

(2000) 08 KL CK 0076
In the High Court Of Kerala
Case No : W.A. No. 714/99 B

Narayana Reddiar

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Constitution of India, 1950 — Article 136, 226
Criminal Procedure Code, 1973 (CrPC) — Section 110, 195, 195(1), 195(4), 340
Government of India Act, 1915 — Section 108, 39
Kerala High Court Act, 1958 — Section 3, 3(13), 4, 5
Land Acquisition Act, 1894 — Section 54
Penal Code, 1860 (IPC) — Section 193, 463, 471, 475, 476
Specific Relief Act, 1963 — Section 6, 6(3)

Citation : (2001) CriLJ 81

Hon'ble Judges : S. Sankarasubban, J;G. Sivarajan, J

Bench : Division Bench

Advocate : M.N. Sukumaran Nair and S. Sreekumar, for the Appellant; T.R. Ramachandran Nair, for Respondent No. 1, M.K. Chandramohan Das, for Respondent Nos. 2 and 3 and Government Pleader, for the Respondent

Judgement

S. Sankarasubban, J.—This Writ Appeal is filed against the order in C.M.P. No. 35930 of 1998 in O.P. No. 12701 of 1998. Fourth Respondent in the C.M.P. is the Appellant. He is the fourth Respondent in the Original Petition also. According to the Appellant, he is a tenant of a building called "Jaya Building", Main Road, Kollam. The tenancy was given by one Durairaja Reddiar by executing an agreement of lease dated 6th January 1994. This lease deed enabled him to make alterations in the building. Accordingly, he effected some alterations in the building. When it was found that alterations were effected, the Appellant received, from the Kollam Municipality, an order, directing him to demolish the structure, which according to the Municipality, is unauthorised.

2. Against the order of the Municipality, Petitioner approached the Government. The Government issued an order dated 22nd June 1998, which is produced as Ext. P-5 in the Original Petition directing the Appellant to submit an application

through the Local Authority seeking regularization of the additional structure made by him. It is challenging the above order that the first Respondent-Rugmini Ammal, w/o Durairaja Reddiar, filed the Original Petition. The contention raised by the Petitioner in the Original Petition is that there was no lease agreement and that the construction was unauthorised. Further, it was stated that the construction cannot be legalised on other grounds.

3. Appellant filed a counter affidavit. Along with the counter affidavit, she produced photo-copy of agreement of lease, Ext. R-4 (a). Ext. R-4 (a) is dated 6th January 1994. Thereafter, the first Respondent filed C.M.P. No. 35930 of 1998. The contention taken in the C.M.P. is that Ext. R-4 (a) is a forged document. It is further stated that the first Respondent sought the opinion of Professor B.B. Kashyap, a renowned and accepted handwriting and fingerprint expert. The signatures in the lease agreement, Ext. R-4 (a) was compared with the admitted signatures of Durairaj Reddiar in Ext. P-7. The expert gave his opinion, copy of which is produced as Ext. P-18, According to Ext. P-18, the signatures in Ext. R-4 (a) don't tally with the signatures in the admitted signatures. Hence, the handwriting expert has given an opinion that the five disputed signatures have not been written by the writer of the admitted signatures.

4. A counter affidavit was filed in C.M.P. No. 35930 of 1998. In the counter affidavit, it is stated that Ext. R-4 (a) was produced before the Government and Ext. P-5 order itself will show that this was produced before the Government. The fabrication of Ext. R-4 (a) is denied. Along with the counter affidavit, the Petitioner produced Exts. R-4 (e) to R-4 (m). According to the counter affidavit, Exts. R-4 (e), R-4 (i) and R-4 (j) also contain the signatures of the deceased Reddiar. An additional counter affidavit was filed producing Ext. R-4 (n). In the counter affidavit, as already stated, the Appellant denied that Ext. R-4 (a) was fabricated.

5. A reply affidavit was filed by the first Respondent in which, the first Respondent denied the execution of certain documents signed by Reddiar and produced by the Appellant. The prayer in C.M.P. No. 35930 of 1998 is to conduct an enquiry into the production of Ext. R-4 (a) forged lease deed and make a complaint thereof and forward it to the Magistrate of the First Class having jurisdiction.

