

(1998) 10 GUJ CK 0001
In the Gujarat High Court

Sanjeev Rajendrabhai Bhatt

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 05-10-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100A, 115, 156
Constitution of India, 1950 — Article 12, 132, 132(1), 133(1)(c), 134A
Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 169, 190, 200
Dowry Prohibition Act, 1961 — Section 3, 4
Essential Commodities Act, 1955 — Section 3, 7
Government of India Act, 1915 — Section 107, 108
Motor Vehicles Act, 1988 — Section 207
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 17, 58(1), 58(2)
Penal Code, 1860 (IPC) — Section 120B, 120B, 195, 196, 302

Citation : (2000) 1 GLR 206

Hon'ble Judges : C.K.Thakker, J;A.M. Kapadia, J

Bench : Division Bench

Judgement

C.K. Thakker, J.—Both these appeals arise out of a common order passed by the learned single Judge in two Special Criminal Applications being Special Criminal Application Nos. 6 and 24 of 1998 on July 9, 1998. The learned single Judge by the above order upheld the preliminary objection raised on behalf of the State of Rajasthan that the High Court of Gujarat had no territorial jurisdiction in the matter as the proceedings were initiated in the Court of Chief Judicial Magistrate, Pali situated in Rajasthan. The petitions were, therefore, not maintainable. In view of non-maintainability of petitions on the ground of want of territorial jurisdiction, the learned single Judge observed that it would not be expedient to express any opinion on the merits of the matter and she did not enter into questions raised in the petitions.

2. To appreciate the controversy in the present proceedings, few relevant facts may now be stated:

Special Criminal Application No. 6 of 1998 (L.P.A. No. 906 of 1998) was filed by

Sanjeev R. Bhatt who at the relevant time in April, 1996, was serving as District Superintendent of Police at Palanpur. On April 30, 1996, a complaint was lodged which was registered as C.R. No. 216 of 1996 at Palanpur City Police Station against Sumersingh Rajpurohit under the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter be referred to as "N.D.P.S. Act"). On May 3, 1996, Sumersingh Rajpurohit was taken to Pali Kotwali Police Station from his residence and thereafter was taken for interrogation to Palanpur. Proceedings were then taken against him at Palanpur. Sumersingh was produced before the Chief Judicial Magistrate on 4th May, 1996. Identification parade was held but Sumersingh could not be identified by the witnesses. The police submitted a report u/s 169 of the Code of Criminal Procedure, 1973 before the Special Court, Palanpur for release of Sumersingh. Sumersingh was accordingly released on bail by the Additional Sessions Judge, Palanpur and finally he was discharged on 14th May, 1996.

3. On October 17, 1996, Sumersingh Rajpurohit filed a complaint in the Court of Chief Judicial Magistrate, Pali against Sanjeev Bhatt, who had filed Special Criminal Application No. 6 of 1998 (L.P.A. No. 906 of 1998), R.R. Jain who had filed Special Criminal Application No. 24 of 1998 (L.P.A. No. 930 of 1998) as also against other accused for various offences punishable under Sections 120B, 195, 196 and 342, 347, 357, 368, 458 and 482 of Indian Penal Code read with Sections 17, 58(1) and 58(2) of N.D.P.S. Act. The date of offence was mentioned as 3rd May, 1996. The Chief Judicial Magistrate, Pali passed the following order on 17th October, 1996:

Shri Sumersingh has produced complaint under Sections 120B, 195, 196 and 342, 347, 357, 368, 458 and 482 of I.P.C. read with Sections 17, 58(1) and 58(2) of N.D.P.S. Act. He has also produced annexure containing 94 pages and a brown colour cover containing two audio cassettes bearing mark as "Philosophy of Excellence" HP 90. I have gone through the complaint. Keeping in mind the substance of complaint I am forwarding the complaint for investigation u/s 156(3) of Cr.P.C. to Kotwali Police Station and the offence should be registered and report should be submitted. Keeping in the mind the allegation made in the complaint it is ordered that the investigation be done by an officer not below the rank of D.G.P. The report be submitted on or before 16-11-1996.

4. As per the above order, the report was to be submitted by an officer of D.G.P. rank before the Chief Judicial Magistrate, Pali on or before November 16, 1996. It, however, appears that a Revision Application being Revision 24 of 1996 was preferred against the order passed by the Chief Judicial Magistrate in the Sessions Court, Pali. The Additional Sessions Judge, who heard the matter, passed the order on November 15, 1996, wherein he observed:

In my opinion, for registering an offence against Shri R.R. Jain, Judge, High Court of Gujarat, consultation of Chief Justice of India is not required.

