this Court, alleging that the officials of the Registry of this court were responsible for dilatory tactics in not

posting the petitions filed by her, then and there. The representation was followed by a writ petition in W.P. No. 21339 of 2010, seeking a writ of

Mandamus to direct the Registrar General to order an enquiry into the allegations against the officials of the Registry;

(p) In the said writ petition W.P. No. 21339 of 2010, the then Registrar General Smt. S. Vimala, filed a counter affidavit to the effect that on the

complaint of the appellant, a report was already called for from the Assistant Registrar (Criminal) and that based upon his report dated 15.9.2010,

the complaint against the officials of the Registry was closed on 22.9.2010, as

baseless;

(q) Taking exception to the counter so filed by the then Registrar General, the appellant filed a petition in M.P. SR. No. 25417 of 2011 in W.P.

No. 21339 of 2010, seeking action against the Registrar General for perjury. This petition was posted before Court for maintainability and it was

later numbered as M.P. No. 1 of 2011. When it was pending, the appellant filed another petition in M.P. SR. No. 76899 of 2011 for a direction

to the Registrar General to furnish certain documents;

(r) It appears that in the meantime, departmental action was taken against the police officials, on the basis of the complaint lodged by the appellant.

Not satisfied with the order dated 23.8.2008 passed by the Commissioner of Police in the disciplinary proceedings against the erring police

officials, the appellant gave an appeal on 11.11.2010 to the Director General of Police. Thereafter, the appellant filed a writ petition in W.P. No.

10458 of 2011 on the file of this Court under Article 226 of the Constitution of India, seeking a writ of Mandamus to direct the Director General

of Police (Law and Order) to take lawful action on her appeal;

(s) Considering the limited nature of the prayer made in the writ petition, a learned Judge of this Court passed an order on 26.4.2011 disposing of

W.P. No. 10458 of 2011, directing the Director General of Police to consider the appeal of the appellant and to pass orders on merits and in

accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order;

(t) In pursuance of the said order, it appears that the Director General of Police issued a notice dated 24.7.2011 calling upon the appellant to

appear before him for an enquiry on 01.8.2011. The appellant appears to have appeared and also submitted certain documents;

(u) Thereafter, the respondent herein passed an order on 04.8.2011, dismissing the appeal and confirming the order of the Commissioner of Police

to drop further action in the disciplinary proceedings against the concerned Police Officers, against whom allegations were made by the appellant;

(v) Thereafter, the appellant herein filed an application in M.P. SR. No. 104437 of 2011, in the aforesaid writ petition W.P. No. 10458 of 2011

(which was already disposed of), praying for a direction to register a complaint against the respondent herein for committing an offence allegedly

u/s 195(1)(a) of the Indian Penal Code. The said petition was filed u/s 340 of the Code of Criminal Procedure read with Article 226 of the

Constitution of India;

(w) The said petition M.P. SR. No. 104437 of 2011 was dismissed by the learned Judge, on 28.10.2011, on the ground that no case was made

out for lodging a complaint. However, the learned Judge gave liberty to the appellant to work out her remedies against the order dated 04.8.2011

passed by the respondent herein, if she was aggrieved by the same.

(x) As against the said order dated 28.10.2011, the appellant filed the above appeal. This appeal was actually presented on 03.01.2012;

(y) In the meantime, the then Registrar General, against whom the appellant made a complaint of perjury in M.P. No. 1 of 2011, for filing a counter

in W.P. No. 21339 of 2010, got elevated as a Judge of this Court. Therefore, the appellant filed a fresh writ petition in W.P. SR. No. 1341 of

2012 seeking a writ of quo warranto against the learned Judge;

(z) The said writ of quo warranto was posted for maintainability before a Division Bench comprising of two Hon''ble Judges. The counsel for the

appellant objected to the constitution of the Division Bench, on the ground that one of them had earlier refused to hear the perjury petition against

the police officers and that the other was also disqualified. But, the learned Judges constituting the Division Bench overruled the objections and

decided to hear the writ petition;

(aa) Finding that they had no alternative except to argue the writ of quo warranto, before the Bench specially constituted for the purpose, the

counsel for the appellant devised a clever plan. They submitted a letter to the Hon''ble Chief Justice, on 30.01.2012, seeking the Hon''ble Chief

Justice to post the writ of quo warranto before some other Bench. Apart from giving the letter, the counsel for the appellant also filed a memo in

the Registry, on the same day, stating (i) that the specially constituted Division Bench should not proceed with the hearing of the writ of quo

warranto, and (ii) that the writ should be listed before some other Division Bench, in which, 13 Judges named by the appellant in paragraph 2 of

the memo should not be included. To be precise, the memo dated 30-1-2012 filed by the appellant and her counsel named 13 Hon''ble Judges,

namely, the Hon''ble Chief Justice and Hon''ble Justices Elipe Dharma Rao, D.

Murugesan, C. Nagappan, R. Banumathi, K. Mohan Ram, P.