6. The learned Single Judge considered the arguments of both sides. The learned Single Judge relied on the opinion given by the handwriting expert and prima facie came to the conclusion that Exts. R-4 (a), R-4 (e), R-4 (i) and R-4 (j) were fabricated and hence, there is a reasonable likelihood to establish the offence under Sections 463, 471, 475 and 476 of I.P.C. The learned Single Judge directed the Registrar of this Court to make a complaint for that purpose in writing and send to the Magistrate of the First Class having jurisdiction. It is against the above order that the present Writ Appeal is filed. Along with the appeal, C.M.P. No. 1776 of 1999 was filed for staying the order in C.M.P. No. 35930 of 1998.

The Division Bench of this Court stayed the direction of the learned Single Judge to make a complaint in writing and send the same to the Judicial First Class Magistrate having jurisdiction.

7. Shri M.N. Sukumaran Nair, Senior Counsel appeared for the Appellant while Shri T.R. Raman Pillai, Senior Counsel appeared for the first Respondent.

8. Shri M.N. Sukumaran Nair made the following contentions: (1) The proceedings u/s 340 of the Code of Criminal Procedure cannot be initiated in this case, because, there is no allegation that the fabrication was made after the document was produced in this case. (2) The opinion of the handwriting expert is not final. The report of the expert shows that what was examined was only photocopies and he has stated that unless he sees the original, the report cannot be confirmed. (3) It is further stated that the view taken by the learned Single Judge has in fact affected the right of the Appellant with regard to the Original Petition. In answer to the above contentions, Shri T.R. Raman Pillai contended that the Writ Appeal is not maintainable. According to him, Section 341 of the Code of Criminal Procedure does not provide for an appeal from an order passed by the High Court. He further contended that the learned Single Judge was right in holding that the documents were false and hence, the proceedings u/s 340 of the Code of Criminal Procedure were correctly passed by the learned Single Judge.

9. Learned Counsel for the first Respondent then took the contention that the appeal was not maintainable. Counsel relied on Section 341 of the Code of Criminal Procedure for this purpose. Section 341 of the Code of Criminal Procedure states as follows:

341 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 maybe, 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.

The contention is that since Section 341 of the Code of Criminal Procedure mentions only the applications filed before any Court other than a High Court, any order passed by a learned Single Judge of the High Court cannot be appealed against. This shows that the Legislature has not provided any remedy by way of appeal against orders passed u/s 340 of the Code of Criminal Procedure, by the High Court. He further relied on the decision of the Supreme Court in K. Karunakaran Vs. T.V. Eachara Warriar and Another, . Learned Counsel

for the Appellant submitted that merely because Section 341 of the Code of Criminal Procedure states that an appeal lies to the superior Court against the order passed by any Court other than High Court, it does not mean that no appeal is maintainable against the orders passed u/s 340 of the Code of Criminal Procedure. Learned Counsel then referred to Section 5 of the Kerala High Court Act, which provides for appeal from judgment and order of a learned Single Judge. He submitted that so far as the present case is concerned, it will come u/s 5(i) of the Kerala High Court Act, viz., appeal shall lie before a Bench of two Judges from the judgment and order of a learned Single Judge in the exercise of original jurisdiction. Learned Counsel further contend id that the proceedings u/s 340 of the Code of Criminal Procedure were exercised in proceedings under Article 226 of the Constitution of India. In the original jurisdiction exercised by the learned Single Judge, the impugned order is passed and hence an appeal will be against that order. Learned Counsel for the first Respondent tried to submit that the proceedings are Criminal in nature and u/s 5 of the Kerala High Court Act, an appeal will lie against an order passed in the Criminal Jurisdiction.

