

(2025) 10 JH CK 1283

In the Jharkhand High Court

Case No : Writ Petition (Civil) Nos. 5903, 5904, 5905 Of 2025

Nexgen Mahindra Sales and Service Centre

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 17-10-2025

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 133, 226, 227, 300A
Bhartiya Nagrik Suraksha Sanhita, 2023 — Section 35(3), 106
Code Of Criminal Procedure, 1973 — Section 102, 321, 482
Indian Penal Code, 1860 — Section 107, 109, 120B, 409, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 7(c), 12, 13(1)(a), 13(2)

Citation : (2025) 10 JH CK 1283

Hon'ble Judges : Deepak Roshan, J

Bench : Single Bench

Advocate : Indrajit Sinha, Rishabh Kumar, Ajay Kumar Shah, Sonal Sodhani, Priyanaka Agarwal, Nilesh Kumar, Sonal Sodhani, Sumeet Kumar Gadodia, Shilpi Sandil Gadodia, Ritesh Kumar Gupta, Shruti Shekhar, Nillohit Choubey, Sanya Kumari

Final Decision : Dismissed

Judgement

Deepak Roshan, J

1. Since all the above writ petitions involve identical question of facts and law and with consent of parties were heard together.
2. In all the three writ petitions, Petitioners have assailed the action of Respondent-Anti Corruption Bureau, State of Jharkhand , wherein premises of Petitioner-companies comprising of showrooms/workshops have been temporarily sealed by Respondent-Anti Corruption Bureau (hereinafter to be referred as 'ACB') on 28th/29th September, 2025 in connection with ACB Ranchi P.S. Case No. 09 of 2025 on the ground that sealing of immovable property carried out by Respondent-ACB is beyond their powers under Section 106 of Bhartiya Nagrik Suraksha Sanhita, 2023 (for short 'BNNS') and also against the principles of natural justice and, accordingly Writ of Mandamus is prayed for

removal of the seal and releasing of premises.

Further prayer has been made for directing the concerned Respondents to pay compensation to Petitioner-companies for illegal sealing the premises with ulterior motive during the peak period of Puja season, only to tarnish the goodwill of Petitioner-companies.

3. The facts involved in all the three writ petitions are almost identical and facts pertaining to W.P.(C) No. 5904 of 2025 (Nexgen Mahindra Sales and Service Centre, Hazaribagh) is noted herein for convenience.

4. Petitioners are having showrooms and workshops relating to Four-wheelers and one of the Directors of Petitioners is Mr. Binay Kumar Singh.

5. An F.I.R. was lodged by Respondent-ACB, Ranchi, being ACB Ranchi P.S. Case No. 09 of 2025 for offences under Sections 420, 467, 468, 471, 409, 107, 109, 120B of Indian Penal Code and Sections 7(c), 12, 13(2) read with Section 13(1) (a) of Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amendment) Act, 2018. The said F.I.R. was instituted against officials of Jharkhand State Beverages Corporation Ltd. as well as contractors on 20th May, 2025 alleging, inter alia, that some of the contractors obtained contract on fake Bank Guarantee in connivance with officials.

6. Although Director of Petitioner-companies Binay Kumar Singh was not named in the F.I.R, but was later served with a notice under Section 35(3) of BNSS, 2023 and, thereafter, he applied for anticipatory bail which was granted vide order dated 07.07.2025 passed in A.B.P. No. 1631 of 2025 by the Court of Ld. Special Judge, ACB, Ranchi. Thereafter, said Director was again served with a notice under Section 35(3) which was duly complied by him, but he was arrested by Respondent-ACB in respect of another case being ACB, Hazaribagh P.S. Case No. 11 of 2025, on 25.09.2025.

7. On 28.09.2025 and 29.09.2025, raids were conducted on several branches of Petitioner companies across State of Jharkhand including its showrooms and workshops at Ranchi, Hazaribagh and Gumla and during course of search and seizure; CPUs, Laptops, records and files of Petitioner-companies were seized even though Petitioner-companies were not named in the F.I.R. and as per the Petitioner-companies, such action of search and seizure was carried out without any warrant.

8. It was further pleaded that Respondent-ACB, despite carrying out search and seizure exercise and recovering documents and digital devices from Petitioner companies' premises, sealed the premises of Petitioner-companies. It was specifically pleaded that although sealing has been described as 'temporary'; in effect the sealing of the premises is for an indefinite period, as the premises which are immovable properties have been sealed since 29.09.2025 itself.

9. While giving reference to Section 102 Cr.P.C./106 of BNSS, 2023, it was specifically pleaded that in criminal proceedings, power to seize property does

not give power to seize immovable property and there is no provision under criminal law/proceedings which provide for sealing of immovable property. Reference is also made in the writ application to provisions of Article 300A of the Constitution of India to assert that right to property is constitutional right which cannot be taken away by Respondents in illegal exercise of powers under Section 106 of BNSS, 2023.