5. It was also observed by him that the order passed by the Chief Judicial

Magistrate sending the complaint to Police Station, Kotwali for investigation u/s 156(3) of the Code was not illegal, erroneous and did not call for interference. He, however, held that the order that investigation be carried out by an officer not below the rank of D.G.P. was not substantiable and was against the provisions of law. He, therefore, partly allowed the revision. The order dated October 17, 1996 passed by the Chief Judicial Magistrate to the effect that investigation should be carried out by an officer not below the rank of D.G.P. was set aside. Rest of the order was, however, confirmed.

6. In the light of the order made in revision, necessary directions were issued. On the strength of original complaint, investigation was made and it was prima facie found that offences under Sections 120B, 195, 196 and 342, 347, 357, 368, 458 and 482 of I.P.C. read with Sections 17, 58(1) and 58(2) of N.D.P.S. were committed. The offences were, therefore, registered as C.R. No. 403 of 1996 on November 18, 1996 under the above provisions. F.I.R. was registered in accordance with law and copy thereof was given to the complainant.

7. Since the appellant apprehended arrest in pursuance of the above case, he approached this Court by filing Special Criminal Application No. 6 of 1998 from which the present L.P.A. arises. The following prayers were made in the prayer clause in Para 12 of the petition:

(A) The Hon"ble Court may be pleased to issue appropriate writ of mandamus or prohibition or any other appropriate writ to the investigating officer of C.I.D. (Crime Branch) Jaipur from carrying on any further investigation and submitting any report before the Competent Court;

(B) The Hon"ble Court may be pleased to quash and set aside the order of learned Chief Judicial Magistrate, directing investigation u/s 156(3) of the Code of Criminal Procedure, 1973;

(C) The Hon"ble Court may be pleased to quash and set aside the report of investigation submitted in the Court of Special Judge at Jodhpur in respect of Crime Register No. 403 of 1996 of Pali Kotwali Police Station;

(D) The Hon"ble Court may be pleased to issue necessary direction to stop the further investigation by C.I.D. (Crime Branch) Jaipur in Crime Register No. 403 of 1996 at Pali Kotwali Police Station during the pendency of this petition; and

(E) That any just and proper order may be pleased.

8. On 7th January, 1998, the petition was notified for admission on Board before the learned single Judge. Notice was issued and was made returnable on January 13, 1998. A direction was also issued by the learned single Judge not to arrest the petitioner in the meanwhile. The said relief was extended from time to time. On July 9, 1998, the learned single Judge, however, dismissed the petition, as stated hereinabove, on the ground of want of territorial jurisdiction of this Court. That order is challenged in L.P.A. No. 906 of 1998.

9. So far as L.P.A. No. 930 of 1998 is concerned, it is instituted by the petitioner of Special Criminal Application No. 24 of 1998 filed against C.R. No. 403 of 1996 in which he is shown as one of the accused. Basic and material facts have already been stated in L.P.A. No. 906 of 1998 and we will state only those facts which are relevant to this appeal. It is stated by the appellant that after F.I.R. was registered on November 18, 1996, the Superintendent of Police (C.I.D. Crime), Jaipur forwarded questionnaire to the Registrar of this Court on December 30, 1997, which was communicated to the appellant by the Registrar on the next day, i.e. on December 31, 1997. The appellant received the said questionnaire on 5th January, 1998 when he returned to Ahmedabad as he was out of station for some time. The appellant sought extension of time to reply. Meanwhile, the appellant also filed L.P.A. against the judgment and order of the learned single Judge passed in Special Criminal Application Nos. 1032 of 1997 and 1309 of 1997. It is stated at the Bar that those L.P.A.s are pending. On 12th January, 1998, the appellant received an intimation through the Registrar of this Court whereby the respondent No. 3 asked the appellant to remain present on 13th January, 1998 at Pali. The appellant informed the respondent No. 3 that due to ill-health of his father, he was unable to come to Pali. On 13th January, 1998, the appellant was informed by the Registrar of this Court that the Hon'ble the Chief Justice of this Court had granted permission to the investigation officer to interrogate the appellant at the time and place convenient to the appellant. On 14th January, 1998, the respondent No. 3 sent a letter to the Registrar so that he could intimate the appellant to remain present on 15th January, 1998 before the Chief Judicial Magistrate, Pali at the time of filing of charge-sheet. On 15th January, 1998, the appellant approached this Court by filing Special Criminal Application No. 24 of 1998 in which following prayers were made:

(A) The Hon'ble Court be pleased to issue a writ of mandamus or writ in nature of mandamus or writ of certiorari or writ in nature of certiorari or any other appropriate writ, direction or order quashing and setting aside the communication dated 13th January, 1998 at Annexure-B to the petition and be pleased to direct the respondents not to proceed further in Criminal Proceedings initiated vide Crime Register No. 403 of 1996 registered at Pali Kotwali Police Station without following due process required under the law, against the petitioner;