10. After hearing both sides, we are of the view that the contention of the first Respondent cannot be accepted. True, Section 341 of the Code of Criminal Procedure does not provide for any appeal from an order passed u/s 340 of the Code of Criminal Procedure by a High Court. But that does not mean that if there is any other provision for appeal from such orders by any other Law, such provision is excluded. It is one of the principles of interpretation that unless there is express exclusion of appeal from an order ordinarily, appeal will lie from such orders. Section 5 of the Kerala High Court Act says that nothing in this Code shall exclude the application of the provisions of special or local Act. According to us, merely because Section 341 of the Code of Criminal Procedure does not provide for appeals, it cannot be said that appeal does not lie u/s 5 of the Kerala High Court Act.

11. Now, we shall refer to the decision of a Five Judges' Bench of this Court reported in K.S. Das v. State of Kerala 1992 (2) KLT 358. In the above decision, speaking for the majority, Jagannadha Rao, C.J., held as follows:

The word "order" in Section 5(i) of the Kerala High Court Act, 1958 includes, apart from other orders, orders, passed by the High Court in Miscellaneous Petitions filed in the Writ Petitions provided the orders are to be in force pending the Writ Petition. An appeal would lie against such orders only if the orders substantially affect or touch upon the substantial rights or liabilities of the parties or are matters of moment and cause substantial prejudice to the parties. The nature of the "order" appealable belongs to the category of "intermediate orders" referred to by the Supreme Court in Madhu Limaye Vs. The State of Maharashtra, . The word "order" is not confined to "final order" which disposes of the Writ Petition.

So far as the present order passed is concerned, it cannot be said to be a temporary order. According to us, it is a final order in proceedings u/s 340 of the

Code of Criminal Procedure in Miscellaneous Petition filed in the Original Petition. It cannot be said that this order does not affect the Appellant. This is because, if the same order was passed by the Subordinate Court, appeal would lie. This itself shows that an order passed u/s 340 of the Code of Criminal Procedure is an order which affects the right of a person.

12. A full Bench of this Court had occasion to consider a similar question u/s 54 of the Land Acquisition Act in the decision reported in *Premavalli v. State of Kerala* 1998 (1) KLT 822. In that case, the question that was considered was because of the provisions of Section 54 of the Land Acquisition Act whether a further appeal to the Division Bench will lie from the judgment and decree of a learned Single Judge. Section 54 of the Land Acquisition Act states as follows:

Appeals in proceedings before Court-

Subject to the provisions of the Code of Civil procedure, 1908 (5 of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any decree of the High Court passed on "such appeal as aforesaid" an appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908 and in Order XLV thereof.

The above Section says that appeal from the judgment and decree of the High Court shall lie only to the Supreme Court. The question that arose in that case was whether an appeal will lie from a decree passed by a learned Single Judge in Land Acquisition Appeal. As per the procedure in the High Court, appeals below the value of Rs. 1 lakh are to be heard by a learned Single Judge and appeals above the value of Rs. 1 lakh are to be heard by a Division Bench. In that case, the appeal was heard by a learned Single Judge and an appeal was filed against the judgment before a Division Bench. The question that arose was whether because of the provisions of Section 54 of the Land Acquisition Act, an appeal will lie to the Division Bench. In that decision, Radhakrishnan, J., speaking for the Bench, had traced the history of the Kerala High Court Act. In paragraph 13 of the above decision, it is stated as follows: "The right of appeal has always been regarded as a valuable and substantial right. A provision of law which confers, extends or regulates the right of appeal would be liberally construed with the object, if possible, of maintaining the right. Section 54 of the Land Acquisition Act: has conferred a right of appeal on an aggrieved party to the High Court against the award passed by Land Acquisition Court. Legislature can also make provisions to make a decision on appeal final, enacting a finality clause". After considering the various decisions, in paragraph 21 of the above decision, it was held thus: "The principle that is deductible from the above mentioned decisions is that unless there is express or implied bar curtailing the rights of appeal, the Court should always uphold the right of appeal. As held by the Supreme Court in *C.I.T. A.P. v. Asoka Eng. Co.* (1993) 1 S.C.C. 754, it is an equally well-settled proposition of law that, if there is, a provision, conferring a right of appeal, it

should be read in a reasonable, practical and liberal manner". In paragraph 11 of the above decision, it was observed as follows:

Therefore, the Kerala High Court Act 1958 regulate the business and exercise of powers of High Court in the State of Kerala and therefore regulate the practice and procedure of the High Court. Section 3 of the Kerala High Court Act states the powers of High Court in relation to certain matters which are to be exercised by a Single Judge. Section 3(13)(b) says that an appeal from original decree or order in any suit or other proceeding, where the amount or value of the subject matter of the suit or other proceeding does not exceed one lakh rupees are to be heard by a Single Judge. Therefore, in accordance with the above mentioned Section 3(13)(b), the land acquisition appeal, L.A.A. No. 101 of 1990, was heard by a Single Judge. As per Section 5(ii) of the High Court Act, 1958 a judgment of a learned Single Judge in exercise of appellate jurisdiction as mentioned above would lie to a Bench of two Judges. Therefore, going by Section 3(13)(b) read with Section 5(ii) of the Kerala High Court Act, an appeal shall lie to a Bench of two Judges unless otherwise specially barred.

13. The Supreme Court had occasion to consider similar question in the decision reported in *Vinita M. Khanolkar Vs. Pragna M. Pai and Others*, . The question that was considered in that case was whether an appeal will lie before a Division Bench against an order of a learned Single Judge rendered by the Judge in proceedings u/s 6 of the Specific Relief Act, 1963. In that case, a suit u/s 6 of the Specific Relief Act was filed before a learned Single Judge and the learned Single Judge decreed the suit in terms thereof. An appeal was filed before a Division Bench. It was then contended that so far as the decree passed, no appeal was maintainable in view of Section 6(3) of the Specific Relief Act. The argument was that an appeal would lie against any order as under Clause 15 of the Letters Patent which is a charter under which the High Court of Bombay functioned. The Supreme Court held as follows: "Now it is well settled that any statutory provision barring an appeal or revision cannot cut across the constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under Letters Patent. No such bar is discernible from Section 6(3) of the Act. It would not be seriously contended by learned Counsel for the Respondents that if Clause 15 of the Letter Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of Clause 15 of the Letters Patent which is applicable to Bombay High Court, the said appeal was maintainable." Thus, going by the decision of the Full Bench and the decisions of the Supreme Court, it becomes clear that unless there is a right of appeal, the appeal will not lie to a Division Bench from an order of a learned Single Judge.

14. Learned Counsel for the first Respondent brought to our notice the decision of a Division Bench of the Karnataka High Court reported in *Sri Channappa v. Basappa* 1984 (1) Kar 204. There also, a similar question arose. Appellant in that

case contended that an appeal will lie u/s 4 of the Karnataka High Court Act. The Division Bench took the view that an appeal u/s 4 of the Karnataka High Court would lie against only such orders of the learned Single Judge which has the effect of affecting the rights and liabilities of the parties. An appeal would not lie u/s 4 of the Act against each and every order of the Single Judge. The ultimate order or direction to be issued u/s 340(1) is either to make a complaint or not to make a complaint. Against such a direction, an appeal lies to the superior Court u/s 341(1) of the Code if such order or direction is made by a Court other than the High Court. The only effect of the order u/s 340 of the Code, is to direct a complaint being lodged or to take a decision not to lodge a complaint. Such a direction, does not have the effect of affecting the rights or liabilities of the parties. With great respect, we don't agree with the reasoning given by the Division Bench. According to us, the observations made by the Division Bench of the Karnataka High Court is not in consonance with the observations made by the Full Bench of this Court in the decision reported in K.S. Das v. State of Kerala 1992 (2) KLT 358. We cannot agree with the Division Bench that the order passed u/s 341 of the Code of Criminal Procedure does not curtail the rights of the parties. As already stated, we failed to understand how this does not affect the rights of the parties particularly when such an order is passed by a Subordinate Court, an appeal is provided against such order. This itself shows that the order has affected the parties and that is why an appeal is provided. Another decision that was cited by the learned Counsel for the first Respondent was the decision in Pashupathi Nath De v. Murari Mohan De and Ors. 81 C.W.N. 762. In the above decision in paragraph 5, the Calcutta High Court held that the words "other than a High Court" have been introduced in Section 341 of the new Code and as such it is clear that under the new Code no appeal lies against an order passed by a Judge of this Court on an application u/s 340. The new Code came into force from April 1, 1974 and the application u/s 340 was filed on 28th of May, 1974. There is therefore no doubt that an appeal against an order passed on such application will be governed by the provisions of the new Code. After this, the Division Bench considered the question whether an appeal would lie under Clause 15 of the Letters Patent. The Division Bench, relying on the decision of the Supreme Court in South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others, , held that irrespective of any provision in Clause 15 of the Letters Patent no appeal will lie against an order passed by a Judge on an application u/s 340 of the Code. We do not agree with the above view. In the decision reported in South Asia Industries Private Ltd. Vs. S.B. Sarup Singh and Others, , the Supreme Court observed thus:

