

(2011) 05 GUJ CK 0043

In the Gujarat High Court

Case No : Letters Patent Appeal No. 335 of 2011 in Special Criminal Application No. 989 of 2009 and Civil Application No. 2373 of 2011 in Letters Patent Appeal No. 335 of 2011 and Letters Patent Appeal No. 336 of 2011 in Special Criminal Application No. 990 of 2009

Nitin Shantilal Bhagat and Another

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 10-05-2011

Acts Referred:

Bombay Children Act, 1948 — Section 94
Bombay High Court (Appellate Side) Rules, 1960 — Rule 1
Bombay Prohibition Act, 1949 — Section 93
Civil Procedure Code Amendment Act, 1976 — Section 100A
Constitution of India, 1950 — Article 226, 227, 228
Criminal Procedure Code, 1973 (CrPC) — Section 341, 36, 401, 482, 491
Government of India Act, 1915 — Section 101, 102, 103, 104, 105
Gujarat High Court Rules, 1993 — Rule 1, 2, 2(10)
High Courts Act, 1861 — Section 107, 108, 130
Income Tax Act, 1961 — Section 34
Provincial Small Cause Courts Act, 1887 — Section 25

Citation : (2011) 3 GLR 1972

Hon'ble Judges : S.J. Mukhopadhaya, C.J.; J.B. Pardiwala, J.; Anant S. Dave, J

Bench : Full Bench

Advocate : Percy Kavina and Shilpa R. Shah, s 1 - 2, for the Appellant; Krina Calla, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, C.J.—The present controversy relates to an important question `whether an intra-court appeal (Letters Patent Appeal) under Clause 15 of the Letters Patent is maintainable against an order passed by a learned Single Judge of the same High Court under Article 226 of the Constitution of India while exercising such power in its criminal jurisdiction".

2. There being conflicting views of two Division Benches of this Court, and some ambiguity whether there can be separate civil and criminal jurisdiction with

regard to the petitions under Article 226 of the Constitution, cases were referred to Larger Bench for its decision.

3. The facts giving rise to these appeals in brief are as follows:

L.P.A. No. 335/2010:

The State of Gujarat preferred a writ petition under Article 226 of the Constitution, in Special Criminal Application No. 989 of 2009 before this Court against one Nitinbhai Shantilal Bhagat and Anr. (Appellants in Letters Patent Appeal No. 335 of 2001) challenging the judgment and order dated 12th May 2008 passed by the learned Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No. 368 of 1996. The said case pertains to offences punishable under the provisions of Drugs and Cosmetics Act, 1940, allegedly committed by the Appellants herein. Learned Single Judge after hearing the parties quashed the order dated 12th May 2008 passed by Chief Metropolitan Magistrate and remanded the entire proceeding to decide the quantum of punishment, the admission of guilt having achieved finality.

L.P.A. No. 336/2010:

The other writ petition under Article 226 of the Constitution of India in Special Criminal Application No. 990 of 2009 was also preferred by the State of Gujarat against M/s. Dermocare Laboratories and two others, Appellants herein. In the said case, judgment and order dated 12th May 2008 was challenged. The said case pertains to offence punishable under the provisions of Drugs and Cosmetics Act, 1940 allegedly committed by the Appellants herein. In the said case also by order dated 3rd February 2011, learned Single Judge remitted the matter to learned Chief Metropolitan Magistrate, Ahmedabad to decide the quantum of punishment after giving opportunity to the Appellants, admission of guilt having achieved finality.

4. While Mr. Percy Kavina, learned Senior counsel for the Appellant in Letters Patent Appeal No. 335 of 2010 would contend that appeal under Clause 15 of the Letters Patent is maintainable against an order passed by the learned Single Judge in a petition under Article 226, and referred to one or other decisions of this Court and Supreme Court; according to Mrs. Krina Calla, learned A.G.P., appeal under Clause 15 of Letters Patent Appeal is not maintainable against an order of learned Single Judge even passed under Article 226, if power is exercised under criminal jurisdiction.

5. For determination of the issue, it will be desirable to notice the background history of Letters Patent, the relevant Clause 15 and other provisions. The background history having already discussed by the Supreme Court in Umaji Keshao Meshram and Others Vs. Radhikabai and Another, , we take advantage of the same and quote some of the relevant paragraphs, as follows:

5. The High Court of Judicature at Bombay was established by Letters Patent. dated June 26, 1862, issued by the British Crown in pursuance of authority

conferred upon it by the Indian High Courts Act, 1861 (24 and 25 Vict., Clause 104). Clause 14 of the said Letters Patent provided as follows:

14. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay from the judgment, in all cases of original civil jurisdiction, of one or more Judges of the said High Court or of any Division Court, pursuant to Section 13 of the said recited Act: Provided always that no such appeal shall lie to the High Court as aforesaid from any such decision made by a majority of the full number of Judges of the said High Court, but that the right of appeal in such case shall be to us. Our heirs or successors, in Our or Their Privy Council in manner hereinafter provided.

6. The Letters Patent issued in 1862 were revoked and replaced by Letters Patent dated December 28, 1865. Clause 15 of the new Letters Patent in its original form was in the following terms:

15. Appeal from the Courts of original jurisdiction to the High Court in its appellate jurisdiction. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Bombay, from the judgment (not being a sentence or order passed or made in any criminal trial) of one Judge of the said High Court, or of one Judge of any Division Court, pursuant to Section 13 of the said recited Act; and that an appeal shall also lie to the said High Court from the judgment not being a sentence or order as aforesaid, of two or more Judges of the said High Court, or of such Division Court, wherever such Judges are equally divided in opinion, and do not amount in number to a majority of the whole of the Judges of the said High Court, at the time being, 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.

7. By Letters Patent dated March 11, 1919. published in the Bombay Government Gazette dated June 19, 1919. Part I, pages 1446-7 the words and brackets in Clause 15, namely, "(not being a sentence or order passed or made in any criminal trial)", were substituted by the words and brackets "(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 one hundred and seven of the Government of India Act, 1915, or in the exercise of criminal jurisdiction)." By Letters Patent dated December 9, 1927, published in the Bombay Government Gazette dated February 2, 1928, Part I, Pages 196-7, Clause 15 was substituted. This substituted clause was amended by Letters Patent dated January 22, 1929, published in the Bombay Government Gazette dated January 24, 1929, Part 1, at pages 131-2. The substituted Clause 15 as amended in 1929 reads as follows:

15 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 Bombay 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.

In Clause 15 as substituted in 1927 the words "on or after the first day of February One thousand nine hundred and twenty-nine" did not find a place but were inserted by the said Letters Patent of 1929.