(AA) In alternative, the Hon'ble Court be pleased to issue a writ of mandamus or writ in the nature of mandamus or any other appropriate writ, direction or order declaring that the Court of the Chief Judicial Magistrate at Pali had no jurisdiction to entertain the complaint filed by Mr. Sumersingh Rajpurohit on 17th October, 1996 against Futermal H. Jain and Ors. and it be further declared that consequent direction by the said Court in exercise of powers u/s 156(3) of the Code of Criminal Procedure, 1973 ordering investigation by the police, is illegal and bad in law and be further pleased to declare the entire investigation consequently carried out by the Superintendent of Police (I) C.I.D. (Crime), Rajasthan null and void and consequently be pleased to issue an appropriate writ

or direction or order quashing and setting aside the communication dated 13th January, 1998 at Annexure-B and be further pleased to direct the respondents to refrain from proceeding further with the Criminal Proceedings initiated vide Crime Register No. 403 of 1996 registered at Pali, Kotwali Police Station against the petitioner;

(B) Pending the final hearing and disposal of the petition, the Hon''ble Court be pleased to restrain the respondents from proceeding further in Criminal Proceeding arising out of C.R. No. 403 of 1996 registered before the Pali Kotwali Police Station;

(C) The Hon''ble Court be pleased to pass such other order as may be deemed just and proper in the circumstances of the case;

(D) The cost of this petition be provided.

10. As stated above, both the petitions were heard and disposed of by the learned single Judge by a common judgment holding that this Court had no territorial jurisdiction in the matter.

11. Being aggrieved by the above common judgment and order, these L.P.A.s are instituted. Two questions arise for our consideration:

(i) Whether L.P.A.s are maintainable; and

(ii) If L.P.A.s are competent and can be entertained; whether the learned single Judge has committed an error of law in holding that the High Court of Gujarat has no territorial jurisdiction in the matter.

12. So far as merits are concerned, it was stated at the Bar that the learned single Judge has not entered into merits of the matter, as according to her, the petitioners could not have approached this Court and that it was not within the territorial jurisdiction of this Court to entertain the petitions. The learned Counsels are right on that submission. Even the learned single Judge while disposing of petitions, has specifically observed in the order that as the Court had no jurisdiction to entertain the petitions, "it would not be expedient for me to express on merits of the case and to deal with the contentions raised by the learned advocates, nor shall I deal with the case law cited before me and referred to hereinabove." Thus, the matters have not been dealt with on merits by the learned single Judge and we also do not intend to enter into correctness or otherwise of the allegations and counter-allegations of the parties.

13. So far as maintainability of LPAs is concerned, in our opinion, the point can be examined in the light of two questions : First, whether an order passed by the learned single Judge can be said to have been made in the exercise of extraordinary powers under Article 226 of the Constitution or in the exercise of supervisory jurisdiction under Article 227 of the Constitution. Secondly, whether the order passed by the learned single Judge can be said to have been passed in the exercise of criminal jurisdiction within the meaning of Clause 15 of the

Letters Patent.

14. Article 226 of the Constitution empowers every High Court to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, 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 by Part III of the Constitution or for "any other purpose". It is settled by a catena of decisions of the Hon'ble Supreme Court as well as of this Court, that the power under Article 226 of the Constitution is extraordinary and original in nature. Article 227 of the Constitution, on the other hand, enacts that every High Court shall have power of superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The power conferred under Article 227 is not original but supervisory and in exercise of that power, the High Court will supervise functioning of all Courts and tribunals situate within its territorial jurisdiction. It is also well settled by several decisions of the Apex Court that the power of superintendence can be exercised by a High Court with a view to seeing that every Court and tribunal subordinate to the High Court exercises its power within the authority of law. Whenever there is abuse of power or excess of jurisdiction by such Court or tribunal, it is the power and duty of the High Court to correct jurisdictional errors committed by a subordinate Court or inferior tribunal by exercising supervisory jurisdiction under Article 227 of the Constitution.

15. There is no provision in the Constitution for intra-Court appeals. By a Letters Patent, such intra-Court appeals from judgments of a single Judge of High Courts are provided. It is not in dispute that the provisions of Letters Patent of Bombay are applicable to this Court. Clause 15 of Letters Patent provides that an appeal would lie from a "judgment" of a single Judge to a Division Bench, if conditions specified therein are complied with. Clause 15 is material for the purpose of deciding the preliminary point regarding maintainability of L.P.A.s and needs to be reproduced in extenso;

And we do further order in 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 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

1929 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 of such Division Court shall be to us, or heirs or successors in our or their Privy Council, as hereinafter provided.

(Emphasis supplied)

16. In the leading decision in *Umaji Keshao Meshram and Others Vs. Radhikabai and Another*, , the Hon"ble Supreme Court had an occasion to consider Clause 15 of the Letters Patent and maintainability of an appeal from a "judgment" of a single Judge of the High Court of Bombay before the Division Bench of that Court. Clause 15 was analysed by their Lordships in Para 9 thus:

(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 reversional jurisdiction;

(c) 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 of 1915; or

(d) a sentence or order passed or made in the exercise of criminal jurisdiction.