A statute may give right of appeal from an order of a Tribunal or a Court to the High Court without any limitation thereon. The appeal to the High Court will be regulated by the practice and procedure obtaining in the High Court. Under the rules made by the High Court in exercise of the powers conferred on it u/s 108 of the Government of India Act, 1915 an appeal u/s 39 of the Act will be heard by a Single Judge. Any judgment made by the Single Judge in the said appeal will,

under Clause 10 of the Letters Patent, be subject to an appeal to that Court. If the order made by a Single Judge is a judgment and if the appropriate Legislature has, expressly or by necessary implication, not taken away the right of appeal, the conclusion is inevitable that an appeal shall lie from the judgment of a Single Judge under Clause 10 of the Letters Patent to the High Court. It follows that, if the Act had not taken away the Letters Patent appeal, an appeal shall certainly lie from the judgment of the Single Judge to the High Court.

This clearly shows that unless the right of appeal has been taken away by any other law, provisions for appeal under the Letters Patent will exist. It cannot be said that on mere reading of Section 340 of the Code of Criminal Procedure, the right of appeal in Letters Patent is taken away. Further, it is also against the decision of the Supreme Court reported in *Premavalli v. State of Kerala* 1998 (1) KLT 822.

15. Learned Counsel for the first Respondent then brought to our notice the decision in *Manual v. Revenue Inspector* 1968 KLT 485. In that case, a Division Bench of this Court was considering Section 5(ii) of the Kerala High Court Act. u/s 5(ii) of the Kerala High Court Act, an appeal shall lie before a Bench of two Judges from a judgment of a learned Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a subordinate Court. Section 5 of the Kerala High Court Act before it was amended by Act 6 of 1966 is as follows:

An appeal shall lie to a Bench of two Judges from a judgment or order of a Single Judge in the exercise of original jurisdiction. An appeal shall lie to a Bench of two Judges from a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a subordinate Court, where the Judge who passed the judgment declares that the case is a fit one for appeal.

The question that was raised was whether an order of acquittal can be challenged before a Division Bench. The Division Bench held that from the context it would appear that the word "order" in Sub-section (ii) of Section 5 was intended to include only an order passed in a suit or civil proceeding. The collocation of the words "decree or order" lends support to this construction. It was therefore held that an appeal from a judgment of a learned Single Judge of the High Court in a criminal matter will not lie before a Bench of two Judges. According to us, this will not help the case of the first Respondent because this Court was only interpreting Section 5(ii) of the High Court Act. Here, the appeal is filed against the order passed u/s 5(i) of the High Court Act. Hence, according to us, the above decision does not apply in the present case.