10. On the aforesaid primary facts, writ petitions have been filed for the reliefs stated hereinabove.

11. Per contra, Counter Affidavit has been filed on behalf of Respondent-ACB and, in the Counter Affidavit, it has been stated that during the course of investigation of ACB Case No. 09 of 2025 dated 20.05.2025, name of the Director of Petitioner-companies surfaced and various incriminating evidence were found against him and despite service of notice under Section 35(3) of BNSS 2023, no cooperation was extended by the Director of Petitioner-company in course of investigation.

12. During investigation, confidential information was received that non-F.I.R. accused is tampering with material evidences in respect of the pending investigation including mass deletion of data resulting into tampering and destruction of digital devices and under the circumstances, power was exercised under Section 106 of BNSS for search and seizure of the properties related to aforesaid non-F.I.R. accused and in respect of four separate showrooms/workshops, search and seizure exercise was carried out.

13. While referring to search and seizure proceedings, it was pleaded that several incriminating documents were recovered during the search proceeding including digital devices and the premises in question were sealed temporarily for facilitating search and seizure in order to prevent tampering of evidences. Seized digital devices were forwarded immediately for forensic examination to Directorate of Forensic Science and Laboratory, Jharkhand, Ranchi through Special Judge, ACB, Ranchi and interim reports were received showing mass deletion of data being possible sign of tampering or destruction of digital devices.

14. In respect of writ petition i.e. Nexgen Solution Technologies Pvt. Ltd., in the Counter Affidavit it has been specifically pleaded that after receipt of interim FSL reports on 11th October, 2025, further search and seizure exercise was carried out in showroom/workshop of the said company and again premises were temporarily sealed. During said search and seizure also, certain further evidences were recovered.

15. On the aforesaid facts, Respondent-ACB justified its action of temporarily sealing of the premises, which according to it, is in continuation of the investigation proceeding i.e. search and seizure under section 106 of BNSS.

16. Writ Petitions being W.P.(C) No. 5904 of 2025 (Nexgen Mahindra Sales and Service Centre, Hazaribagh) and W.P.(C) No. 5905 of 2025 (M/s. S.S. Motogen

Private Ltd. Ranchi) were mentioned before this court with only Filing Nos. for hearing the writ petitions on urgent basis and, accordingly, writ petitions were notified to be heard on 09.10.2025. On the said date, this court passed an order directing Respondents to unseal the showrooms by 10th October, 2025 up to 12.00 P.M. and further gave certain direction and guidelines which were to be followed by Respondent-ACB.

17. Further, on 10.10.2025, W.P.(C) No. 5903 of 2025 (M/s. Nexgen Solution Technologies Pvt. Ltd.) was also mentioned for urgent listing and same was notified for hearing on 10.10.2025 itself. When the matter was taken up for consideration, Mr. Sumeet Gadodia, counsel for Respondent-ACB appeared and raised preliminary objection regarding maintainability of the writ petition by stating, inter alia, that writ petition titled as 'Civil Writ Jurisdiction' is not maintainable and only 'Criminal Writ Jurisdiction' is maintainable and a request was made before this Court that the matters may be adjourned enabling Respondent-ACB to file its Counter Affidavit as well as Interlocutory application raising issue of maintainability of writ petitions including recall of interim order passed in two writ petitions.

Looking into urgency of the matters, the matters were listed again on 13.10.2025 and apart from filing of Counter Affidavits, three separate Interlocutory application were filed by Respondent-ACB being I.A. No. 14099 of 2025, I.A. No. 14100 of 2025 and I.A. No. 14101 of 2025 raising objection regarding maintainability of the writ petitions including recall of earlier order of stay passed in two writ petitions.

18. Matters were taken up for consideration before this Court on 13.10.2025 and in view of Interlocutory applications filed by Respondent-ACB raising question about maintainability of writ petitions, the matters were fixed for hearing on 14th October, 2025 on the issue of maintainability of writ petitions including recall of interim orders. The matters were heard at length on the said date and Judgment was reserved on the aforesaid issues.