Again in Para 91, the Court summarised the following principles:

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.

17. In the facts and circumstances of the case, however, the Court held that since the petition was filed under Article 227 of the Constitution against the judgment and order of the Maharashtra Revenue Tribunal and was heard by a single Judge, intra-Court appeal was not maintainable as it was expressly barred under Clause 15. It was, therefore, observed that no error of law was committed by the Division Bench of the High Court in holding that L.P.A. was not maintainable.

From the decision in *Umaji Keshao* (supra), in our judgment the following principles relevant to the case on hand appear to us to be well settled:

(i) In case of a "judgment" rendered by a single Judge of the High Court in exercise of powers under Article 226 of the Constitution, an intra-Court appeal would lie;

(ii) If a "judgment" is rendered by a single Judge of the High Court in exercise of powers of superintendence under Article 227 of the Constitution, an intra-Court appeal would not lie, and

(iii) No appeal would lie from a judgment passed or order made "in exercise of criminal jurisdiction".

[We are not concerned with other category of cases and do not propose to deal with them.]

18. On behalf of the appellants, an endeavour was made to persuade us to hold that the present L.P.A.s are maintainable. It was urged that the petitions were filed under Article 226 of the Constitution. It was stated that in the cause title, a reference was made only to Article 226 of the Constitution. It was submitted that in *Umaji Keshao* (supra), the Supreme Court has held that a party cannot be deprived of right of intra-Court appeal under Article 226 of the Constitution, if he has invoked Article 227 of the Constitution along with Article 226.

19. In *Umaji Keshao*, Madon, J. stated:

Petitions are at times filed both under Articles 226 and 227 of the Constitution. The case of *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, before this Court was of such a type. Rule 18 provides that where such petitions are filed against orders of the tribunals or authorities specified in Rule 18 of Chapter XVII of the Appellate Side Rules or against decrees or orders of Courts specified in that Rule, they shall be heard and finally disposed of by a single Judge. The question is whether an appeal would lie from the decision of the single Judge in such a case. 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. Such was the view taken by the Allahabad High Court in *Aidal Singh and Others Vs. Karan Singh and Others*, and by the Punjab High Court in *Raj Kishan Jain Vs. Tulsi Dass etc.*, and *Barham Dutt and Others Vs. Peoples' Co-operative Transport Society Ltd., New Delhi and Others*, and we are in agreement with it.

[Emphasis supplied]

(No opinion was expressed by Chinnappa Reddy, J. on this point)

20. It was argued that the appellants had invoked Article 21 of the Constitution. The said Article declares that "No person shall be deprived of his life or personal liberty except according to procedure established by law". Article 21 is one of the Fundamental Rights guaranteed under Part III of the Constitution. The petitions for enforcement of a right under that Article were under Article 226 of the Constitution.

21. It was also urged that the order passed by the Chief Judicial Magistrate, Pali, Rajasthan was null and void and without jurisdiction. When the Court had no power, authority or jurisdiction to pass an order and in purported exercise of power under Sub-section (3) of Section 156 of Code of Criminal Procedure an action was taken, the said action could not be challenged by invoking power of superintendence under Article 227 of the Constitution and petitions ought to have been treated as simple writ petitions under Article 226 making complaint against an order which was still-born order. L.P.A.s are, therefore, competent.

22. It was submitted that had it been a case of a grievance against an order passed by a Court subordinate to a High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution, the petitioners would have invoked the jurisdiction of the High Court concerned, namely, the High Court of Rajasthan and not the High Court of Gujarat.

23. It was also contended that if criminal proceedings were initiated in the Court of Chief Judicial Magistrate, Pali, Rajasthan which were not in accordance with law, the petitioners could have filed applications u/s 482 of Code for quashing of proceedings by approaching an appropriate Court (High Court of Rajasthan). Since the grievance of the petitioners was totally different, they have invoked Article 226 of the Constitution. An order passed in those petitions is, therefore, subject to intra-Court appeal. It was submitted that the prayer for quashing of order passed by the Chief Judicial Magistrate, Pali under Sub-section (3) of Section 156 of the Code was merely "a link in the chain of illegal actions" and that is how the challenge was made to that order. From such prayer it cannot be concluded that the Petitions were under Article 227 of the Constitution and no Letters Patent Appeals would be competent.