16. Another decision cited was the decision in *Haji Sheikh Ibrahim Sahib's Private Trust Tanjore Vs. Madras State Wakf Board, Madras*, In that case, a Division Bench of the Madras High Court held that no appeal lies under Clause 15 of the Letters Patent, against an order of a Single Judge, while presiding over the

Criminal Sessions of the High Court, finding a person guilty of "ex facie" contempt and sentencing him to fine. The reason is that though such an order or sentence would be a "judgment" it is one passed "in the exercise of criminal jurisdiction". Admittedly, the jurisdiction exercised here is the original jurisdiction and not criminal jurisdiction. Hence, this decision does not apply to the facts of the present case. The next decision cited was the decision of a Full Bench of the Madras High Court, reported in K.V. Muniswamy Mudaliar Vs. Kajaratnara Pillai and Ots., There, the question was whether a Division Bench can revoke sanction given u/s 195 of the Code of Criminal Procedure by a learned Single Judge in exercising the power under Clause 15 of the Letters Patent. There also, the view taken was that no appeal lies to the High Court from the decision of a Judge of the High Court in the exercise of criminal jurisdiction. As already stated, the position here is what is exercised is only original jurisdiction and not criminal jurisdiction.

17. Learned Counsel for the first Respondent brought to our notice the decision reported in K. Karunakaran Vs. T.V. Eachara Warriar and Another, . There, from an order passed u/s 340 of the Code of Criminal Procedure by a Division Bench of this Court, an appeal was preferred before the Supreme Court under Article 136 of the Constitution of India. In the course of the judgment, their Lordships of the Supreme Court referred to Section 341 of the Code of Criminal Procedure. In paragraph 19 of the judgment, the Supreme Court stated as follows: "An order of the High Court made under Sub-section (1) or Sub-section (2) of Section 340 is specifically excluded for the purpose of appeal to the superior Court u/s 341(1), Code of Criminal Procedure. This is, therefore, a new restriction in the way of the Appellant when he approaches this Court under Article 136 of the Constitution". Thereafter, in paragraph 26 of the judgment, the Supreme Court observed as follows:

It is well settled that this Court under Article 136 of the Constitution would come to the aid of a party when any gross injustice is manifestly committed by a Court whose order gives rise to the cause for grievance before this Court. Even when two views are possible in the matter it will not be expedient in the interest of justice to interfere with the order of the High Court unless we are absolutely certain that the two pre-conditions which are necessary for laying a complaint after an enquiry u/s 340 are completely absent. The two pre-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution u/s 193, I.P.C.

Learned Counsel for the first Respondent tried, to argue that as per the above decision, an appeal u/s 5 of the Kerala High Court Act is also not maintainable. We are of the view that from the judgment of the Supreme Court, it cannot be said that there was a bar for an appeal u/s 5 of the Kerala High Court Act. So far as the appeal from a Division Bench of the High Court is concerned, only a petition under Article 136 of the Constitution will lie and the Supreme Court

refused to interfere under Article 136 of the Constitution on the ground that it will not be expedient in the interest of justice to interfere with the order of the High Court and because the two pre-conditions which are necessary for laying a complaint after an enquiry u/s 340 are completely absent. The two pre-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution u/s 193, I.P.C.

18. The allegation in the petition filed by the first Respondent is that the Petitioner has committed offences under Sections 463, 471, 475 and 476 of the Code of Criminal Procedure. In this context, it is pertinent to note that even Ext. R-4 (a) is only a photo copy. According to the first Respondent, after he saw Ext. R-4 (a), he was convinced that the document was a forged one. Hence, he sent the document along with the other documents, which contained the admitted signatures of her husband to Kashyap. The report of Kashyap is produced as Ext. P-18. A perusal of Ext. P-18 will show that a final opinion has not been expressed by the expert. On the other hand, what was stated is that opinion has been given on the basis of the photo copies and reserve his right to confirm it by examination of the original disputed and admitted documents, before giving evidence in the Court. Thus, the handwriting expert himself has given the opinion that what he has considered is only the photo copies and only after confirmation by examining the undisputed admitted documents that evidence can be given in the Court. The above report was relied on by the learned Single Judge. The learned Single Judge also verified the admitted signatures with that of the disputed signatures. Thus, the learned Single Judge took the view that the contention raised in the C.M.P. was correct and that Ext. R-4 (a) and other documents mentioned were forged by the Appellant. We are of the view that so far as this aspect is concerned, the learned Single Judge was wrong in holding that there is evidence to show that the documents were fabricated. The only evidence adduced before the learned Single Judge was Ext. P-18, the report of the handwriting expert.