Jyothimani, Chitra Venkatraman, K.N. Basha, S. Nagamuthu, C.T. Selvam, S. Rajeswaran, N. Paul Vasanthakumar, as Judges who are

disqualified from hearing the writ of quo warranto;

(ab) Agitated by the tone and tenor of the said letter and memo dated 30.01.2012 circulated by the learned Advocates appearing for the

appellant, the Hon''ble Chief Justice constituted a Larger Bench of 7 Hon''ble Judges and suo motu issued a notice of contempt to the appellant as

well as to all the counsel on record for the appellant. In response to the contempt notice, the appellant as well as all her counsel on record

appeared before the Larger Bench of 7 Hon''ble Judges. In a show of strength, which was more mathematical than moral, the appellant and her

counsel were defended by a battery of lawyers. Finding that the purchase of peace is more prudent, the Larger Bench posted the suo motu

contempt petition before us;

(ac) Before us, the appellant and her counsel filed independent affidavits, narrating the entire history, right from the day (26.9.2004) when a small

dispute with regard to an easementary right erupted between the appellant and her neighbour. (In fact, we have culled out all the above historical

details only from the affidavit filed by the appellant herein in that contempt petition). The affidavits also contained regrets and hence the contempt

petition was closed by this Bench, by an order dated 06.7.2012, accepting the affidavits filed by the appellant as well as by her counsel on record;

(ad) Thereafter, the writ of quo warranto filed by the appellant in W.P. SR. No. 1341 of 2012 against the learned Judge of this Court (who was

earlier the Registrar General) and the present criminal appeal CrI. A. No. 17 of 2012 also came up before us for hearing.

(ae) After a couple of adjournments, Mr. S. Pattabiraman, the counsel for the appellant made an endorsement in the writ petition for quo warranto

that he was not pressing the writ of quo warranto. It is pertinent to note here that the writ of quo warranto was yet to be numbered and was

pending only for consideration of the question of maintainability. When we questioned the learned counsel as to whether his client was aware of his

endorsement not pressing the writ of quo warranto, he replied that his client''s husband (the husband of the appellant herein) was very much

present in Court. In an interesting turn of events, the appellant's husband informed us in open court that he and his wife were not aware of the writ of quo warranto. This statement was sufficient for us to take action against the learned counsel, but we resisted from doing so and we simply dismissed the writ of quo warranto, as not pressed.

(af) Thereafter, this Bench took up for hearing, the above criminal appeal.

(ag) Thus, what started off as a small civil dispute between the appellant and her neighbour, over the alleged infringement of easementary rights of

light and air, got magnified into a Mahabharata war, first involving 2 subordinate police officials, then involving the Assistant Public Prosecutor of

the trial Court, later involving the officials of the Registry of this Court, then dragging the Registrar General of this Court and the Director General

of Police into complaints of perjury, eventually leading to a writ of quo warranto against a learned Judge and an expression by the appellant and

her counsel, of lack of faith on as many as 13 Judges of this Court. In other words, in a simple civil dispute between the appellant and her

neighbour, many persons totally unconnected with them (including the Judges of this Court) have become victims and the system of administration

of justice, a casualty.

3. It is in the above background of facts that we started hearing this criminal appeal. Prima facie, we had a doubt about the maintainability of the

criminal appeal and hence we started raising questions. The learned counsel for the appellant, invited our attention to the provisions of Section 188

and 195 of the Indian Penal Code as well as to the provisions of Sections 340 and 341 of the Code of Criminal Procedure. The learned counsel

for the appellant also produced copies of certain decisions relied upon by him in support of his contention that the appeal was maintainable.

4. Apart from drawing our attention to the provisions of law and the precedents, the learned counsel for the appellant also contended that on this

criminal appeal, another Bench of two Hon'ble Judges, namely, K. Mohan Ram and G.M. Akbar Ali, JJ, had already ordered notice of motion

through Court as well as privately returnable in three weeks. Therefore, the learned counsel contended that once notice is ordered u/s 341 of the

Code of Criminal Procedure, the respondent had to come and appear in person, without the assistance of a counsel, at least for the first hearing.

He also contended that this Bench is not competent to raise questions regarding the maintainability of the criminal appeal, in view of the fact that an

earlier Bench had already considered the question of maintainability and ordered the issue of notice of motion.

5. We pointed out to the learned counsel for the appellant that the question of maintainability goes to the root of the matter and that neither the

admission of a criminal appeal, nor the issue of notice of motion by another Bench, would tantamount to a final adjudication on the question of

maintainability of the appeal. We could not agree with the contention of the learned counsel for the appellant that we are not entitled to raise

questions of maintainability.

6. Unable to satisfy us regarding the maintainability of the criminal appeal, the learned counsel for the appellant, made a prayer on 21.01.2013,

when the matter was heard by us, to adjourn the case to enable him to prepare himself fully for making submissions. In good faith and in all

fairness, we adjourned the appeal to today for hearing, as it is a specially constituted Bench.

7. After taking adjournment, on the pretext that he wanted to prepare fully for the case, the learned counsel for the appellant filed a memo in the

Registry praying for referring this criminal appeal to a Full Bench or Larger Bench of this Court, on two grounds, namely, (i) that there is a

confrontation of views between me and my brother (M.M. Sundresh, J.); and (ii) that there is confrontation of views between this Bench and other

Co-ordinate Benches of this Court. The Memo filed by the Counsel for the appellant not only sought a reference of this criminal appeal to a Larger

Bench, but also sought to exclude both of us from any such Full Bench, if constituted. Thus it became clear that the adjournment sought on

21.01.2013 was with the sinister motive of including both of us in the long list of Judges whom the appellant did not want to hear her cases.