24. Finally, it was submitted that by now it is well settled that the validity of judicial orders can also be challenged by invoking Article 226 of the Constitution. For that proposition, reliance was placed on various decisions including the decision in A.R. Antulay Vs. R.S. Nayak and Another, and Supreme Court Bar Association Vs. Union of India and Another,

25. Mr. Rathod, on the other hand, appearing for the State of Gujarat submitted that in substance and in reality, the orders are challenged by both the petitioners under Article 227 of the Constitution. He submitted that an order was passed by the Chief Judicial Magistrate, Pali, in exercise of powers under Sub-section (3) of the Section 156 of the Code. All the same, it was an order passed by the Chief

Judicial Magistrate in his capacity as such. Since he was of the opinion that before taking cognizance, investigation was necessary, he directed investigation to be made. Such order, nevertheless remains to be a judicial order subject to challenge in an appropriate Court u/s 482 of the Code or under Article 227 of the Constitution. Mr. Rathod further submitted that the said order was taken in revision which was decided by Additional Sessions Judge on November 15, 1996. It was thus clear that the order was passed by a Court subordinate to the Court of Sessions and the order was also modified. It was stated that one of the parties aggrieved by the order passed by Chief Judicial Magistrate, Pali has invoked jurisdiction of the High Court of Rajasthan u/s 482 of the Code of Criminal Procedure and the application is pending in the High Court of Rajasthan.

26. According to Mr. Rathod, even if it is assumed that an order passed by the Chief Judicial Magistrate, Pali was without jurisdiction or there was jurisdictional error in exercising power under Sub-section (3) of Section 156 of Code, unless and until it is set aside by a superior Court to which the Court of Chief Judicial Magistrate, Pali is a subordinate, it remains in force. The validity or otherwise of that order can be tested by a Court superior to that Court under revisional or supervisory jurisdiction.

27. According to Mr. Rathod, merely by referring Article 226 in the cause title, a petition does not become a petition under Article 226 of the Constitution. The Court will have to consider the totality of the facts and circumstances, such as, nature of the order challenged, relief prayed by the petitioner, availability of alternative remedy, etc. The same principle would apply even where the petitioners invoke Article 21 of the Constitution. Merely by mentioning Article 21, the petitioners cannot contend that they have invoked jurisdiction of this Court under Article 226 and not under Article 227 of the Constitution.

28. In the facts and circumstances of the case, it would not be advisable to express final opinion on the question whether the petitions filed by the petitioners can be said to be under Article 226 or Article 227 of Constitution, as in our opinion, even on other grounds, L.P.A.s, are not maintainable.

29. We, therefore, proceed to consider the second part of the first question; namely; whether an order passed by the learned single Judge could be said to be an order passed "in the exercise of criminal jurisdiction" as referred in Clause 15 of Letters Patent. We have already quoted Clause 15 in the earlier part of the judgment. As observed by the Supreme Court in *Umaji Keshao*, an appeal shall lie to a Division Bench under Clause 15 from the judgment of a single Judge of the High Court, if it is not against "sentence or order passed or made in the exercise of criminal jurisdiction".

According to learned Counsel for the appellants, the order passed by the learned single Judge impugned in the present L.P.A.s could not be said to be one passed or made in the exercise of criminal jurisdiction. For that, following circumstances were brought to our notice;

(i) No cognizance was taken by the Court of Chief Judicial Magistrate, Pali u/s 190 of the Code;

(ii) Neither process was issued nor proceedings were taken under Sections 200-202 of the Code;

(iii) An order passed under Sub-section (3) of Section 156 of the Code cannot be said to be a judicial order in the exercise of criminal jurisdiction;

(iv) When the order passed by the Chief Judicial Magistrate, Pali, was not an order made in the exercise of criminal jurisdiction, the order passed by the learned single Judge can never be said to be an order passed in the exercise of criminal jurisdiction.

(v) Article 21 which guarantees the right to life and liberty is a Civil right. When petitions were filed for enforcement or protection of that right, the proceedings cannot be said to be criminal proceedings and L.P.A.s are competent.

(vi) Jurisdiction under Article 226 of the Constitution is extraordinary in nature and is always subject to intra-Court appeal under Clause 15 of the Letters Patent.

(vii) Exercise of criminal jurisdiction covered by Letters Patent is the jurisdiction referred to in Clauses 22 to 30, 33 and 38. Only in those cases, actions taken or orders made are not subject to intra-Court appeals.

30. Mr. Rathod, on the other hand, submitted that the order passed by the learned single Judge can be said to be passed or made in exercise of criminal jurisdiction. Mr. Rathod made the following submissions:

(i) A criminal complaint was filed against the appellants and thus criminal proceedings were initiated against both of them. The case is, therefore, covered by bracketed portion of Clause 15 of the Letters Patent and L.P.A.s are not maintainable.

(ii) The learned Chief Judicial Magistrate, Pali, by passing order under Sub-section (3) of Section 156 of the Code exercised powers under the Code of Criminal Procedure. That order was passed in exercise of criminal jurisdiction. The said order was challenged by the petitioners by filing Special Criminal Applications. The order passed in those petitions by the learned single Judge, therefore, could be said to be an order made in the exercise of criminal jurisdiction.

(iii) The fact that the Chief Judicial Magistrate has not taken cognizance is not at all relevant or material so far as exercise of power by him is concerned, An action may be taken by the Court under Sections 190, 200 or 156(3) of the Code in exercise of criminal jurisdiction. The difference is that whereas in the former the Court takes cognizance, in the latter, the Court directs investigation without taking cognizance. The nature of the proceedings, however, does not change.