8. It may be pointed out that the provision in Clause 15 providing for an appeal from a judgment in a second appeal decided by a Judge of the High Court if such Judge declares that the case is a fit one for appeal has now become inoperative in view of Section 100A of the Code of Civil Procedure, 1908, which was inserted in that Code by the CPC (Amendment) Act, 1976, under which no further appeal is to lie against the judgment of a single Judge of the High Court in a second appeal. The provision in Clause 15 providing for an appeal from the judgment of one judge of any Division Court has also become redundant and inoperative after the amendment of Clause 36 of the Letters Patent by the said Letters Patent dated December 9, 1927....

67. The next statute with which we are concerned is the Government of India Act, 1915 (5 and 6 Geo. V, Clause 61). This Act was amended in 1916 by the Government of India (Amendment) Act, 1916 (6 and 7 Geo. V, Clause 37), and principally by the Government of India Act, 1919 (9 and 10 Geo. V, Clause 101). The Government of India Act, 1915, as so amended, is, u/s 135 of that Act, to be cited as "the Government of India Act". The Government of India Act introduced a scheme of diarchy in the Provinces but the constitutional set-up still remained unitary. The Act of 1915 repealed several statutes including the High Courts Acts 1861, 1865 and 1911. u/s 130, such repeal was inter alia not to affect "the validity of any law, charter, letters patent...under any enactment hereby repealed and in force at the commencement of" the Act of 1915. The provisions of the

Government of India Act with which we are really concerned are those contained in Part IX thereof which consisted of Sections 101 to 114 and was headed "THE INDIAN HIGH COURTS". Sections 101 to 105 bore the sub-heading "Constitution" (that is, the constitution of the High Courts); sections 106 to 111, the sub-heading "Jurisdiction" (that is, the jurisdiction of the High Courts); Section 113, the sub-heading "Additional High Courts"; and Section 114, the sub-heading "Advocate-General;". Sections 101(1), 106, 107 and 108 provided as follows:

101. Constitution of High Courts.-

(1) The High Courts referred to in this Act are the High Courts of judicature for the time being established in British India by letters patent.

106. Jurisdiction of High Courts.-

(1) The several High Courts are Courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the Court, and power to, make rules for regulating the practice of the Court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdiction, powers and authority as are vested in those Courts respectively at the commencement of this Act.

(1-A) The letters patent establishing or vesting jurisdiction, powers or authority in a High Court may be amended from time to time by His Majesty by further letters patent.

(2) The High Courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

107. Powers of High Courts with respect to subordinate Courts.

Each of the High Courts has superintendence over all Courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-

(a) call for returns:

(b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;

(c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;

(d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts; and

(e) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of Courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor-General in Council, and in other cases of the local Government.

108. Exercise of jurisdiction by single Judges or division Courts.

(1) Each High Court may by its own rules provide, as it thinks fit for the exercise, by one or more judges, or by division Courts constituted by two or more judges of the High Court, of the original and appellate jurisdiction vested in the Court.

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone and what Judges of the Court, whether with or without the Chief Justice, are to constitute the several Division Courts.

69. The Government of India Act was replaced by the Government of India Act, 1935 (25 and 26 Geo. V, Clause 42) reprinted in pursuance of the Government of India (Reprinting) Act, 1936 (26 Geo. V and 1 Edw. VIII, Clause 2) (hereinafter referred to as "the 1935 Act"). The 1935 Act envisaged a federal constitution. It made a division of powers between the Centre and the Provinces, certain subjects being exclusively assigned to the Central Legislature and others to the Provincial Legislature. In another field the two Legislatures had concurrent legislative powers. The 1935 Act came into force with regard to the Provinces on April 1, 1937. The federal structure at the Centre, however, never came into existence, and the Central Government continued to be carried on in accordance with the provisions of the old Government of India Act except that its executive and legislative powers were restricted to the matters assigned to it by the 1935 Act. Part IX of the 1935 Act was headed "THE JUDICATURE". Chapter I of Part IX dealt with the constitution of the Federal Court. Chapter II, which consisted, of Sections 219 to 231, was headed "THE HIGH COURTS IN BRITISH INDIA".

6. Relevant provisions of the 1935 Act were noticed by the Supreme Court, namely:

223. Jurisdiction of existing High Courts.-

Subject. to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in division courts, shall be the same as immediately before the commencement of Part III of this Act.

224. Administrative functions of High Courts.

(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say,-

(a) call for returns;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and

(d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts;

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to, a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

7. The Supreme Court then proceeded to decide the question whether the powers conferred upon the High Courts by Article 226, 227 and 228 of the Constitution are wholly new powers not possessed by the existing High Courts, and observed:

71. The Constituent Assembly for India so set up under the Indian Independence Act adopted and enacted on November 26, 1949, in the name of the people of India, the Constitution of India. Under Article 394 of the Constitution, that Article and Articles 5 to 9, 60, 324, 366, 367, 379, 380, 388 and 391 to 393 came into force at once and the remaining provisions were to come into force on January 26, 1950. This date is referred to in the Constitution as the commencement of the Constitution. The Constitution repealed both the Government of India Act, 1935, and the Indian Independence Act, 1947. The relevant provisions of the Constitution have already been noticed.

83. ...A provision similar to Article 228 was to be found in Section 225 of the Government of India Act, 1935. Article 227 has a longer ancestry. Clause 55 of the Charter of the Supreme Court of Judicature at Bombay made the Court of Requests and the Court of Quarter Sessions subject to the order and control of the said Supreme Court in the same manner as inferior courts and Magistrates in England were subject to the Court of King's Bench. Section 15 of the Indian High Courts Act, 1861, conferred upon each of the Chartered High Courts the power of superintendence over all courts subject to its appellate jurisdiction. A similar power of superintendence was conferred upon the High Courts by Section 107 of the Government of India Act of 1915-1919, and a more limited power of

superintendence was conferred upon them by Section 224 of the Government of India Act, 1935. The powers under Articles 227 and 228, though in a somewhat different form, were thus possessed by the existing High Courts immediately prior to the commencement of the Constitution. The power conferred by Article 226, however, stands on a different footing. This was not a power possessed by every existing High Court but only by the three Chartered High Courts. The Recorder's Courts established at Madras and Bombay were invested with jurisdiction similar to the Court of King's Bench in England "as far as circumstances would admit", The Court of King's Bench possessed the jurisdiction to issue prerogative writs of various kinds. A brief account of the origin, nature and development of the various, prerogative writs in England has been set out in the judgment of this Court in *Prabodh Verma and Others Vs. State of Uttar Pradesh and Others*, . Clause 55 of the Letters Patent of the Supreme Court of Judicature at Bombay conferred upon that Court the power to issue writs of Mandamus, Certiorari, Proceeeded or Error to the Court of Requests and the Court of Quarter Sessions. Proceeeded was a prerogative which issued out of the common law jurisdiction of the Court of Chancery when Judges of any subordinate court delayed the parties by not giving judgment. In such a case the writ was known as a writ of Proceeeded, asjudicium, (see Jowitt's Dictionary of English Law", Second Edn., p. 1438). A writ de non Proceeeded rage inconsistent was issued at the intervention of the King to withdraw from the cognizance of the common law courts proceedings in which he claimed to have interest (see De Smith's "Judicial Review of Administrative Action", Fourth Edn., p. 585)....