8. With such a memo on record, the criminal appeal was taken up today by us. As soon as the case was called, the learned counsel for the

appellant reiterated the contents of the memo filed by him and wanted us not only to refer the appeal to a Larger Bench, but also told us that in all

fairness, both of us should also not be parties to any Full Bench that he would like the Chief Justice to constitute. The learned counsel for the

appellant also stated that arguments on the appeal cannot be advanced (i) unless we decide the question of reference to a Full Bench as per the memo filed by him; (ii) unless the respondent appears before this Court in person, in response to the notice of motion ordered on 06.01.2012; and (iii) unless the issue of maintainability is first decided by the Full Bench.

9. In simple terms, the learned counsel for the appellant refused to advance arguments beyond the prayer made in the memo and beyond the point that the question of maintainability cannot be raised anymore by us. When we put a specific question, the learned counsel reiterated that the arguments in the appeal cannot be made at this juncture. The learned counsel also informed us that if we were not inclined to refer the matter to a Full Bench, we must simply adjourn the case, to enable him to circulate a letter to the Chief Justice, to take the matter to a Full bench.

10. In normal circumstances, we would have been inclined to adjourn the case to enable the counsel for the appellant to circulate a letter to the Chief Justice. But in this case, we could not do so, since it has become a matter of routine for the learned counsel for the appellant first to make an oral request to the Judges to recuse themselves, then to circulate a letter to the Chief Justice and eventually to file memos asking named Judges not to hear the cases. Since this bad practise of browbeating the Judges was not nipped in the bud and a kid-glove approach was adopted, the learned counsel for the appellant had become very emboldened. A show of magnanimity was mistaken to be a sign of weakness and this Bench was eventually left with the task of taming the wild. Therefore, we went through the pleadings and the records in open court in the presence of the counsel and we are passing the following order.

11. First, let us take up the issue raised in the memo filed by the learned counsel for the appellant. The memo filed by the learned counsel for the appellant goes actually in the name of the appellant, as the heading given would show. But, it contains only the signature of the counsel and not that of the appellant. Secondly, in the memo, the learned counsel states that in the course of hearing of the matter on 21.01.2013, a difference of opinion arose between me and my brother (M.M. Sundresh, J.). It is his case that both of us have different views on the matter. In paragraph 10 of the memo, the learned counsel states that one of us (M.M. Sundresh, J)

agreed with his contention on the basis of a judgment of a Co-ordinate

Division Bench of this Court in Arunachalam Pillai v. Ponnusami Pillai and that one of us (V. Ramasubramanian, J) did not agree.

12. We take a very strong exception to the said statement. Both of us were not divided in our views. I do not know where-from the counsel for

the appellant got an impression that both of us are divided in our opinion. The practice of filing memos on the basis of questions put forth by the

Bench, has been deprecated by Courts. But, unfortunately, this case has turned out to be a case of memos and letters and not really a case on

merits. We have already indicated the list of Judges whom the counsel for the appellant made to recuse, by filing memos. Therefore, we condemn

the statement made in paragraph-10 of the memo that both of us were divided in our opinions.

13. As a matter of fact, the memos filed by the learned counsel for the appellant in other matters before 30.01.2012, proved fruitful to them. But

the memo filed on 30.01.2012 landed the appellant and her counsel in a suo motu contempt petition. But, still the counsel did not learn from the

mistake of the past. Once bitten, did not make them twice shy.

14. It may be necessary at this stage to record how many learned Judges of this Court had to recuse themselves from hearing various cases of the

appellant. The list is as follows:

(a) Justice C.T. Selvam, had to recuse himself from hearing a perjury petition arising out of a criminal original petition, in view of a request made by

the counsel for the appellant that it should be posted only before Justice K.N. Basha, in whose Court the alleged perjury took place.

(b) Justice K.N. Basha recused himself on account of some unpleasant remarks and hence the perjury petition got posted before Justice S.

Nagamuthu. But, he had to recuse himself since the counsel circulated a memo seeking the constitution of a Division Bench to hear the perjury

petition.

(c) The perjury petition was ultimately heard by Justice M. Chockalingam, who was also later forced to recuse himself after the counsel filed a

memo making certain allegations.

(d) In a writ petition filed for taking action against the Assistant Public Prosecutor, Justice N. Paul Vasanthakumar had to recuse himself for

identical reasons.

(e) Then, when the writ of quo warranto was first posted before a Division Bench of K.N. Basha and N. Paul Vasanthakumar, JJ, the counsel

objected to their hearing the matter. When the Bench proceeded to hear the matter, a memo was filed in the Registry by the Counsel for the

appellant. Therefore, they recused themselves.