19. As already stated, the handwriting expert has given his report stating that a final opinion can be given only after the original documents are produced. The learned Single Judge compared with the signature on the photo copies and then came to the conclusion that there was prima facie proof of falsification. We are afraid that the learned Single Judge was not correct in taking such a view. This is because the original of Ext. R-4 (a) and other documents which were now found to have been falsified, were not produced before the learned Single Judge. Further, we are of the view that the mere comparison of the signatures, the Court cannot come to the prima facie conclusion of falsification. Hence, we are of the view that there is no evidence to show that Ext. R-4 (a) and other documents were forged. Further, we are of the view that so far as this case is concerned, the proceedings cannot be initiated u/s 340 of the Code of Criminal Procedure. There is no case that Ext. R-4 (a) and other documents were forged after they were produced in Court. In such circumstances, the question is whether the

proceedings u/s 340 of the Code of Criminal Procedure can be initiated.

20. The Supreme Court had occasion to decide this question in *Sachida Nand Singh and Another Vs. State of Bihar and Another*, . There the question raised was whether the bar contained u/s 195(1)(b)(ii) of the Code of Criminal Procedure is not applicable to a case where forgery of the document was committed before the document was produced in a Court. Thomas, J. speaking for the Bench, held as follows:

12. The scope of the preliminary enquiry envisaged in Section 340(1) of the Code is to ascertain whether any offence affecting administration of justice has been committed in respect of a document produced in Court or given in evidence in a proceeding in that Court. In other words, the offence should have been committed during the time when the document was in custodia legis.

13. It would be strained thinking that any offence involving forgery of a document if committed for outside the precincts of the Court and long before its production in the Court, could also be treated as one affecting administration of justice merely because that document later reached the Court records.

The Supreme Court followed its earlier decisions in *Raghunath and Others Vs. State of U.P. and Others*, , *Mohan Lal and Others Vs. The State of Rajasthan and Another*, and *Legal Remembrancer of Govt. of West Bengal Vs. Haridas Mundra*, . Thus, it can be seen that there is no case before us that the documents were forged after they were produced in Court. Further, in Ext. P-5 order of the Government, it is seen that the document was produced in the case. Hence, according to us, the initiation of the proceedings u/s 340 of the Code of Criminal Procedure against the fourth Respondent is without jurisdiction.

21. Learned Counsel for the first Respondent then contended that even though the matter arose in proceedings under Article 226 of the Constitution of India, the jurisdiction exercised by the learned single Judge is u/s 340 of the Code of Criminal Procedure. Hence, an appeal will not lie. We don't find any basis for this contention. According to us, merely because a provision u/s 340 of the Code of Criminal Procedure was being considered, the jurisdiction exercised by the Court cannot be said to be criminal jurisdiction. The offences cannot be tried without a complaint from the Court and before sending such complaint u/s 340, the Court has to be satisfied (hat a prima facie case has been made. It may arise in Criminal Court, Civil Court, Revenue Court or Tribunal. Merely because such proceedings are u/s 340 of the Code of Criminal Procedure, it cannot be said that what was being exercised is criminal jurisdiction. We are supported by the provisions u/s 341 of the Code of Criminal Procedure itself. According to Section 341 of the Code of Criminal Procedure, an order passed u/s 340 of the Code of Criminal Procedure by a Court other than a High Court, then an appeal lies to the Court to which ordinary appeal lies from such Court. Thus, if an order is passed u/s 340 of the Code of Criminal Procedure by a Munsiff's Court, appeal will lie to the District Court. But on the other hand, if such proceedings are taken before a

Chief Judicial Magistrate, it lie to the Sessions Court. According to us, the proceedings are tainted with the colour of jurisdiction of the Court in which proceedings arise.

22. After considering the entire aspects of the case, we are of the view that the learned single Judge was not correct. Hence, we set aside the order of the learned single Judge. Writ Appeal is allowed.