84. A question may well be asked why it was thought necessary to incorporate in the Constitution "the jurisdiction and powers conferred by Articles 226, 227 and 228. The answer is obvious. Provisions similar to Articles 227 and 228 already existed in a Constitution Act, namely, in Sections 224 and 225 of the Government of India Act, 1935. The said Sections 224 and 225 were not made subject to the provisions of Part IX of the said Act and of any Order in Council made under the said Act or any other Act or to the provisions of any. Act of the appropriate Legislature as the jurisdiction of the existing High Courts was by Section 223 of the said Act. These sections could, therefore, have been amended only by a legislation made by, the British Parliament by amending the Government of India Act, 1935. The Government of India Act, 1935, repealed by Article 395 of the Constitution. It was, therefore, necessary to re-enact these provisions and the only way in which it could be done was to insert them in the Constitution because were these powers to be treated on the same footing as the other powers and jurisdiction of the existing High Courts, they would have become subject to laws made by the appropriate Legislature. So far as Article 226 is concerned, the power to issue prerogative writs was possessed by the three chartered High Courts only. As the Constitution-makers intended to confer the enlarged power under Article 226 upon all "High Courts, and not merely the three Chartered High courts, this power had to be embodied in an Article of the Constitution. It should also be borne in mind that the jurisdiction under Articles

226, 227 and 228 was intended to be conferred upon all High Courts; not only the existing High Courts but also any other High Court as and when it came to be established in the future. Further, the insertion of Articles 226, 227 and 228 in the Constitution without making them subject to any law to be made by the appropriate Legislature put these Articles beyond the legislative reach of Parliament and the State Legislatures with the result that the jurisdiction conferred by these Articles can only be curtailed or excluded with respect to any matter by a constitutional amendment and not by ordinary legislation.

8. In the said case, the Supreme Court then proceeded specifically with regard to maintainability of intra-court appeal against the judgment of Single Judge in a petition under Article 226 and 227 and observed as follows:

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

100. Under Article 226 an order, direction or writ is to issue to a person, authority or the State. In a proceeding under that Article the person, authority or State against whom the direction, order or writ is sought is a necessary party. Under Article 227, however, what comes up before the High Court is the order or judgment of a subordinate Court or tribunal for the purpose of ascertaining whether in giving such judgment or order that subordinate Court or tribunal has acted within its authority and according to law. Prior to the commencement of the Constitution, the Chartered High Courts as also the Judicial Committee had held that the power to issue prerogative writs possessed by the Chartered High Courts was an exercise of original jurisdiction (see *Mahomedalli Allabux Vs. Ismailji Abdulali*, *Raghunath Keshav Khadilkar v. Poona Municipality* AIR 1945 Born 7, AIR 1943 164 (Privy Council) and *Moulvi Hamid Hasan Nomani v. Banwarilal Roy* (1946) 74 Ind App 120 ; AIR 1947 PC 90, In the last, mentioned case which dealt with the nature of a writ of quo warrant to the Judicial Committee held:

In their Lordships' opinion any original civil jurisdiction possessed by the High Court and not in express terms conferred by the Letters Patent or later enactments falls within the description of ordinary original civil jurisdiction.

By Article 226 the power of issuing prerogative writs possessed by the Chartered

High Courts prior to the commencement of the Constitution has been made wider and more extensive and conferred upon every High Court. The nature of the exercise of the power under Article 226, however, remains the same as in the case of the power of issuing prerogative writs possessed by the Chartered High Courts. A series of decisions of this Court has firmly established .that a proceeding, under Article 226 is an original proceeding and when it concerns civil rights". it is an original civil proceeding (see, for instance, State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, , S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others, Arbind Kumar Singh Vs. Nand Kishore Prasad and Others, and Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, .

101. Consequently, where a petition filed under Article 226 of the Constitution is according to the rules of a particular High Court heard by a single Judge, an intra-Court appeal will lie from that judgment if such a right of appeal is provided in the charter of that High Court, whether such Charter be Letters Patent or a Statute. Clause 15 of the Letters Patent of the Bombay High Court gives in such a case a right of intra-Court appeal and, therefore, the decision of a single Judge of that High Court given in a petition under Article 226 would be appealable to a Division Bench of that High Court.

102. It is equally well-settled in law that a proceeding under Article 227 is not an original "proceeding. In this connection, we need refer to only two decisions of this Court. In Ahmedabad Mfg. and Calico Ptg. Co."s case this Court said (at pages 193-4) (of Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others, .

Article 227 of the Constitution no doubt does not confer on the High Court power similar to that of an ordinary Court of appeal. The material part of this Article substantially reproduces the provisions of Section 107 of the Government of India Act, 1915, except that the power of superintendence has been extended by this Article to Tribunals as well. Section 107 according to preponderance of judicial opinion clothed the High Courts with a power of judicial superintendence apart from and independently of the provisions of the other laws conferring on them revisional jurisdiction. The power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate Courts and Tribunals within the bounds of their authority and, not for correcting mere errors: see Waryam Singh and Another Vs. Amarnath and Another, . Under Article 226 of the Constitution it may in this connection be pointed out the High Court does not hear an appeal or a revision: that Court is moved to interfere after bringing before itself the record of a case decided by or pending before a Court, a Tribunal or an authority, within its jurisdiction.

103. Under Clause 15 of the Letters Patent of the Bombay High Court no intra-Court appeal lay against an "order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of

India Act". By the same process of interpretation by reason of which the phrase "pursuant to Section 108 of Government of India Act" in Clause 15 is to be read as "pursuant to Article 225 of the Constitution of India", the phrase "order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act" is to be read as "order passed or made in the exercise of superintendence under the provisions of Article 227 of the Constitution". The result is that an intra-Court appeal does not lie against the judgment of a single Judge of the Bombay High Court given in a petition under Article 227 by reason of such appeal being expressly barred by Clause 15 of the Letters Patent of that High Court. This is the view also taken by different High Courts (see, for instance, Jagannath Ganbaji Chikhale Vs. Gulabrao Raghobaji Bobde,) Sukhendu Bikash Barua Vs. Hare Krishna De and Others, , Srinivasa Reddiar and Others Vs. P. Krishnaswami Reddiar and Others, , In Re: V. Tirupuliswamy Naidu, . and The J. and K. Co-operative Bank Vs. Shams-ud-din Bacha, and Ishwar Singh Vs. Smt. Ram Piari and Another,).