19. Mr. Sumeet Gadodia, learned counsel for Respondent-ACB vehemently argued that writ petitions filed by Petitioners as Writ Petitions (Civil) invoking Civil Writ Jurisdiction of this Court, are not maintainable and, at best, Writ Petition (Criminal) could be maintainable. It was submitted that the issue, whether Civil Writ Petition or Criminal Writ Petition would lie against the action of Respondent-ACB in temporarily sealing of showrooms/workshops premises of Petitioners, goes to the root of jurisdiction of this Court, especially because, as per Roster defined by Hon'ble The Chief Justice of Jharkhand High Court, 'Civil Writ Petitions' and 'Criminal Writ Petitions' are assigned to different Single Judges and this Bench has been assigned Roster of 'Civil Writ Jurisdiction', and, 'Criminal Writ Jurisdiction' has been assigned by Hon'ble the Chief Justice to another Bench, and, if it is held that writ petition is in the nature of Criminal Writ Petition, any order passed by this Single Bench would be deemed to be void and a nullity. Reliance was placed upon a recent decision of Hon'ble Supreme Court in the case

of 'Garden Reach Shipbuilders and Engineers Limited Vs. Grse Limited Workmens Union and Ors, 2025, SCC OnLine SC 582.

20. Further, while relying upon a recent Division Bench decision of Hon'ble Kerala High Court in 'Trivandrum Apollo Towers Pvt. Ltd. & anr. Vs. Union of India & Ors. 2025:KER:26139, it was submitted that almost identical issue came up for consideration before Division Bench of Kerala High Court, wherein issue of maintainability of writ petition as 'Civil Writ Jurisdiction' or 'Criminal Writ Jurisdiction' was raised before Division Bench. It was argued that Division Bench in aforesaid Judgment after considering the Judgment of Hon'ble Supreme Court in the case of 'Garden Reach Shipbuilders and Engineers Limited' (supra) remanded the matter back to learned Single Judge to first adjudicate the issue as to whether the order challenged would fall within W.P.(Civil) or W.P.(Criminal) Jurisdiction. Laying emphasis on the aforesaid Judgment, it was vehemently submitted that the issue of maintainability of the writ petitions is to be adjudicated first by this Court before adverting into the merit of the case, as it goes to the root of jurisdiction of this Court.

21. Ld. Counsel further submitted that, admittedly, even as per Petitioners, Respondent-ACB allegedly exceeded its jurisdiction while carrying out search and seizure operation under Section 106 of BNSS and, thus, power exercised is under criminal law and against such exercise of power, only Criminal Writ petition would be maintainable and not Civil Writ petition. It was further submitted that exercise of temporary sealing of premises has been undertaken pursuant to search and seizure operation under Section 106 of BNSS and reliefs sought for in petition under Article 226 is against exercise of power and purported exceeding of power under criminal law and, thus, proceeding would be a criminal proceeding and only Writ Petition (Cr.) would be maintainable.

22. It was further submitted that exercise of power by the High Court under Article 226/227 of the Constitution of India, if it arises out of or relates to investigation, inquiry or trial would fall within 'Criminal Writ Jurisdiction' of High Court and not 'Civil Writ Jurisdiction'.

23. It was further argued that determination of jurisdiction to be exercised by this Court, whether 'Criminal' or 'Civil' would also have direct nexus and bearing to maintainability of intra court Appeal (L.P.A.) before this Court. As per Clause 10 of Letters Patent Jurisdiction of this Court, no appeal lies before Division Bench against exercise of power under Criminal Writ Jurisdiction and vice versa. Thus, on aforesaid ground also, it was submitted that the issue of maintainability of Writ Petition (Civil) or Writ Petition (Criminal) is to be decided at the outset. He further relied upon following Judgments on the proposition that if the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, civil jurisdiction before Hon'ble Court would not be maintainable: -

(i) Vipul Gupta Vs. State..... (2014) SCC OnLine Delhi 434

(ii) Ram Kishan Fauji v. State of Haryana, (2017) 5 SCC 533,

(iii) Nagpur Cable Operators' Association v. Commissioner of Police, Nagpur & Anr. 1995 2 MHLJ 753.

24. Per contra, Mr. Indrajit Sinha & Mr. Nilesh Kumar, Counsels for Petitioners vehemently opposed the issue of maintainability raised by Respondent-ACB and strenuously contended that issue of maintainability has been raised as an afterthought especially because this Court has earlier entertained the writ petitions and has passed interim order for unsealing of the premises and said order has not yet been complied by Respondent-ACB. Referring to Judgment of Hon'ble Apex Court in the case of 'Nevada Properties Private Limited v. State of Maharashtra & Anr, (2019) 20 SCC 119 it was submitted that Hon'ble Supreme Court, in said Judgment, while considering provisions of Section 102 Cr.P.C. equivalent to Section 106 BNSS, categorically held that power of Police Officer under Section 102 of the Code would not include power to attach, seize and seal an immovable property. On the strength of above, it was stated that in view of admitted fact that order for temporary sealing of premises has been passed in exercise of power under Section 106 of BNSS, said exercise of power is wholly without jurisdiction and non-est in the eye of law and amenable to challenge under Article 226 of the Constitution of India.