(f) This criminal appeal is also no exception to the above onslaught. In this appeal, notice of motion, which according to the learned counsel for the

appellant, is to his advantage, was ordered by a Division Bench of K. Mohan Ram and G.M. Akbar Ali, JJ. But, after notice of motion was

ordered by the said Bench on 06.01.2012, they were also made to recuse themselves as seen from an order passed on 27.01.2012;

(g) The pinnacle was reached when on 30.01.2012, the counsel circulated the letter to the Hon"ble Chief Justice requesting him not to post these

matters before 13 Judges.

(h) Despite the fact that the filing of memo dated 30.01.2012 amounted to a clear case of contempt, both of us passed an order closing the

contempt on the basis of the affidavits filed by the appellant as well as the counsel.

(i) After this bench closed the contempt petition, now it is our own turn, to receive a request in the form of a memo to refer the case to a Full

Bench, in which both of us will not be members.

15. In the light of above, we were afraid that this High Court would soon be running out of Judges who, according to the counsel for the appellant,

would be competent to hear these cases. The only advantage that the counsel for the appellant so far had, was that the other Judges acceded to

their request and recused themselves. But, we would not, since, at some point of time or the other, we had to pull up our socks and protect the

dignity of the institution. Therefore, we condemn the request made by the counsel for the appellant to post the matter before a larger Bench not

comprising of both of us. We also condemn the learned counsel for the appellant for thinking and articulating in the memo that both of us were

divided in our opinion. We were not divided in our opinion and it was a misstatement of facts by the counsel for the appellant.

16. Now, we will come to the next issue, namely, as to whether the questions

posed by us regarding the maintainability of the criminal appeal

would tantamount a confrontation of the views expressed by the previous Bench of K. Mohan Ram and G.M. Akbar Ali, JJ, on 06.01.2012.

17. As seen from the records, the previous Bench merely ordered notice of motion on 06.01.2012 through Court as well as privately returnable in

three weeks. According to the learned counsel for the appellant, the very ordering of notice of motion has put the lid on the question of

maintainability and that it can never be raised thereafter. Unfortunately, the law is otherwise and hence, we cannot agree.

18. An admission of any petition or an order directing the issue of notice of motion, does not clinch the issue on the question of maintainability.

They are all orders passed on a prima facie consideration of the question of maintainability and not binding precedents. An order admitting a

petition or directing the issue of notice of motion is not a stare decisis. It is not a decision and it is not an adjudication on the question of

maintainability. It is a pity that this fundamental aspect has not been understood or refused to be understood, despite our attempt to explain it to the

counsel for the appellant.

19. The learned counsel for the appellant also relies upon another order passed by another Division Bench of C. Nagappan and M.

Sathyanarayanan, JJ, admitting yet another criminal appeal in Crl. A. No. 45 of 2013. It appears from paragraph 8 of the memo filed by the

counsel for the appellant that he filed a criminal appeal in SR No. 318 of 2013 against an order passed in Contempt Petition No. 30 of 2010. It

appears that the matter was posted for maintainability before a Bench comprising of the said learned Judges. The learned Judges are said to have

directed the Registry to number the appeal and also ordered the Registry to take the criminal appeal on file. Therefore, the contention of the

learned counsel for the appellant is that we are again taking a view, which is directly in confrontation with the view expressed by the other Bench in

Crl.A. No. 45 of 2013.

20. But, what we said in relation to the order of notice of motion passed by the previous Bench in this case, holds good, with the very same vigour,

even in respect of the admission of the appeal Crl.A. No. 45 of 2013. As stated earlier, Crl.A. No. 45 of 2013 has only been admitted. The

question of maintainability has not been adjudicated by a detailed order by that Bench. Unless an earlier Bench has taken a categorical view, after

considering the relevant provisions of law and after considering the precedents, it would not constitute a precedent. Therefore, the admission of

Crl. A. No. 45 of 2013 will also not stand in our way of considering the question of maintainability.

21. Now, we will come to the judgment of a Division Bench of this Court in *Arunachalam Pillai v. Ponnusami Pillai* (ILR Mad. Vol. 42 pg. 64),

which, according to the learned counsel for the appellant, is a decision on the question of maintainability. What happened in *Arunachalam Pillai*

was, that a Stationary Sub-Magistrate (of pre-independence days) passed an order on 08.5.1917 u/s 144 of the Criminal Procedure Code,

prohibiting a few persons from taking a deity in procession through a private property. On the ground that the order was violated, a petition for

sanction to prosecute was filed. But, the said petition was dismissed by the Stationary Sub-Magistrate on two grounds viz., that the prohibitory

order itself was bad and that in any case, no offence was made out by such violation. On appeal, the District Magistrate reversed the said decision

and sanctioned prosecution. An appeal challenging the sanction to prosecute, was filed before the Sessions Judge against the order of the District

Magistrate. The Sessions Judge held the appeal to be not maintainable on the ground that the order sanctioning prosecution was only an

administrative order. Therefore, the party against whom sanction to prosecute was issued, filed two petitions on the file of this Court, one for

revising the order of a District Magistrate sanctioning prosecution and another for revising the order of the Sessions Judge, holding the appeal as

not maintainable. In such circumstances, the question that arose before a Division Bench of this Court in *Arunachalam Pillai*, was whether an order

sanctioning prosecution was a judicial or administrative order. The Bench first held that it was a judicial order, as the original prohibitory order u/s

144 itself was a judicial order.