106. ...In our opinion, where the facts justify a party in filing an application either under Article 226 or 227 of the Constitution, and the party chooses to file his application under both these Articles, in fairness and justice to such party and in order not to deprive him of the valuable right of appeal the Court ought to treat the application as being made under Article 226, and if in deciding the matter, in the final order the Court gives ancillary directions which may pertain to Article 227, this ought not to be held to deprive a party of the right of appeal under Clause 15 of the Letters Patent where the substantial part of the order sought to be appealed against is under Article 226....

9. The aforesaid issue also fell for consideration before number of Courts from time to time, as referred hereunder:

In re. Adapala Venkata Narasa Reddy and Anr. reported in AIR 1916 Mad 1223, the Division Bench of Madras High Court held that an order passed by Single Judge of the High Court in the exercise of its criminal revisional jurisdiction is one passed in a criminal trial, if the proceedings which gave rise to the revision were a criminal trial, no appeal lies under Clause 15 of the Letters Patent against such an order.

10. In the case of Babujan Misir v. Sheo Sahay Chaudhury reported in AIR 1918 Pat 138, Patna High Court held that an order of a Single Judge staying proceeding in a criminal case is an order made in exercise of criminal jurisdiction, and therefore, no appeal lies against it under Clause 10 of Letters Patent.

11. Clause 10 of Letters Patent of Patna High Court is similar to Clause 15 of Bombay High Court, which is applicable to the High Court of Gujarat.

12. The Madras High Court again in the case of M. Venkatagiri Aiyar v. N.M. Firm reported in AIR 1920 Mad 144 (2) held that no appeal lies against an order of commitment made u/s 478, by a Judge presiding on the original side of the High Court in the course of the trial of a suit, except under the provisions of Section

215 of the Code. Clause 15 is controlled by the specific provisions of Section 215.

13. In the case of K.V. Muniswamy Mudaliar Vs. Kajaratnara Pillai and Ots., when similar issue fell for consideration before the Madras High Court, the Madras High Court held that no appeal lies to the High Court from the decision of a Judge of the High Court in the exercise of criminal jurisdiction.

14. Allahabad High Court in the case of Mt. Haidri Begam Vs. Jawad Ali Shah held that an appeal u/s 10 of Letters Patent is not maintainable from an order passed on an application u/s 491 of the Criminal Procedure Code.

15. In re. S. Govind Swaminathan reported in AIR Mad 121 the Madras High Court held that no appeal lies under Clause 15 of Letters Patent against an order of 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 Court observed:

21. The next question that falls to be considered is whether the expression "in the exercise of criminal jurisdiction" should be read as confined or limited to the exercise of the jurisdictions mentioned in Clauses 22 to 29 of the Letters Patent. Before dealing with this it might be pointed out that in the Letters Patent as issued in 1865 the exclusion of the right of appeal was confined to "sentences or orders passed or made in any criminal trial before the Courts of original criminal jurisdiction which might be constituted by one or more Judges of the High Court." In 1919 the Letters Patent were amended so as to widen the exemption from appeals not merely to cases of "sentences or orders in criminal trials" but also, to those passed "in the exercise of criminal jurisdiction". The words now used are very general and in our opinion include within their scope the exercise of jurisdiction by a Judge of the High Court dealing with any criminal matter and we are unable to see any distinction between the expression "criminal cause or matter" as understood in England and the words "in the exercise of criminal jurisdiction" in the Letters Patent.

16. When the question fell for consideration before this Court regarding maintainability of Letters Patent under Clause 15 against a decision of Single Judge in a writ petition under Article 226, a Full Bench (Three Judges) of this Court in Patel Kashiram Lavjibhai v. Narottamdas Bechardas reported in AIR 1979 Guj 1 made the following observation:

12. In Tata Engineering and Locomotive Company Ltd. Vs. Assistant Commissioner of Commercial Taxes and Another, , Hidayatullah, J. (as he then was) speaking for the Supreme Court observed in Para. 8 at p. 1403:

The power and jurisdiction of the High Court under Article 226 of the Constitution has been the subject of exposition from this Court. That it is extraordinary and to be used sparingly goes without saying. In spite of the very wide terms in which this jurisdiction is conferred the High Courts have rightly recognised certain limitations on this power. The jurisdiction is not appellate and it is Obvious that it

cannot be a substitute for the ordinary remedies at law. Nor is its exercise desirable if facts have to be found on evidence. The High Court, therefore, leaves the party aggrieved to take recourse to the remedies available under the ordinary law if they are equally efficacious and declines to assume jurisdiction to enable such remedies to be bypassed.

(Emphasis supplied by us.)

14. These different decisions of the Supreme Court clearly bring out the following; points:

(1) The revisional jurisdiction which the High Court exercises is a part of the general appellate jurisdiction of the High Court which it possesses over all Courts subordinate to it.

(2) The power of superintendence under Article 227 of the Constitution, prior to its amendment by 42nd Amendment Act of 1976, was a power of judicial superintendence akin to the power of revision being exercised u/s 115 of the Code of Civil Procedure. But, after the 42nd Amendment Act, the power under Article 227 of the Constitution can only be exercised in respect of orders or decisions of subordinate Courts.

(3) An order made by a single Judge of the High Court in exercise of the powers under Article 226 of the Constitution is neither in exercise of its appellate jurisdiction nor in the exercise of its revisional jurisdiction. It is in exercise of its extraordinary original jurisdiction.

16. Under these circumstances, it is obvious that a learned single Judge of the High Court when he exercises powers under Article 226 of the Constitution, exercises extraordinary original jurisdiction (what may be called for convenience sake as constitutional jurisdiction) and this jurisdiction is distinct from revisional jurisdiction and appellate jurisdiction of the High Court. Under these circumstances, it is obvious that the view taken by the Division Bench consisting of S.H. Sheth and R.C. Mankad, JJ. in Letters Patent Appeal No. 303 of 1977: reported in Gariadhar Gram Panchayat Vs. Nanubhai S. Desai and Another, , cannot be said to be correct since it is contrary to the view taken in several decisions of the Supreme Court referred to hereinabove. It may be pointed out that the other High Courts in the country have come to the same conclusion as we have done in this case (vide M. Ramayya Vs. The State of Madras and Another, , Chairman, Budge Budge Municipality Vs. Mongru Mia and Others, , Aidal Singh and Others Vs. Karan Singh and Others, and Kamalnarain Sharma Vs. Pt. Dwarka Prasad Mishra and Others,).