It was argued that Respondents, without addressing the issue on merit regarding jurisdiction to temporary seal any immovable property of Petitioner is raising hyper technical objection regarding nomenclature of writ petition as 'Civil Writ Jurisdiction' or 'Criminal Writ Jurisdiction', which is nothing but an attempt to thwart the reliefs sought by Petitioners in the writ petitions. On this ground, it was submitted that issue of maintainability of writ petitions raised is completely misconceived and writ petitions should be adjudicated on their own merit.

25. However, in alternative, it was submitted that the issue, whether power to be exercised by this Court under Article 226 of the Constitution of India as a civil proceeding or a criminal proceeding, is to be adjudged simultaneously with the issue of jurisdiction of Respondent-ACB in sealing immovable property/showrooms of Automobiles of Petitioners, and, request was made to this Court to answer both the issues together.

26. Elaborating on the submissions of maintainability of writ petitions as a 'civil proceedings' or 'criminal proceeding' it was strenuously argued that nature of proceeding is to be decided on touchstone of the nature of rights that is sought to be enforced as well as nature of reliefs claimed in consequence thereof. It was submitted that in order to adjudicate that whether the proceeding is 'criminal' or 'civil' proceeding, nature of rights alleged to have been violated and nature of reliefs claimed are only required to be looked into by the Court and not the nature of proceeding which led to a breach of right and prayer for relief.

27. It was submitted that present writ petitions have been filed by writ petitioners claiming infringement of their fundamental right to carry on business guaranteed under Article 19(1)(g) of the Constitution as well as their

constitutional right to property guaranteed under Article 300A of the Constitution and, thus, the nature of right infringed is a right to carry on business and a right to property which would definitely fall under 'civil proceeding' and merely because the right infringed arises out of criminal proceeding pursuant to an action invoked under Section 106 of BNSS would not change the nature of proceeding into a criminal proceeding. Reference was further placed upon the Judgment of Hon'ble Apex Court in the case of M.C. Mehta v. Union of India, (2021) 20 SCC 465 and it was submitted that the ambit and scope of Article 300A of the Constitution of India was considered by Hon'ble Supreme Court and in the said case it was held that power of sealing of property carries civil consequences. Further reliance was placed upon a Judgment of this Court in the case of S.R.P. Oil Pvt. Ltd. v. State of Jharkhand, 2020 SCC OnLine Jhar 813 wherein an act of sealing any property was held to carry civil consequences. On the strength of above two Judgments, it was vehemently argued that sealing of property is infringement of civil right and relief claimed for direction for unsealing of properties in the writ petition by way of mandamus would also fall within the purview of enforcement of civil proceeding and this Civil Writ would be maintainable.

28. Further reliance was also placed by Writ Petitioners in the Judgment of Ram Kishan Fauji (supra) and by relying upon various paragraphs of said Judgment, it was contended that in the said Judgment Hon'ble Supreme Court held that a civil proceeding would not mean a proceeding only in the nature of or arising from a civil suit, but a petition for issue of high prerogative writ under Article 226 of the Constitution of India in certain cases would also be treated as 'civil proceedings'. Further, relying upon the said Judgment, it was submitted that Hon'ble Supreme Court, while examining the contours of criminal proceeding, held that a criminal proceeding is ordinarily one in which if carried to its conclusion it may result in the imposition of sentence such as, death, imprisonment, fine or forfeiture of property including proceeding in which larger interest of State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed.

29. Further reliance was placed upon Para-30 of the said Judgment to contend that the character of the proceeding would not depend upon nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed.

30. Further reliance was placed upon Judgment of Hon'ble Supreme Court in the case of S.A.L. Narayan Row and Anr. v. Ishwarlal Bhagwandas and Anr., 1965 SCC OnLine SC 18 wherein Hon'ble Court was considering the issue as to whether an appeal lies to Hon'ble Supreme Court with certificate granted under Article 133 of the Constitution of India in respect of revenue proceeding. Reliance was placed upon Para-16 of the said Judgment, wherein Hon'ble Apex Court observed that the expression 'civil proceeding' cannot be restricted only to those

proceedings which arise out of civil suits or proceedings. In the said Judgment, it was held that when the High Court exercises its jurisdiction under Article 226 on the instance of aggrieved party seeking relief against infringement of civil rights by authorities purporting to act in exercise of the powers conferred upon them by revenue statutes, the said proceeding would be termed as 'civil proceeding'.

31. Having heard learned counsels for the parties and on careful examination of relevant facts and circumstances of the cases, this Court is of the opinion that issue regarding maintainability of instant writ petitions is required to be decided at the first instance, as said issue goes to the root of jurisdiction of this Bench. Admittedly, this Bench has been assigned with Roster by Hon'ble The Chief Justice, Jharkhand High Court to hear writ petitions arising out of civil proceedings and not writ petitions arising out of criminal proceedings. The Roster of criminal writ petitions has been assigned to another Single Bench by Hon'ble The Chief Justice.