22. After holding that an order rejecting the request for sanction for prosecution is a judicial order, the Bench took up for consideration, the next

question regarding the scope of Section 195 of the Code of Criminal Procedure. On the said question, the Bench pointed out that Section 195(1)

of the Code deals with 3 classes of offences. The offences u/s 172 to 188 of the Indian Penal Code fall under the first category. The offences

falling u/s 193 and other provisions, deal with false evidence and offences against public justice and they would fall under the second category. The

third category comprises of offences relating to documents and to trade and property marks. After categorising the classes of offences dealt with

u/s 195(1), the Division Bench pointed out in Arunachalam Pillai that by virtue of Sub-section (7) of Section 195, the expression ""Court"" would

encompass within itself even a public servant who passes an order as a Court. In other words, the Division Bench held that in view of the definition

of the expression ""public servant"" appearing in Section 21 of the Code, the word ""Court"" used in Clauses (b) and (c) was intended to limit the

operation of those Clauses to proceedings in relation to Courts.

23. Therefore, it is very clear from a careful reading of the decision of the Division Bench in Arunachalam Pillai that the question that arose there

was completely different from the question that we are raising in this appeal. Today, we are dealing with an appeal filed as a criminal appeal u/s

341(1) of the Code of Criminal Procedure. This appeal is filed against an order passed by a learned Judge of this very same Court in a petition

filed as a continuation of the original proceedings under Article 226 of the Constitution. We are not dealing with an appeal against an order of a

Court, which is subordinate to us. The order passed by the learned Judge in M.P. SR. No. 104437 of 2011 in a writ petition filed under Article

226, cannot be construed as an order passed by a Court subordinate to this Court. The remedy of appeal available to a Division Bench of this

Court, as against certain types of orders passed by the learned single Judges of this Court, is by virtue of Clause 15 of the Letters Patent. But, it

does not mean that the order under appeal is to be treated as an order by a Court subordinate to us.

24. It is true that the expression ""Court subordinate"" appearing in Section 341(1) is referable only to the kind of subordination contemplated u/s

195(4). In other words, we are conscious of the fact that the expression ""Court subordinate"" appearing in Section 341(1) does not connote a

Court which is administratively subordinate. It only refers to a Court which is judicially subordinate, for the purpose of entertaining appeals or

revisions. This is made clear by Section 195(4). Section 195(4) makes it clear that for the purpose of Section 195(1)(b), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction. By virtue of Clause 15 of the Letters Patent, an appeal would lie to a Division Bench of this Court against certain types of orders of learned single Judges. Therefore, while construing the expression "Court subordinate" appearing in Section 195(3) of the old Code, which corresponds to Section 195(4) of the new Code, the Supreme Court held *Narain Das Vs. The State of Uttar Pradesh*, that an order of a learned single Judge of the Allahabad High Court could be construed as an order of a Court subordinate, for the limited purpose of entertaining an appeal, as an appeal would lie against such orders under Clause 10 of the Letters Patent. But, the said position in law would not advance the cause of the appellant, in view of the fact that even if this Court is construed to be a superior Court, merely because of the availability of an appeal under Clause 15 of the Letters Patent, the most essential requirement of Section 341 is not satisfied here. This can be understood by having a look at Section 341.

25. Section 341 of the Criminal Procedure Code reads as follows:

Appeal.-(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made u/s 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order u/s 340, shall be final, and shall not be subject to revision.

26. A careful reading of Section 341(1) would show that the remedy of appeal provided therein, is available under two contingencies. The first contingency is when a request to make a complaint u/s 340 of the Code is

rejected by a Court other than the High Court. The second contingency is when such a Court (namely other than the High Court) allowed the application and made a complaint. If either of these two contingencies is satisfied, then an appeal would lie u/s 341(1) to a superior Court to which the Court which passed the order was subordinate.

27. Unfortunately for the appellant, the present appeal is filed against the rejection of her application to file a complaint. Though the rejection of her request to file a complaint would fall under the first contingency indicated in Section 341(1), such rejection should have been by a Court other than the High Court. This condition is not satisfied in this case. In this case, the order under appeal, though an order rejecting a request to make a complaint, was not by a Court other than the High Court, but, by the High Court itself. Therefore, no appeal would lie in the case on hand. In

Arunachalam Pillai, the appeal was against an order of the Sessions Judge. Therefore, the conditions prescribed in Section 341(1) were satisfied therein. But, in this case, the conditions are not satisfied. Hence, the decision in Arunachalam Pillai will not go to the rescue of the appellant.

28. The learned counsel for the appellant relies upon another decision of yet another Bench of this Court in Jamna Doss v. A.B. Sabapathy Chetty (1911 Vol. 36 ILR Pg. 138). But, even in the said case, the appeal arose out of an order of the Presidency Small Causes Court granting sanction.

The only question that arose in that case was whether such an appeal against an order passed by the Presidency Small Causes Court would lie to the Original Side or the Appellate Side of this Court. Therefore, that decision is also of no assistance to the appellant.