19. Under these circumstances, we answer the question referred to us as follows:

An appeal lies against a decision of a single Judge of this High Court in the exercise of the jurisdiction of the High Court under Article 226 of the Constitution under Clause 15 of the Letters Patent; and it is not barred by the wordings of Clause 15 of the Letters Patent. The decision of the learned Single judge cannot

be said to be given in the exercise of revisional jurisdiction of the High Court; and there is no other bar under Clause 15 of the letters Patent.

17. In the case of *State of Gujarat v. Jayantilal Maganlal Patel* reported in 1995 (2) GLH 260 a contention was raised by the counsel for Jayantilal Maganlal Patel that because the learned Single Judge has passed order while exercising criminal jurisdiction, the Letters Patent Appeal is not maintainable. However, the Division Bench observed that it did not agree with such argument and observed as follows:

5. On the appeal being filed, a contention has been raised by the Counsel for the Respondent that because the learned Single Judge has passed the order while exercising criminal jurisdiction, the Letters Patent Appeal is not maintainable. We do not agree with this argument for the simple reason that the petition by the Respondent was under Article 226 of the Constitution and the learned Single Judge, in terms, has observed in the, impugned order that, in proceedings under Article 226 of the Constitution, he was doing substantial justice and the request of the Respondent's Counsel for permission to amend the writ petition was granted. It is, no doubt, true that the exercise of power related to a person, who had been convicted of a crime, but the criminal jurisdiction which is referred to in Clause 15 of the Letters Patent Clause, would be with regard to the exercise of powers of Appeal or Revision by the High Court under the relevant provisions of the Code of Criminal Procedure and not in exercise of powers under Article 226 of the Constitution. Therefore, the Letters Patent Appeal is maintainable.

18. In *State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others*, the Division Bench of the Allahabad High Court considered the nature of the proceedings under Article 226 of the Constitution of India. One of the Judges, Beg, J. explaining the nature of proceedings, held that whether a proceeding is civil or not, depends on the nature of the subject-matter of the proceeding and its object and not on the mode adopted or the form provided for enforcement of right. According to His Lordship, a proceeding which deals with the right of civil nature and otherwise of civil nature does not cease to be so just because the party chooses resort to Article 226 of the Constitution enforcement of such right. The fact that a right has been created by the Constitution or the forum for its enforcement prescribed by it should not make any difference, if the subject-matter of the right sought to be agitated in the proceedings is itself of a civil nature, and the object of the proceedings is merely the enforcement of such a right, and not punishment of a wrong. On the other hand, Desai, J. constituting the Division Bench was of the view that a proceeding under Article 226 for a writ is not a civil proceeding. According to His Lordship, much confusion has resulted from the assumption, for which there is no warrant at all, that jurisdiction is either civil or criminal. There are several kinds of jurisdictions and there is no foundation for the view that civil and criminal jurisdiction exhaust the list of jurisdictions that can be conferred upon a High Court. According to Desai, J., Article 225 retains the civil, criminal, testamentary, intestate and matrimonial

jurisdiction conferred upon the High Courts under the Letters Patent and Article 226 confers additional jurisdiction and since it is the additional jurisdiction, it must be different from the jurisdictions viz. civil or criminal.

19. The Division Bench of this Court in J.P. Sharma Vs. The Phalton Sugar Works Ltd., , while dealing with the proceedings under Article 226 of the Constitution held as under:

The next argument of Mr. Joshi is that all proceedings under Article 226 are either civil or criminal. When a person asks for a writ of Habeas Corpus, that is a criminal proceeding. But when a person asks for any other writ than the Habeas Corpus, the proceedings are necessarily civil proceedings. The proceedings started under Article 226 are not proceedings under any Act, but are proceeding to quash the orders made under certain Acts, or for orders restraining the officers to take action under certain Acts. They are, therefore, civil proceedings and not proceedings under the Act. It is not possible to accept the argument. Mr. Joshi admits that the proceedings for the issue of a writ of Habeas Corpus is a criminal proceeding. He admits that it is criminal proceeding because it is a relief asked against the arrest or retention of a person in contravention of the provisions of the criminal law. If that be so, we see no reason why we should hold that even though the relief asked is a relief against an order made under taxation laws or enforcement of the taxation laws against a person, the proceedings should not be revenue in nature. On the other hand, it would be logical to hold that the nature of the relief which is asked for in each case under Article 226 should be determinative of the nature of that proceeding. If the relief asked is against the exercise of powers under criminal law, the proceedings would be criminal proceedings. If the relief asked is for enforcement or in exercise of a civil right to prevent infringement of a civil right, the proceedings will be civil in nature. Similarly, if the relief is sought in relation to the enforcement of the taxation law, the proceedings would be revenue in nature. It is difficult to accept the contention of Mr. Joshi that proceedings under Article 226 are either civil or criminal in nature. On the other hand, we agree, with respect, with the view taken by the Patna High Court that the writ application may be a civil proceeding according to the nature of the application and the questions raised and decided in the proceedings. In the instant case, as already stated, the Assessee sought to get quashed the notices issued u/s 34 of the income tax Act, and also prayed for an order restraining the income tax Officer from taking any action in enforcement of the notices. In other words, in the proceedings under the income tax Act, as already stated, are revenue in nature. The writ proceedings with which we were dealing, therefore, were revenue in nature.

20. The question whether a writ proceeding under Article 226 of the Constitution of India is a civil proceeding or criminal proceeding is considered at great length in the judgment of the Apex Court in S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, . The Apex Court observed thus:

...The expression "civil proceedings" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts as civil and criminal....

The Supreme Court further observed in the said report as under:

. .. The character of the proceedings, in our judgment, depends not upon the nature of the Tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed. A civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which if the claim is proved would result in the declaration - express or implied of the right claimed and relief such as payment of debt, damages, compensation, delivery of specific property, enforcement of personal rights, determination of status etc.