32. In light of the above, reference may be made to a recent decision of Hon'ble Supreme Court in the case of Garden Reach Shipbuilders and Engineers Ltd. (supra). In the said Judgment, Hon'ble Apex Court was considering an order passed by Division Bench of High Court of Judicature at Calcutta. In the said case, initially a Writ Petition (Service Matter – Group VI) was filed before Single Judge, wherein Writ Petitioner claimed compassionate appointment. Learned Single Judge, in the said matter, deferred hearing of the writ petition on the ground that the issue raised in said writ petition was subject matter of reference to a larger Bench before Hon'ble Supreme Court. The said order of deferring hearing of writ petition, was challenged before Division Bench of Calcutta High Court having Roster to hear Appeal from the order of Single Bench. Learned Division Bench, which was then ceased with the matter of hearing in intra-court Appeal, with the consent of all the parties, transferred the writ petitions to be heard by Division Bench itself, and, accordingly passed final order after hearing both the parties directing appointment of Writ Petitioner on compassionate ground. Said order was challenged before Hon'ble Supreme Court and one of the issues before Hon'ble Supreme Court was whether Division Bench had jurisdiction to transfer to itself hearing of writ petition as the Roster assigned to hear 'Service Matter' by Hon'ble The Chief Justice, Calcutta High Court was only assigned to Single Judge and not to Division Bench. It was argued that exercise of power by Division Bench was a nullity and void ab-initio in view of the Roster assigned by Hon'ble The Chief Justice.

33. Hon'ble Supreme Court, in the said decision, vide paras 8 and 9, has held as under:-

" 8. The cause-list of the predecessor Division Bench dated March 11, 2024 would reveal that it had, inter alia, the determination to hear "APPEAL FROM ORDER RELATING TO SERVICE (GROUP VI) INCLUDING APPLICATIONS CONNECTED THERETO [EXCLUDING ...]". We have further noticed from the cause-lists of August 16, 2024 (the date on which the writ petition, after hearing,

was reserved for judgment) and September 4, 2024 (the date when the writ petition was allowed by the impugned order) that the Division Bench had the same determination, i.e., to hear, inter alia, "APPEAL FROM ORDER RELATING TO SERVICE (GROUP VI) INCLUDING APPLICATIONS CONNECTED THERETO [EXCLUDING ...]". Moreover, as per the Roster set by the Chief Justice, determination was not given either to the predecessor Division Bench or to the Division Bench to hear writ petitions under 'Service (Group VI)' of the Classification List appended to the Writ Rules. We have also noticed that determination to hear writ petitions relating to Group VI, as made by the Chief Justice, was given to single benches on the relevant dates. On the face of such determination, neither the predecessor Division Bench nor the Division Bench of the High Court could have assumed jurisdiction to hear the writ petition premised on the legal position that they had jurisdiction to hear appeals from orders passed on writ petitions relating to Group VI."

"9. In the light of the law laid down by the High Court itself¹⁵ in *Sohan Lal Baid v. State of West Bengal* ¹⁶, as approved by a three-Judge Bench of this Court in *State of Rajasthan v. Prakash Chand* which has subsequently been approved by a Constitution Bench in *Campaign for Judicial Accountability and Reforms v. Union of India*, as well as Rule 26 (supra), we hold that any order which a bench comprising of two judges or a single judge may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, such an order is without jurisdiction. In other words, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the *primus inter pares*, has been vested with the power and authority to set the Roster, as articulated in *Sohan Lal Baid* (supra), and such Roster is final and binding on all the 'Companion Justices' of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction."

(Emphasis supplied)

34. Thus, Hon'ble Supreme Court, in the said case, clearly held that it is the Chief Justice of a High Court who has been vested with the power and authority to set Roster and such Roster is final and binding upon all companion Judges and any order of adjudication passed beyond allocation is void and is to be considered as a nullity.

35. Said Judgment of Hon'ble Supreme Court has been recently considered by Division Bench of Kerala High Court in the case of '*Trivandrum Apollo Towers Pvt. Ltd. & Anr.*' (supra). In the said case, a Civil Writ Petition was filed on almost identical facts where Enforcement Directorate, while carrying out search and seizure operation, directed the freezing of Bank account of Writ Petitioner. Learned Single Judge rejected the prayer for interim relief, which was challenged before Division Bench of Kerala High Court. The Kerala High Court, after noticing the Judgment of Hon'ble Supreme Court in the case of *Garden Reach*