29. In the next decision in In Re: D.S. Raju Gupta, the District Judge, Vishakapatnam, ordered the registration of a complaint against a person u/s 476 of the Code of Criminal Procedure. When an appeal was filed, a question was raised before Justice Pandrang Row of this Court as to whether the appeal would lie on the civil side or the criminal side of the High Court. The learned Judge held that a criminal complaint cannot be held to be made in the exercise of civil jurisdiction. The power to make a complaint, it was held by the learned Judge, arose under the provisions of the Criminal Procedure Code, and that therefore, an appeal would lie only on the criminal side of this Court. Since the said decision also arose out

of an order sanctioning prosecution passed by a Court subordinate to the High Court, the said decision has no relevance to the case on hand.

30. The next decision relied upon by the learned counsel for the appellant is *Narain Das Vs. The State of Uttar Pradesh*, . In the said decision, a

civil writ petition was filed by one Narain Das on the file of the High Court of Judicature at Allahabad. Subsequently, he moved an application u/s

476 of the old Code of Criminal Procedure, for making a complaint against a person who had allegedly sworn to a false affidavit. That application

was dismissed by a learned Judge and the petitioner took the matter on appeal to the Supreme Court. The Supreme Court directed the petitioner

to first go before a Division Bench of the High Court.

31. Before the Supreme Court, a contention was raised that an order passed by a single Judge of the High Court cannot be construed as an order

passed by a Court subordinate to the High Court, to enable the High Court to entertain the appeal. But, the said contention was rejected by the

Supreme Court on the ground that u/s 195(3) of the old Code, a deeming fiction was inserted, to include the Courts, against whose orders, an

appeal would ordinarily lie from appealable decrees. In other words, the Supreme Court pointed out that by virtue of the deeming fiction found in

Section 195(3) of the old Code (which now corresponds to Section 195(4) of the new Code), a learned Judge of the High Court against whose

orders appeals would ordinarily lie from appealable decrees, could be taken to be a Court subordinate, for the limited purpose of entertaining an

appeal u/s 476-B of the old Code (corresponding to Section 341(1) of the new Code). Taking advantage of the opinion so expressed by the

Supreme Court, it is contended by the learned counsel for the appellant that an appeal would lie to the Division Bench.

32. But, the learned counsel for the appellant has forgotten for a moment, that in the said matter, the Supreme Court permitted the petitioner only

to invoke Clause 10 of the Letters Patent. The Supreme Court merely pointed out that the petitioner therein ought to have filed an appeal to the

Division Bench under Clause 10 of the Letters Patent. Paragraph 4 of the decision of the Supreme Court would show that the Supreme Court

directed the petitioner to go before the Division Bench, only on account of the fact that the original proceedings arose under Article 226 of the

Constitution and that an appeal to the Division Bench of the Court was provided under Clause 10 of the Letters Patent. Even in the present case, if

the petitioner had filed an appeal under Clause 15 of the Letters Patent of 1865, the question of maintainability would not have assumed so much

of controversy as it had now given rise to.

33. As a matter of fact, all the decisions relied upon by the learned counsel for the appellant, including the decision of the Supreme Court In Re

Maintainability of Appeal in S.C., arose under the old Criminal Procedure Code, before it was completely revamped in 1973 under Act 2 of

1974. The original Code of Criminal Procedure of 1898 underwent significant amendments in 1923 and 1955. Though the amendments made in

1955 were significant, a comprehensive review of the Code was undertaken by the Law Commission, after it was set up in 1955. The 41st report

of the Law Commission presented in September 1969, which also took into account the earlier reports, suggested a complete revamping of the

Code. Act 2 of 1974 was a product of those recommendations. Therefore, the decisions rendered in 1911-1918 by the two Division Benches of

this Court, in Arunachalam Pillai and in Jamna Doss and the decision rendered in 1939 by a learned Judge of this Court in D.S. Raju Gupta, as

well as the decision rendered by the Supreme Court in 1961, have to be tested on the touchstone of the changes that were made in 1973 to the

Code.

34. Section 476 of the old Code corresponds to Section 340 of the 1973 Code. Section 476-B of the old Code corresponds to Section 341 of

the 1973 Code. There is a very significant change between the language employed in Section 476-B of the old Code and Section 341(1) of the

present Code. We have already extracted Section 341 of the present Code in paragraph 26 above. Let us now, extract Section 476-B of the old

Code, which reads as follows:

Appeals.-Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint u/s 476 or section 476A, or

against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of section

195, sub-section (3), and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the

case may be, itself make the complaint which the subordinate Court might have made u/s 476, and if it makes such complaint the provisions of that section shall apply accordingly.

35. A comparative reading of Section 476-B of the old Code and Section 341 of the new Code would show that there are two significant changes effected under the new Code. They are:

(i) u/s 476-B of the old Code, an appeal would lie against two types of orders. The first type of order is an order of a civil, revenue or criminal

Court refusing to make a complaint u/s 476 or 476-A. The second type of order is an order making a complaint. Even Section 341 of the present

Code speaks about appeals against two types of orders. The first type of order is an order passed by any Court other than a High Court refusing

to make a complaint. The second type of order is an order registering a complaint. But, the difference between Section 476-B of the old Code and

Section 341 of the new Code, lies in the substitution of the expression ""any civil, revenue or criminal Court"" appearing in Section 476-B with the

expression ""any Court other than a High Court"" in Section 341; and

(ii) Section 476-B did not talk about any finality to an order passed on appeal. But, by inserting a sub-section under sub-section (2) to Section

341, the new Code attaches finality to an order passed on appeal u/s 341.