(iv) Even if the order passed by the Chief Judicial Magistrate, Pali was illegal, it

could have been challenged in the High Court of Rajasthan under Article 227 of the Constitution.

(v) An order passed by the Chief Judicial Magistrate, Pali, was subject-matter of Criminal Revision Application No. 24 of 1996 before the Additional Sessions Judge, Pali and it was modified.

(vi) The order passed by the Chief Judicial Magistrate, Pali is again challenged by one of the aggrieved parties in the High Court of Rajasthan u/s 482 of the Code of Criminal Procedure, and the petition is pending.

(vii) Even if a party challenges an order by filing a petition under Article 226 of the Constitution, the Court will have to exercise power considering the nature of the order impugned. In the instant case, in substance, the challenge was to the order passed by the Chief Judicial Magistrate, Pali u/s 156(3) of the Code, which was passed in exercise of criminal jurisdiction. The learned single Judge, therefore, also exercised criminal jurisdiction and no intra-Court appeal would lie.

(viii) Even if the prayer is for enforcement of Fundamental Right under Article 21 of the Constitution, since it was likely to be affected in pursuance of an order passed under Sub-section (3) of Section 156 of the Code or in consequence thereto, the action could be said to be in exercise of criminal jurisdiction and no intra-Court appeal could be filed against that order.

31. It has been clearly held in *Umaji Keshao* by the Supreme Court that an intra-Court appeal will lie to a Division Bench of a High Court from a "judgment" of a single Judge of that Court, if it is not covered by excluded category of cases specified in Clause 15. The bracketed portion of that clause makes it clear that if such judgment is "a judgment passed or order made in exercise of criminal jurisdiction", L.P.A. would not be competent. The question, therefore, is whether the order passed by the learned single Judge impugned in the present L.P.A.s can be said to be "a judgment or order passed or made in exercise of criminal jurisdiction. If the reply is in the affirmative, it is not disputed that no appeal is competent. On the other hand, if the reply is in the negative, it must be conceded that appeal would be tenable.

32. Now, to substantiate the argument that L.P.A. is maintainable we have been taken by the learned Counsel for the appellant to several decisions. Special reference was made to *Umaji Keshao* and our attention was invited to various paragraphs of the said judgment. It may, however, be noted that in *Umaji Keshao*, proceedings were of a civil nature. In tenancy proceedings, a matter had gone to Revenue Tribunal from which it reached before learned single Judge of the High Court of Bombay (Nagpur). When L.P.A. was filed against the judgment of a single Judge, the Division Bench held that L.P.A. was not maintainable. The Supreme Court also held that the order passed by the Division Bench was correct. While considering rival submissions, the Supreme Court traced the history of Letters Patent, nature of proceedings before the learned single Judge and maintainability or otherwise of intra-Court appeal from a "judgment" of a

single Judge of High Court. The Court also observed as to when an order can be said to be "judgment" within the meaning of Clause 15 of Letters Patent. The Court further stated that an intra-Court appeal would not lie against the judgment or order, made or passed by the learned single Judge in exercise of criminal jurisdiction. The Court also considered the relevant provisions of Indian High Courts Act, 1861 by which High Courts were empowered to exercise civil, criminal and other jurisdiction original as well as appellate. The Court noted that the Constitution saved the powers of existing High Courts under Article 225 of the Constitution and invested with powers and jurisdiction under Articles 226 and 227 of the Constitution on other High Courts. It was posited that if a petition was under Article 227 of the Constitution, no intra-Court appeal would lie but if it was under Article 226 of the Constitution or under both the Articles 226 and 227 of the Constitution, the party will not be deprived of right of intra-Court appeal, if otherwise such an appeal would be competent.

33. Considerable stress was placed on a decision of a Division Bench of this Court in *State of Gujarat v. Jayantilal Maganlal Patel* 1995 (2) GLH 260. In that case, a petition was filed under Article 226 of the Constitution by a convict who was sentenced u/s 302 of the Indian Penal Code and awarded life imprisonment. His appeal against conviction was pending in this Court. During the pendency of appeal, he filed an application before the Government for grant of parole. Initially, parole was granted for some time but no decision was taken by the Government on his application for extension of parole. He, therefore, filed a petition under Article 226 of the Constitution. The learned single Judge allowed the petition. The State preferred L.P.A. A preliminary objection was raised on behalf of the convict petitioner that no appeal would be tenable because the learned single Judge had passed an order in exercise of criminal jurisdiction.

34. Overruling the objection and holding the appeal maintainable, the Division Bench, speaking through Kirpal, C.J. (as he then was) observed:

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 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.