Shipbuilders and Engineers Ltd. (supra) held, inter alia, that the issue, as to whether learned Single Judge having Roster to hear civil writ petitions could have entertained aforesaid writ petition challenging action of freezing of Bank account, is an issue which goes to the root of jurisdiction of learned Single Judge and said issue is to be decided at the first instance. The Division Bench held that said consideration as to whether criminal writ petition or civil writ petition would be maintainable, is an exercise which has to be carried out by learned Single Judge at the first instance and, accordingly, remanded the matter back to learned Single Judge in following terms:-

"8. Accordingly, we dispose of the Appeal to enable the learned Single Judge to examine whether W.P.(C) No. 44196 of 2024 is a Civil Writ Petition or Criminal Writ Petition. If the learned Single Judge comes to the conclusion that the writ petition is a Criminal Writ Petition and does not pertain to the assigned Roster, then as per the law declared by the Hon'ble Supreme Court in the case of Garden Reach Shipbuilders and Engineers Limited, the order dated 24th February 2025 will be treated as a nullity and the writ petition will have to be placed as per the Roster. If the learned Single Judge is of the opinion that the writ petition is a Civil Writ Petition and pertains to the Roster, and consequently the impugned order is within the jurisdiction, then we permit the Appellants to restore the Appeal for consideration of the Division Bench."

36. Thus, from perusal of said Judgment also, it would be evident that determination of the issue, as to whether a Writ Petition would be maintainable as Civil Writ Petition and/or as a Criminal Writ Petition, goes to the root of jurisdiction of this Bench and is not a matter of mere wrong nomenclature or incorrect nomenclature given in the writ petition. Accordingly, I am of the opinion that the issue regarding maintainability of the writ petition as Civil Writ Petition or Criminal Writ Petition is to be decided at first instance and the issue of merit can only be decided thereafter and, hence, contention of Writ Petitioners that the issue of maintainability and merit should be decided together and/or simultaneously, is hereby rejected.

37. I now propose to deal with the issue, as to whether the present writ petition labeled as Civil Writ Jurisdiction, is maintainable, or Criminal Writ Petition would be maintainable.

38. Article 226 of the Constitution of India empowers a High Court to issue orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and Certiorari, or any of them, for the enforcement of any of the rights conferred in Part-III, or for any other purpose. The Constitution does not provide that jurisdiction to be exercised by High Court under Article 226 would be civil or criminal. 'Civil Proceeding' or 'Criminal Proceeding' is not defined anywhere. The Constitution of India does not define the expression 'Civil Proceedings', nor does the General Clauses Act. The two proceedings are entirely different and distinct though, at times, it may overlap to some extent.

39. Writ Petitioners have raised a very vital argument that proceeding, whether civil or criminal, is to be decided only on the basis of nature of the rights infringed and nature of reliefs claimed and not upon the provisions of Statutes and/or the proceedings which has resulted into infringement of rights resulting into nature of relief claimed due to such infringement.

40. This Court is of the opinion that in order to determine, whether proceeding would be 'Civil Proceeding' or 'Criminal proceeding', would not only be dependent upon the nature of rights infringed or nature of reliefs claimed, but would also require a determination as to the proceedings and/or power exercised resulting into infringement of the rights. Reference in this regard may be made to Clauses 10 and 15 of Letters Patent, which read as under: -

"10. Appeal to the High Court from Judges of the Court.—And we do further ordain that an appeal shall lie to the said High Court of Judicature at Patna from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order) made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a Judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, One thousand nine hundred and twenty nine, in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, where the Judge who passed the Judgment declares that the case is a fit one for appeal; but that the right of appeal from other Judgments of Judges of the said High Court or of such Division Court shall be to Us, our Heirs or Successors in Our or Their Privy Council, as hereinafter provided. "

xxx xxx xxx

"15. Ordinary original criminal jurisdiction of the High Court.—And We do further ordain that the High Court of Judicature at Patna shall have ordinary original criminal jurisdiction in respect of all such persons within the Province of Bihar and Orissa as the High Court of Judicature at Fort William in Bengal had such criminal jurisdiction over immediately before the publication of these presents."

41. Aforesaid pari materia provision of Clause-10 has been subject matter of interpretation by various High Courts including Hon'ble Supreme Court in a catena of decisions. The Delhi High Court, in the case of 'Vipul Gupta' (supra) was considering the question as to whether decision of Lt. Governor of Delhi in

not allowing the application for withdrawal of case under Section 321 Cr.P.C. would be an exercise of power under 'Civil Proceeding' or 'Criminal Proceeding'. The writ petition challenging the order of Lt. Governor of Delhi was filed as 'Civil Writ Petition' which was subject matter of intra-court appeal before Delhi High Court, and, Delhi High Court, vide Para 14, held as under:-

"14..... Even though the challenge in the writ petitions was to a decision of Hon'ble the Lieutenant Governor but the said decision was relating to the prosecution already underway of the appellants and the direct effect of the dismissal of the writ petitions is of continuation of the prosecution which may result in imposition of sentences such as death, imprisonment, fine or forfeiture of property, of the appellants. We are thus of the view that this Court while dealing with the writ petitions was exercising its criminal jurisdiction. It cannot be also lost sight of that the writ petitions were intended to avoid the consequences of criminal proceedings initiated under the Code of Criminal Procedure and concerned with rights in criminal laws domain. We have thus no doubt that the learned Single Judge, in dealing with the writ petitions was exercising "criminal jurisdiction" and these letters patent appeals are not maintainable."