21. The Supreme Court in Narayan Row's case (supra) further observed that by a petition for a writ under Article 226 of the Constitution, extraordinary jurisdiction of the High Court to issue high prerogative writs granting relief in a special case to persons aggrieved by the exercise of authority - statutory or otherwise - by public officers or authorities is invoked and this jurisdiction is undoubtedly special and exclusive, but on that account is not altered. Resolving the conflict in large number of cases arising before the High Courts, the Supreme Court in paras. 14 and 16 of the aforesaid report held thus:

14. A large number of cases have arisen before the High Courts in India in which conflicting views about the meaning of the expression "civil proceedings" were expressed. In some cases it was held that the expression "civil proceedings" includes a proceeding instituted in the High Court for the issue of a writ whatever may be the nature of the right infringed and the relief claimed; in other cases it has been held that a proceeding resulting from an application for a writ under Article 226 of the Constitution may in certain cases be deemed to be a "civil proceeding", if the claim made, the right infringed and the relief sought warrant that inference; in still another set of cases it has been held that even if a proceeding commenced by a petition for a writ be generally categorized as a civil proceeding, where the jurisdiction which the High Court exercises relates to revenue, the proceeding is not civil. A perusal of the reasons given in the cases prompt the following observations. There are two preliminary conditions to the exercise of the power to grant certificate; (a) there must be a judgment, decree

or final order, and that judgment, decree or final order must be made in a civil proceeding. An advisory opinion in a tax reference may not be appealed from with certificate under Article 133, because the opinion is not a judgment, decree or final order, and (b) a proceeding does not cease to be civil, when relief is claimed for enforcement of a civil rights merely because the proceeding is not tried as a civil suit. In a large majority of the cases in which the jurisdiction of the High Court to certify a case under Article 133(1) was negative it appears to have been assumed that the expression "other proceeding" used in Article 132 of the Constitution is or includes a proceeding of the nature of a revenue proceeding and, therefore, the expression "civil proceeding" in Article 133(1) does not include a revenue proceeding. This assumption for reasons already set out is erroneous.

16. On a careful review of the provisions of the Constitution, we are of the opinion that there is no ground for restricting the expression "civil proceeding" only to those proceedings which arise out of civil suits or proceedings which are tried as civil suits, nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226 where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of the powers conferred upon them by revenue statutes. The preliminary objection raised by counsel for the Assessee must, therefore, fail.

22. The aforesaid issue fell for consideration before a Division Bench of Bombay High Court in *M/s. Nagpur Cable Operators' Association Vs. Commissioner of Police, Nagpur and another*, . Having notice different cases decided by other High Courts and Supreme Court, the Bombay High Court observed:

21. ...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 of 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 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 Article 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.... 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 there from would not be criminal proceeding.

23. In *Ramjibhai Dayarambhai Joshi v. State of Gujarat and Anr.* reported in 1997 (1) GLH 992, a Division Bench of this Court entertained the appeal under Clause 15 against an order of learned Single Judge passed in a writ petition under Article 226, though there was objection by the learned A.G.P. that the said order was passed in a criminal proceeding. In the said case, court observed that:

It, therefore, cannot be said that it was in exercise of criminal jurisdiction that the Appellant has approached this Court. If that is not the situation Letters Patent Appeal lies.

24. In the case of *Sanjeev Rajendra Bhai Bhatt v. State of Gujarat* reported in 1999 (1) G.L.H. 47, this Court having noticed that the order was passed in exercise of powers conferred under the Code of Criminal Procedure held that the judgment of learned Single Judge can be said to be in exercise of criminal jurisdiction, and, therefore, no intra-court appeal lies against such order.

25. In the case of *Patel Kashiram Lavjibhai (supra)* the Full Bench of this Court held that an order made by a Single Judge of the High Court in exercise of powers under Article 226 of the Constitution is neither in exercise of appellate jurisdiction nor in exercise of its reversionary jurisdiction. It is in exercise of its extraordinary original jurisdiction. In the case of *Umaji Keshao Meshram (supra)* the Supreme Court observed that an intra-court appeal against the judgment of Single Judge in a writ petition under Article 226 is not barred, while Clause 15 itself bars an intra-court appeal against the judgment of a Single Judge in a writ petition under Article 227.

26. The powers under Article 226 of the Constitution are in exercise of extraordinary original jurisdiction as held by Full Bench of this Court in *Patel Kashiram Lavjibhai Vs. Narottamdas Bechardas and Others*, and in many other cases. In *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, , S.A.L. Narayan Row and Another Vs. *Ishwarlal Bhagwandas and Another*, and other cases, Supreme Court held that an intra-Court appeal under Clause 15 against the judgment of Single Judge in a writ petition under Article 226 is not barred.

27. The question whether a writ petition under Article 226, which is extraordinary

original jurisdiction can be sub-classified into civil jurisdiction and criminal jurisdiction. The aforesaid issue has not been decided by the Supreme Court in the cases referred to above or by Full Bench of this Court in the case of Patel Kashiram Lavjibhai Vs. Narottamdas Bechardas and Others, .

28. The Division Bench of Bombay High Court in the case of M/s. Nagpur Cable Operators" Association Vs. Commissioner of Police, Nagpur and another, has sub-classified the writ petitions in two distinct groups, viz. criminal writ petitions and civil writ petitions and held that appeal under Clause 15 against an order passed by learned Single Judge in a writ petition preferred under criminal jurisdiction is not maintainable.

29. Clause 15, if broken up into its component parts, its operative form reads as follows:

An appeal shall lie to the High Court of Judicature at Bombay -

- (1) from a judgment
- (2) of one Judge of the High Court
- (3) pursuant to Section 108 of the Government of India Act of 1915
- (4) not being -
 - (a) 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 High Court,
 - (b) an order made in the exercise of revisional jurisdiction,
 - (c) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of S. 107 of the Government of India Act of 1915, or
 - (d) a sentence or order passed or made in the exercise of criminal jurisdiction.

30. 1985 Letters Patent constituting Bombay High Court has been broken into two different and distinct jurisdictions, viz. `civil jurisdiction" and `criminal jurisdiction".

Clause 11 to 18 have been grouped together under the caption `civil jurisdiction", as sub-divided into different civil jurisdictions and shown hereunder:

- i) ordinary original civil jurisdiction (Clause 11),
- ii) original civil jurisdiction as to suit (Clause 12),
- iii) extraordinary original civil jurisdiction (Clause 13),
- iv) civil appellate jurisdiction (Clause 15),
- v) jurisdiction as to infants and lunatics (civil) (Clause 17).

31. Similarly, Clause 22 to 29 have been grouped together under the caption 'criminal jurisdiction', which is subdivided as follows:

- i) ordinary original criminal jurisdiction (Clause 22),
- ii) extraordinary original criminal jurisdiction (Clause 24),
- iii) appellate jurisdiction in an appeal from criminal courts (Clause 27),
- iv) reference and revisional jurisdiction of criminal trials (Clause 28).