(Emphasis supplied)

35. Putting emphasis on the portion underlined, the learned Counsel for the appellant urged that the Court in no uncertain terms held that criminal jurisdiction referred to in Clause 15 of the Letters Patent is with regard to "exercise of power of appeal or revision by the High Court under relevant provision of Code of Criminal Procedure and not exercise of the power under Article 226 of the Constitution." According to them, the Court clarified the legal position by interpreting Clause 15 confining its application to appeals and revisions. They, therefore, submitted that an embargo placed by Clause 15 would not extend to petitions under Article 226 of the Constitution.

36. In our considered view, the submission is not well founded and cannot be accepted. The observations must be considered in light of the facts before the Court. In the case before the Court, the petitioner did not approach this Court against any order passed by any Court or Government in exercise of criminal jurisdiction. Criminal trial was over and he was convicted. An appeal was pending in this Court. The question before the learned single Judge in a petition under Article 226 of the Constitution was inaction on the part of the Government in not deciding an application for extension of parole. In our considered opinion, the decision by the learned single Judge, in that petition cannot be said to be a decision in exercise of criminal jurisdiction. An intra-Court appeal against such decision was, therefore, competent. The power which was to be exercised by the State Government was neither under I.P.C. nor under Cr.P.C. It was administrative or executive power under the Prison (Bombay Furlough and Parole) Rules, 1959. When the power was not exercised by Government, a grievance was made by the aggrieved party by invoking Article 226 of the Constitution and the learned single Judge passed an order. In our opinion, therefore, the observations of the Division Bench cannot be construed to mean that when a petition is filed under Article 226 of the Constitution, L.P.A. would lie irrespective of the fact that such question might have arisen in exercise of criminal jurisdiction.

37. This is quite clear if one reads the following observations:

In the present case, it cannot, in any way, be said that the petitioner had invoked the criminal jurisdiction under the provisions of the Code of Criminal Procedure of the High Court when he had, in fact, filed the Special Civil Application under Article 226 of the Constitution before the single Judge.

38. In our judgment, therefore, it cannot be said that in the above decision, this Court has laid down any rule of universal application regarding maintainability of Letters Patent Appeal against "judgment" of a single Judge irrespective of the facts of the case.

39. The matter can be considered from a different angle also. It is well settled that availability of alternative remedy is no bar to exercise of extraordinary powers by a High Court under Article 226 of the Constitution. Even if an alternative and efficacious remedy is available to the aggrieved party, he can

approach a High Court by filing a petition. It also cannot be disputed that the High Court can entertain a petition and can grant appropriate relief to the applicant notwithstanding availability of other remedy. Availability of such remedy is but one of the considerations which the Court may take into account while exercising extraordinary powers under Article 226. In other words, it is a question of discretion of the Court and not of jurisdiction of the Court.

40. Now, if the contention of the learned Counsel for the appellants is upheld, a person convicted for an offence under the Indian Penal Code or under any other law may approach a High Court by invoking extra-ordinary jurisdiction under Article 226 of the Constitution. If an order passed by the learned single Judge under Article 226 of the Constitution is subject to Letters Patent Appeal, against such order also, L.P.A. would be competent. In fact, Mr. Jhaveri emphatically stated that in such cases, L.P.A.s would lie inasmuch as it cannot be said that the learned single Judge has passed an order or delivered a judgment in exercise of criminal jurisdiction.

41. With respect, we are unable to agree with the Counsel. If the argument is upheld, the bracketed portion of Clause 15 and the embargo placed therein, will become nugatory and frustrate the very object with which such a provision has been made.

42. Our attention was also invited to a decision in *Ramjibhai Dayarambhai Joshi Vs. State of Gujarat and Another*, . In that case, Special Criminal Application was filed which was rejected by the learned single Judge and against the said rejection, L.P.A. was filed which was held maintainable. It was submitted that the ratio laid down in *Ramjibhai Joshi* (supra) would apply to the facts of the present case and L.P.A.s are competent.

43. We are afraid, the principle laid down in *Ramjibhai Joshi* (supra) also does not help the appellants. In that case, a vehicle was detained by Regional Transport Authorities in exercise of power u/s 207 of the Motor Vehicles Act for contravention of the provisions of the Act. An application was filed by the appellant in the Court of Judicial Magistrate, First Class, Tharad for custody of vehicle during the pendency of the proceedings which was rejected by the learned Magistrate on the ground that no criminal case was registered against the appellant and hence the Court had no power to make an order for custody of vehicle under the Code of Criminal Procedure, 1973. The application was, therefore, not maintainable. A revision application also came to be dismissed by the learned Sessions Judge and the petition also met with the same fate. When L.P.A. was filed, a preliminary objection was raised by the State that L.P.A. against Special Criminal Application was not maintainable.