42. Said Judgment of the Delhi High Court has been quoted with approval by Hon'ble Supreme Court in the Judgment of 'Ram Kishan Fauji' (supra), which has been relied upon by both the Writ Petitioner and Respondents. In the aforesaid decision, Hon'ble Supreme Court was considering the question as to whether intra-court appeal would be maintainable against an order passed in writ jurisdiction, wherein order of Lokayukta, Haryana directing investigation and lodging of F.I.R. was under challenge. Hon'ble Supreme Court in the said Judgment, considering its earlier Judgment in the case of 'Chandrdashekaraiah V Janekera C. Krishna (2013) 3 SCC 117, noticed that although Lokayukta acts as a quasi-judicial authority, but its functions under the Lokayukta Act is investigative in nature, and, the nature of power exercised is investigative which results into recommendation. The Supreme Court further in the case of 'Ram Kishan Fauji' (supra), vide Para 45, held as under:-

"45. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra-court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdictions is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in 'Hari Vishnu Kamath v. Ahmad Ishaque' AIR 1955 SC 233, does not render any assistance to the argument advanced by the learned counsel for the respondent State."

(Emphasis supplied)

43. After examination of provisions of Lokayukta Act and the powers exercised by Lokayukta under the relevant law, which was investigative in nature, Hon'ble Supreme Court has held that the proceeding, nature and relief claim in any writ petition which would be demonstrative of the fact that whether exercise of power in the writ petition is under 'Criminal jurisdiction' or 'Civil jurisdiction'. Ultimately, Hon'ble Supreme Court held that any order passed by Lokayukta directing for any investigation, etc. is an exercise of power which was investigative in nature and, hence, no Letters Patent Appeal would lie under Clause 10, as the proceedings were connected to a criminal jurisdiction.

44. Hon'ble Supreme Court, in Para-56, further held as under:-

"56. The conception of "criminal jurisdiction" as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 Cr.P.C., there would be no space for an intra-court appeal, would create an anomalous, unacceptable and inconceivable situation. The provision contained in the Letters Patent does not allow or permit such an interpretation. When we are required to consider a bar or non-permissibility, we have to appreciate the same in true letter and spirit. It confers jurisdiction as regards the subject of controversy or nature of proceeding and that subject is exercise of jurisdiction in criminal matters. It has nothing to do whether the order has been passed in exercise of extraordinary jurisdiction under Article 226 of the Constitution or inherent jurisdiction under Section 482 Cr.P.C."

(Emphasis supplied)

45. In the case of Nagpur Cable Operators Association (supra), Bombay High Court was also considering the issue of difference between Criminal and Civil proceedings and in the said Judgment, the Bombay High Court held as under:-

"21. In the light of the aforesaid legal position explaining the nature of proceedings under Article 226 of the Constitution and the classification whether the said proceeding is civil or criminal, when the provisions of the Appellate Side Rules are looked into, it would be found that all applications under Article 227 of the Constitution challenging the orders and decisions of the courts constituted under the Criminal Procedure Code are dealt with on the side of criminal business of the Appellate Side of this Court, but the said clause (1) of Part II Criminal of rule 2 of Chapter I is not all exhaustive. Rule 2-B of Chapter I, as observed above, states that all petitions/applications under Articles 226/227 of the Constitution arising out of or relating to the order of penalty or confiscation or an order in the nature thereof or an order otherwise of penal character and passed under any Special Statute shall be heard and decided by the Division Bench hearing writ petitions. This rule only allocates that the class of petitions/