32. From the aforesaid fact, it would be evident that while Letters Patent was issued constituting the Bombay High Court, the civil jurisdictions and criminal jurisdictions were mentioned there under.

33. When the Government of India Act, 1915 was enacted, as amended in 1916, the jurisdiction of the High Courts was shown u/s 106 as under:

106. (1) The several high courts are courts of record and have such jurisdiction, original and appellate, including admiralty jurisdiction, in respect of offences committed on the high seas, and all such powers and authority over or in relation to the administration of justice, including power to appoint clerks and other ministerial officers of the court, and power to make rules for regulating the practice of the court, as are vested in them by letters patent, and, subject to the provisions of any such letters patent, all such jurisdictions, powers and authority as are vested in those courts respectively at the commencement of this Act.

(1a) The letters patent establishing or vesting jurisdiction, powers or authority in a high court may be amended from time to time by His Majesty by further letters patent.

(2) The high courts have not and may not exercise any original jurisdiction in any matter concerning the revenue, or concerning any act ordered or done in the collection thereof according to the usage and practice of the country or the law for the time being in force.

34. There under, the exercise of jurisdiction by Single Judge and Division Courts was separated u/s 108 as quoted hereunder:

108. (1) Each high court may by its own rules provide, as it thinks fit, for the exercise, by one or more judges, or by division courts constituted by two or more judges, of the high court, of the original and appellate jurisdiction vested in the court.

(2) The chief justice of each high court shall determine what judge in each case is to sit alone, and what judges of the court, whether with or without the chief justice, are to constitute the several division courts.

35. The aforesaid provisions stand continued by virtue of provision under Article 225 of the Constitution of India with amendments, which reads as follows:

225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:

Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.

In exercise of power conferred under the aforesaid provisions, in super session of Bombay High Court Appellate Side Rules, 1960, the Gujarat High Court Rules, 1993 were enacted by the Gujarat High Court, where under the jurisdiction ordinarily required to be exercised by Division court of two Judges, as evident from Rule 1 and quoted hereunder:

1. Jurisdiction ordinarily exercised by Division Court of two Judges. - The Civil and Criminal Jurisdiction of the Court shall, except in cases where it is otherwise provided for by any law in force or by these rules, be exercised by a Division Court consisting of two or more Judges.

36. From the aforesaid Rule 1, it will be evident that Gujarat High Court also separated civil and criminal jurisdiction for the purpose of hearing by Division Courts consisting of two or more Judges.

37. The matters to be disposed of by a Single Judge are prescribed under Rule 2, wherein Single Judges have been empowered to dispose of certain nature of cases of civil nature and certain nature of cases of criminal jurisdiction, relevant portion of which is quoted hereunder:

2. Matters to be disposed of by a Single Judge.- Save as otherwise expressly provided by any law in force or by these rules, a Single Judge may dispose of the following matters:

I. Civil

(1) xx xx

(2) Appeals under Special or Local Acts where the value of the subject matter before the trial Court or Tribunal or other authority does not exceed Rs. 10,00,000/- or is incapable of valuation.

(3) Appeals in proceedings under the Guardians and Wards Act, 1890 and the Hindu Minority and Guardianship Act, 1956.

- (4) Appeals u/s 144, Code of Civil Procedure, 1908.
- (5) Appeals under the Hindu Marriage Act and other Matrimonial enactments.
- (6) Appeals from Appellate Decrees.
- (7) Appeals from orders u/s 104 and Order XLIII, Rule 1 of the Code of Civil Procedure, 1908.
- (8) Appeals relating exclusively to costs or instilments.
- (9) Appeals arising out of the Land Acquisition References, the value of the subject matter of which does not exceed Rs. 10,00,000/- except where the valuation in an allied matter to be heard with the former exceeds Rs. 10,00,000/-.
- (10) Applications under Articles 226 of the Constitution of India except:
- (1) those where virus of any provision of a statute are challenged.
 - (2) those for issue of writs of Habeas Corpus and also those for issue of appropriate directions order or writs in respect of orders of deportation.
 - (3) those where awards under the Industrial Disputes Act (India Act XIV) of 1947) concerning revision of wages or wage structure of a class or classes of an employees in an industry are challenged.
 - (4) those arising under the Acts specified below:
 - (a) The Customs Act (India Act L II of 1962).
 - (b) The Central Excises and Salt Act (Act I of 1944).
 - (c) Taxing statutes such as the Income Tax Act (India Act No. XLIII of 1961) The Wealth Tax Act, 1957 (India Act No. 27 of 1957) the Gift Tax Act, 1958 (India Act No. 18 of 1958). The Gujarat Sales Tax Act, 1969 (Act No. 1 of 1970) etc.
 - (d) The Land Acquisition Act (Act 1 of 1894).
 - (e) The Import and Export Control Act (Act XVIII of 1947).
- (11) Matters Pertaining to Preventive Detention Laws.
- (12) Applications under Article 227 of the Constitution of India except those arising from the decisions under the Industrial Disputes Act (India Act XLV of 1947), concerning revision of wages or wage structure of a class or classes of the employees in an Industry. The Customs Act (India Act LII of 1962). The Central Excise and Salt Act (Act I of 1944) and Taxing Statutes.
- (13) Applications for the exercise of the Court's revisional jurisdiction u/s 115 of the Code of Civil Procedure, 1908, or u/s 25 of the Provisional Small Causes Courts Act, 1887 or under any Special or Local Law.
- (14) to (25) xx xx

II. Criminal

(1) Appeals against conviction in which only a sentence of fine or imprisonment for a period not exceeding seven years with or without fine has been imposed except (i) where a notice of enhancement of sentence has been issued where the accused has been sentenced for a term of 2 years or more and (ii) where a notice has been issued to show cause why his conviction should not be altered to one of any offence punishable with death or imprisonment for life.

(2) appeals or applications against the order of acquittal by Metropolitan Magistrate or Chief Judicial Magistrate or Judicial Magistrate or by a Sessions Court in exercise of its appellate powers.

(3) Appeals against orders relating to disposal of property and orders directing payments of compensation expenses and/or fees.

(4) Appeals against order u/s 360, Criminal Procedure Code, 1973, Section 93 of the Bombay Prohibition Act, 1949, Bombay Probation of Offenders Act, 1938, or any other enactment or provision relating to probation of offenders.

(5) Appeals u/s 94 of the Bombay Children Act, 1948 and u/s 93 of the Saurashtra Act, 1954.

(6) Appeals u/s 341(i) of the Criminal Procedure Code, 1973.

(7) Appeals or Revision Applications against orders passed under Chapter VIII Code of Criminal Procedure, 1973.