36. Thus, Section 476-B of the old Code underwent two significant changes in Section 341 of the new Code. The most important change, that has

a bearing on the present appeal is the substitution of the expression ""any civil, revenue or criminal Court"" appearing in Section 476-B with the

expression ""any Court other than a High Court"" in Section 341. u/s 476-B of the old Code, even an order passed originally by the High Court

would have become appealable, by virtue of the fact that Section 476-B provided for an appeal against an order passed by any civil, revenue or

criminal Court. But, Section 341(1) has imposed a restriction, by using the expression ""any Court other than the High Court"". Therefore, today, an

appeal u/s 341 may lie only against the refusal of any Court other than a High Court to make a complaint or alternatively, against the making of a

complaint. No appeal would lie against the order of the High Court itself, refusing to make a complaint. In view of this changed scenario, after the

amendments effected in 1973, the decisions relied upon by the learned counsel

for the appellant, have to be understood only in the context of the provisions prevailing then.

37. Today, appeals under the Code of Criminal Procedure are governed by Chapter XXIX of the Code. But, Sections 372 to 394 in Chapter XXIX deal only with appeals against orders of criminal Court. Section 372 makes it clear that no appeal shall lie from any judgment or order of a criminal Court, except as provided by the Code or by any other law for the time being in force. Admittedly, the present appeal would not fall under any one of the provisions contained in Chapter XXIX of the Code from Sections 372 to 394. This is why the appellant has superscribed her appeal as one u/s 341. If it is an appeal u/s 341, it must satisfy the two contingencies stipulated in Sub-section (1). Otherwise, the appeal is not maintainable.

38. Once it is found that the appeal, as it is filed u/s 341(1) of the Code, is not maintainable, it is needless for us to go into the merits of the case to find out whether the order of the learned single Judge is in accordance with law or not. Stricto sensu, a Court rejecting an appeal as not maintainable, cannot and will not go into the merits. But, in this case, we have also decided to look into the merits of the case on account of one simple factor. After all, the order impugned in this appeal was passed by a learned Judge in a proceeding which was a continuation of the proceeding under Article 226. Therefore, the appellant could have filed an appeal under Clause 15 of the Letters Patent. If it had been filed under Clause 15 of the Letters Patent, we would have dealt with the appeal on merits. Therefore, we looked into the merits of the appeal, just for the purpose of testing whether we could at least convert this criminal appeal into a writ appeal under Clause 15 of the Letters Patent, since what was required in that event, was only a change of label, though not the contents. But, even on merits, even if the present appeal is converted into one under Clause 15 of the Letters Patent, we could not have interfered with the order of the learned Judge, for reasons which we shall point out.

39. The complaint of the appellant as against the respondent, as projected in the miscellaneous petition M.P. SR. No. 104437 of 2011 is that the respondent did not give even bare minimum opportunity for the appellant, in the enquiry held on 01.8.2011, to make her submissions. In other

words, the only allegation made against the respondent is that he violated the order passed by this Court on 26.4.2011 in W.P. No. 10458 of

2011, by ridiculing the appellant and not giving her adequate opportunity of representation in the enquiry.

40. In order to test the correctness of the said contention, it is necessary to record the order dated 26.4.2011 passed in W.P. No. 10458 of 2011.

3. Considering the above facts and circumstances of the case, without going into the merits of the case, the first respondent-Director General of

Police, is directed to consider the appeal filed by the petitioner dated 11.11.2010, against the order of the second respondent-Commissioner of

Police dated 23.8.2008 and after giving an opportunity of hearing to the petitioner as well as to the person against whom accusation has been

made, pass appropriate orders, on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this

order. This writ petition is disposed of accordingly. No costs.

The operative portion of the above order made it clear that the direction given therein was made without going into the merits of the case. It is true

that the respondent was directed to give an opportunity of hearing and to pass orders. What is the level of the opportunity that should have been

granted to the appellant is not a matter that would fall under the category of an offence u/s 188 of the Indian Penal Code. Section 188 of the Indian

Penal Code reads as follows:

Disobedience to order duly promulgated by public servant.-Whoever, knowing that, by an order promulgated by a public servant lawfully

empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession

or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of

obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one

month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life,

health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend

to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation:- It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is

sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

41. A reading of Section 188 of the Indian Penal Code would show that it deals with the disobedience to an order duly promulgated by a public

servant. The expression ""public servant"" is defined in Section 21 of the Indian Penal Code. It includes every Judge including any person

empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions.

42. Unfortunately for the appellant, the learned Judge, while holding the miscellaneous petition as not maintainable, had pointed out that there was

no disobedience of the order passed by him. In accordance with the order passed in the writ petition, an opportunity of hearing was admittedly

granted by the respondent to the appellant on 01.8.2011. Therefore, the matter ends there.