applications under Articles 226 and/or 227 of the Constitution of India mentioned in rule 2-B shall be decided by the Division Bench hearing writ petitions, but does not classify the nature of proceedings whether the said writ petition/application shall be criminal or civil writ petition. Applying the tests laid down by the Apex Court in Narayan Row's case (supra), we are of the view that if the writ petition/application under Articles 226 and/or 227 of the Constitution arises out or relates to a proceeding in which, if carried to its conclusion ultimately it may result in sentence of death or by way of imprisonment, fine or forfeiture of the property then such writ petition/application under Article 226 of the Constitution of India and/or under Article 227 of the Constitution, should be treated as a "criminal writ petition" and styled as such. For hearing and decision of such petition, it should be listed before the Division Bench allocated such business by Hon'ble the Chief Justice or if it pertains to the single Judge jurisdiction, before the bench assigned such work. As regards petitions/applications under Article 226 of the Constitution seeking writs or orders in the nature of habeas corpus, rule 1 of Chapter XXVIII of Appellate Side Rules, also provides only allocation of such writ petitions to the Division Bench taking criminal business of the Appellate Side of the High Court. Obviously, since the petitions/applications under Article 226 of the Constitution of India for issuance of writs of habeas corpus arise out of the unlawful detention, in its very nature, such petitions too should be styled as criminal writ petitions. Criminal Writ Petitions would also cover those Writ Petitions which arise out of the orders and the matters relating to prevention or breach of peace or maintenance of peace and order or such orders aimed at preventing vagrancy contemplated to be passed. 'Criminal Writ Petition shall also take in its embrace the petitions/applications under Articles 226 or 227 of the Constitution of India if it arises out of or relates to investigation, enquiry or trial of the offences either under special or general statute. When a Statute commands or prohibits an act, disobedience of such statute is prima facie criminal unless criminal proceedings are excluded by such statute and the petitions/applications under Articles 226 and 227 of the Constitution of India in connection thereto or arising therefrom would be criminal proceeding and should be styled, as 'Criminal Writ Petition'. However, such cases are to be distinguished from the cases where an act may be prohibited or commanded by the Statute in such a manner that the person contravening the provision is liable to pecuniary penalty and such recovery is to be made a civil debt. In such type of cases the contravention would not be a crime and therefore, petitions/applications under Articles 226 and 227 of the Constitution of India arising therefrom would not be criminal proceeding.

(Emphasis supplied)

46. From the ratio of aforesaid Judgments, it would be, thus, evident that it is not only the nature of rights infringed or consequential reliefs sought is a determining factor for deciding whether proceedings are 'civil proceedings' or 'criminal proceedings', but the nature of powers exercised including proceedings undertaken is to be examined for determining the issue of civil or criminal proceedings.

47. Admittedly, in the instant case, a criminal proceeding pertaining to ACB Ranchi P.S. Case No. 09 of 2025 is pending, and it is also an admitted fact that search and seizure operation was carried out under Section 106 of BNSS. In fact, writ petitioners themselves, vide Paras 30 and 31 of the writ petition has pleaded as under:-

"30. That it is stated and submitted that in criminal proceedings, power to seize property has been specified in Section 102 Cr.P.C./Section 106 of BNSS, 2023. However, the said provision does not give the power to seal an immovable property and the same has been observed by the Hon'ble Supreme Court in the case of 'Nevada Properties Pvt. Ltd. v State of Maharashtra reported in 2019 SCC OnLine SC 1247.

31. That it is further stated and submitted that there is no provision under the criminal law/proceeding that provides for sealing of an immovable property, as such the act of the respondents is cryptic and bad in law and has been done without the authority of law."

48. The question involved in the instant writ petitions is whether in exercise of powers under 106 BNSS, 2023, immovable property of Petitioners could have been seized. Thus, this proceeding admittedly arose in the exercise of power under criminal law and the proceeding would be criminal proceeding. This Court is in agreement with the ratio laid down by Bombay High Court that a criminal writ petition would be maintainable under Article 226 or 227 of the Constitution of India, if it arises out of or relates to an investigation, inquiry or trial of offence under Special or General statutes.

49. Accordingly, it is hereby held that proceeding, which has led to alleged infringement of rights of writ petitioners emanate from power exercised under criminal law and is pertaining to proceeding of investigation and/or inquiry and, hence, proceedings are criminal proceedings for which 'Criminal Writ Petition' would be only maintainable and not a 'Civil Writ Petition'.

50. Hence, I hereby declare that present writ petitions are not maintainable. So far as interim orders passed by this Court is concerned, in view of aforesaid finding, said interim order would, otherwise, not be sustainable in view of the Judgment in the case of 'Garden Reach Shipbuilders and Engineers Limited' (supra) and, accordingly, interim orders are hereby recalled/vacated.

51. Ordinarily, this Court would have permitted the writ petitioners to convert the present writ Petitions being W.P.(C) into W.P.(Cr.), but in view of the Judgment of Hon'ble Supreme Court in the case of 'Garden Reach Shipbuilders and Engineers Limited' (supra), any such order passed by this Court would be beyond the jurisdiction conferred upon this Court by Hon'ble the Chief Justice and may lead to a nullity.

52. Accordingly, all the above writ petitions are dismissed as not maintainable and interim order is hereby recalled and vacated. However, in the facts and

circumstances of the case, there shall be no order as to cost. Interlocutory Applications filed by Respondents are allowed.