(8) Applications for the exercise of the Court's Revisional Jurisdiction u/s 401 of the Criminal Procedure Code, 1973 and the disposal of cases of which record is called for an examination of Criminal Returns or otherwise.

(9) Applications for the exercise of the Court's revisional jurisdiction under any other statute.

(10) Applications u/s 482 of the Criminal Procedure Code, 1973.

(11) All applications (except applications under Article 228 of the Constitution of India) for transfer of cases, Appeals or other proceedings pending for trial or disposal in any Criminal Court subordinate to the High Court or over which the High Court has power of superintendence, to the High Court Superintendence of the High Court.

(11-A) Applications under Article 227 of the Constitution of India.

(11-B) Applications under Article 226 of the Constitution of India except those specified in Sub-rule (10) of part 1 Civil or Rule 2.

(12) Applications for bail or stay not arising out of or relating to any appeal, except appeals referred to in Clause (i).

(13) Applications for excuse of delay in or extension of time for making deposit

for transcript record in Criminal Appeals to the Supreme Court.

(14) All miscellaneous applications including applications for bail or stay arising in or out of or relating to matters falling under this rule.

(15) All Criminal proceedings transferred or withdrawn to this High Court from subordinate Courts except proceedings withdrawn under Article 228 of the Constitution.

(16) All applications or proceedings incidental to or arising out of or relating to applications for leave to appeal to the Supreme Court or of appeals to the Supreme Court after the grant of leave to appeal by the High Court or of Special Leave by the Supreme Court except cancellation of certificate of fitness granted by the High Court.

(17) Parol, Furlough, Jail Petitions and Experiment Matters.

38. Thus, from Gujarat High Court Rules, it will be evident that when Single Judge exercises power under Article 226, i.e. extraordinary jurisdiction, such power is exercised either under civil jurisdiction or criminal jurisdiction.

39. The writ petition under civil jurisdiction in the Gujarat High Court are registered as Special Civil Application whereas writ petition under criminal jurisdiction is registered as Special Criminal Application. In the case of State of Uttar Pradesh and Others Vs. Mukhtar Singh and Others, while considering the nature of proceedings under Article 226, one of the Hon'ble Judges, Beg J. held that whether a proceeding civil or not depends on the nature of the subject-matter of the proceeding and its object, and not on the mode adopted or the forum provided for the enforcement of the right. A proceeding deals with right of a civil nature and is otherwise civil, ceases to be so just because a party chooses to resort to Article 226 of the Constitution. The fact that a right has been created by the Constitution or the forum for its enforcement prescribed by it should not make any difference, if the subject-matter of the right sought to be agitated in the proceedings is itself of a civil nature. On the other hand, a proceeding under Article 227 of a writ is not a civil proceeding. There are other kinds of jurisdictions and there is no foundation for the view that the civil and criminal jurisdiction exhaust the list of jurisdiction that can be conferred upon a High Court. According to Desai J., Article 225 retains the civil, criminal, testamentary, intestate and matrimonial jurisdictions conferred upon the High Courts under the Letters Patent and Article 226 confers additional jurisdiction. In the case of S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, , the Supreme Court observed that a proceeding does not cease to be a civil when relief is claimed for enforcement of a civil right, merely because the proceeding has been tried as civil suit. Therefore, "civil proceeding" cannot be restricted to those proceedings which arose out of civil suits or proceedings which are tried as civil suits.

40. Taking queue from the aforesaid decision of Supreme Court in Narayan Row

(supra), Bombay High Court in M/s. Nagpur Cable Operators" Association (supra) held that if a writ petition under Article 226 of the Constitution arise out of or relates to 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 property, then such writ application under Article 226 of the Constitution of India should be treated as a criminal writ petition and styled as such.

41. Similarly, petition under Article 226 of the Constitution of India for issuance of a writ of Habeas Corpus in case of detention and for issue of appropriate directions, orders or writs in respect of orders of deportation, in their very nature, such petitions should be styled as a criminal writ petitions.

42. The aforesaid fact has been noticed by the Gujarat High Court while framing the Gujarat High Court Rules, 1993, as evident from Rule 1 and 2 quoted above.

43. In view of the provisions of law as cited above and the decisions of Supreme Court and other High Courts, we hold that the question "whether an order passed by learned Single Judge in a writ petition under Article 226 of the Constitution of India is a proceeding under civil jurisdiction or criminal jurisdiction" can be determined by taking into consideration the nature of proceeding and keeping in mind the following principles:

(i) If the relief asked for is against exercise of power under criminal law or the proceeding would be a criminal proceeding, or the proceeding if carried to its conclusion ultimately may result in sentence of death or by way of imprisonment or fine or forfeiture of property and those which have been specifically provided as a writ petition under criminal jurisdiction under Clause (2) of Part II of Gujarat High Court Rules 1993, such writ petitions should be treated a proceeding under criminal jurisdiction. In such case, the appeal under Clause 15 of Letters Patent against an order passed by learned Single Judge in a writ petition under Article 226 is not maintainable.

(ii) on the other hand, if the nature of relief as sought for under Article 226 is that of a civil proceeding, and a person seeks to enforce by appropriate relief which alleged to have infringed his civil rights against any person or State and which if proved would result in declaration, express or implied, of right, claim and relief, such as payment of debt, damage, compensation, delivery of specific property, enforcement of personal right, determination of status, etc., such proceedings and those which have been shown in Part I of Rule 2 of the Gujarat High Court Rules, 1993, are to be treated as civil proceedings under civil jurisdiction and an appeal under Clause 15 of the Letters Patent preferred against an order of learned Single Judge is maintainable.

44. In the present cases in hand, we have seen that in one case the Appellants have been convicted by learned Chief Metropolitan Magistrate, Ahmedabad, by judgment dated 12th May 2008 passed in Criminal Case No. 368 of 1996 pertaining to offence punishable under the provisions of Drugs and Cosmetics Act, 1940. In the other case, the Appellants have been punished by the learned

Chief Metropolitan Magistrate, Ahmedabad, in Criminal Case No. 126 of 1997. The offences punishable under the provisions of the Drugs and Cosmetics Act, 1940, having been proved against the Appellants, learned Single Judge has affirmed the guilt as proved, and merely remitted the matter for determination of quantum of punishment after giving an opportunity of hearing of the case. Those being criminal proceedings, as per High Court Rules, the Appellants rightly preferred the writ petitions under Article 226 of the Constitution of India under criminal jurisdiction and both the cases were registered as Special Criminal Applications. Thus, in both the cases, the proceedings having been finally culminated into punishment in criminal proceedings, we hold that the appeals under Clause 15 against both the orders passed by the learned Single Judge are not maintainable. They are accordingly dismissed.