43. It is interesting to note that the main petition filed by the appellant before the learned single Judge complaining of the commission of an offence

by the respondent was u/s 195 of the Code of Criminal Procedure. Sub-section (1) of Section 195 of the Code of Criminal Procedure reads as

follows:

Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in

evidence.-

(1) No Court shall take cognizance-

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public

servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both

inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any

proceeding in any Court, or

(ii) of any offence described in section 463, or punishable u/s 471, section 475 or section 476, of the said Code, when such offence is alleged to

have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some

other Court to which that Court is subordinate.

44. A close look at Sub-section (1) of Section 195 would show that it comprises of two parts. One part is dealt with in clause (a) and the other

part is dealt with in clause (b). The first part deals with (i) offences punishable under Sections 172 to 188, (ii) abetment or attempt to commit

offences under Sections 172 to 188 and (iii) any criminal conspiracy to commit offences under Sections 172 to 188. Clause (b) deals with offences

punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 of the IPC, when these offences are committed in relation to a proceeding

in a court. Clause (b) of section 195(1) also includes offences under sections 463, 471, 475 and 476 when they are committed in respect of a

document produced or given in evidence in a court proceeding.

45. Insofar as offences that fall under clause (a) of Sub-section (1) of Section 195 are concerned, a complaint has to be lodged in writing by the

public servant whose order was wilfully disobeyed or by any other public servant to whom the other public servant is administratively subordinate.

46. However, for offences covered by clause (b) of Sub-section (1) of Section 195, a complaint has to be lodged by the Court or by such officer

of the Court authorised by the Court. In other words, despite the fact that Section 21 of the Indian Penal Code includes a Judge within the meaning

of the expression "public servant", clauses (a) and (b) of Section 195(1) of the Code of Criminal Procedure provide two different procedures, one

for taking cognizance of an offence committed against an order of a public servant and another for taking cognisance of an offence committed in

relation to a Court proceeding. In fact this distinction has been recognised even in the decision of the Division Bench of this court in Arunachalam

Pillai.

47. In this case, the offence allegedly committed by the respondent, is stated to be u/s 188 of the Indian Penal Code. Therefore, the case would

fall only u/s 195(1)(a) of the Code of Criminal Procedure. It will not fall under clause (b) of Sub-section (1) of Section 195.

48. Keeping the above distinction in mind, let us now go to Sections 340 and 341 of the Code of Criminal Procedure. Section 340 prescribes the

procedure to be followed in cases mentioned in Section 195. Sub-section (1) of Section 340 empowers a Court to which an application is made,

to consider whether an enquiry should be made or not, into any offences referred to in Section 195(1)(b). The offences should have been

committed in or in relation to a proceeding in that Court. In this case, the only offence allegedly committed by the respondent is that the respondent

failed to provide adequate opportunity of hearing to the appellant, in the enquiry conducted in pursuance of the order passed in the writ petition.

We do not know how it will fall u/s 340(1). An offence of disobedience of an order of this court, falls u/s 188 of IPC. This is conceded by the

learned counsel for the appellant. Therefore, the case would fall u/s 195(1) (a) (i). If so, section 340 (1) cannot be invoked, as it applies only to

offences covered by section 195(1)(b). Therefore, the original application filed before the learned single Judge u/s 340(1) of the Code itself was

misconceived. Therefore, the appeal, even if it is converted into one under Clause 15 of the Letters Patent, deserves to be dismissed as devoid of

merits. As we have pointed out earlier, what started off as a simple controversy between two neighbours over easementary rights, has been

magnified by the appellant and her counsel completely out of proportions, implicating several persons including learned Judges of this Court.

Therefore, we should actually impose very heavy costs on the appellant, apart from recommending action against the counsel for the appellant. In

fact, yet another Judge of this Court, namely, T. Sundathiram, J, had expressed similar sentiments while dismissing a petition filed by the very same

appellant, through the very same counsel, in Crl. M.P. No. 1 of 2008 dated 05.02.2009. Paragraph 6 of the order of the learned Judge reads as

follows:

Though, the order in the main petition was passed by His Lordship Mr. Justice K.N. Basha, when the clarification petition came up for hearing, a

memo dated 14.8.2008 was filed by petitioner praying for the matter to be heard by The Honourable The Chief Justice. Therefore, His Lordship

Mr. Justice K.N. Basha directed the matter to be posted before some other Judge. Then, as per the order of The Honourable The Chief Justice,

the matter was placed before The Honourable Mr. Justice S.K. Krishnan. His Lordship also directed the matter to be posted before some other

Judge, since a memo dated 8.9.2008 was filed objecting for hearing. Again, as per the order of The Honourable The Chief Justice, the matter was

placed before the Honourable Mr. Justice K. Mohan Ram. Again, a memo was filed objecting for hearing by The Honourable Mr. Justice K.

Mohan Ram stating that the comment was made by the Judge on personal behaviour of the counsel. Therefore, The Honourable Mr. Justice K.

Mohan Ram also declined to hear this matter. Then, as per the order of The Honourable The Acting Chief Justice, the matter has been placed

before me for hearing. Though, this is a fit case to impose heavy cost, this Court is ordering any cost.

However, we desist both from imposing costs and from recommending action against the counsel for the appellant, only as proof of the fact that

even now, we have not run out of patience and magnanimity. Therefore, this appeal is dismissed.