44. Dealing with the objection one of us (C.K. Thakker, J.) observed:

We may, however, deal with a preliminary objection raised by the learned A.G.P. that since the main petition was a Special Criminal Application i.e. in exercise of administration of criminal justice, Letters Patent Appeal is not maintainable. Our

attention in this connection was invited to Clause 15 of the Letters Patent of Bombay applicable to this Court. Looking to the decision of the Supreme Court in *The Transport Commissioner, Andhra Pradesh, Hyderabad and Another Vs. S. Sardar ali, Bus Owner, Hyderabad and Others*, , if no criminal proceedings are pending before a Magistrate and no order is passed by Criminal Court in exercise of criminal jurisdiction, the remedy which is available to any aggrieved party is to invoke provisions of Article 226 of the Constitution of India. As stated hereinabove, an application filed by the appellant before the J.M.F.C., Tharad, came to be rejected on the ground that no criminal complaint was registered against the appellant. Revision application filed by the appellant against the said order also met with the same fate. In these circumstances, the appellant invoked Article 226 of the Constitution of India. 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, a Letters Patent Appeal lies. We, therefore, do not uphold the contention that Letters Patent Appeal is not maintainable and we hold that Letters Patent Appeal is maintainable at law.

(Emphasis supplied)

45. From the above observations, it is clear that though the petition filed under Article 226 of the Constitution was Special Criminal Application, it could not be said that the learned single Judge passed an order in exercise of criminal jurisdiction as it was clear that no criminal proceedings were pending in any Court and the application came to be rejected both by J.M.F.C, as well as by Sessions Judge, only on that ground. In these circumstances, when the applicant approached this Court by filing a petition, it was under Article 226 of the Constitution of India as observed by the Hon'ble Supreme Court in *Sardar Ali*, (supra) and intra-Court appeal was maintainable. The said judgment, therefore, cannot be of any assistance to the appellants.

46. Reliance was also placed on an order in L.P.A. No. 1064 of 1997, dated 10th August 1998. In that case, the petitioner-appellant was appointed as Special Public Prosecutor for conducting cases on behalf of the State Government by the State of Gujarat which was challenged by one of the accused. The learned Judge, who heard the matter, made certain remarks of bias against the Special Public Prosecutor observing that he was acting in a partisan way favouring some of the accused and his conduct was not befitting the office of Special Public Prosecutor. The order of the learned single Judge was challenged by the Special Public Prosecutor by filing L.P.A. Apart from the fact that no contention as to the maintainability of L.P.A. was raised by the respondents, even on facts, we are of the view that the decision would not be of any help to the appellant. The action of appointment of Special Public Prosecutor, in our opinion, is an administrative act by the State. When such appointment was challenged and was set aside by the learned single Judge, an order can be made subject-matter of intra-Court appeal.

47. In *Mahomedalli Allabux Vs. Ismailji Abdulali*, , a writ of habeas corpus was

issued by a single Judge of the High Court of Bombay in exercise of power u/s 491-A of the Code of Criminal Procedure, 1898. L.P.A. was filed against the order passed by the single Judge. The question before the Division Bench was whether L.P.A. was competent. Holding appeal to be maintainable, the Division Bench observed that an order of a single Judge directing a writ of habeas corpus to issue cannot be said to be an order made or passed "in exercise of criminal jurisdiction" and hence appeal was competent.

48. The decision in Mahomedali (supra) also in our opinion, does not help the appellants. In the instant case, a criminal complaint is already filed before a Court of Law and investigation is ordered under Sub-section (3) of Section 156 of the Code of Criminal Procedure. The said order was challenged before the learned single Judge on the ground that the order passed by the Chief Judicial Magistrate, Pali was null and void. The order was thus passed in exercise of powers under the Code of Criminal Procedure and hence the judgment of the learned single Judge can be said to be in exercise of criminal jurisdiction. No intra-Court appeal lies against such order.

49. State of Orissa Vs. Ram Chander Agarwala and Others, is also not applicable to the facts of the case. There the Court considered revisional jurisdiction of the High Court and power to alter judgment after it is signed with reference to inherent powers conferred on High Courts u/s 561-A of the Code of Criminal Procedure, 1898. The question of maintainability or otherwise of L.P.A. against an order passed by a single Judge of the High Court was not at issue before the Supreme Court.

50. A.R. Antulay Vs. R.S. Nayak and Another, , to which our attention was invited is not on the point. The Hon"ble Supreme Court in paras 33, 66 and 166 referred to ordinary original criminal jurisdiction and extraordinary original criminal jurisdiction, as also different clauses of Letters Patent on the point of right of appeal under the Code of Criminal Procedure and infringement of Fundamental Rights guaranteed under Article 12 of the Constitution. The observations in A.R. Antulay, therefore, are not relevant to the case before us.

51. Reference was made to a recent decision of a Division Bench of this Court in Ajit D. Padiwal and etc. Vs. State of Gujarat and Others, for the proposition that LPA would lie even if the proceedings are of criminal nature. In that case, an article was published in "Indian Express" (daily) dated 29th January 1995 under the title "Where law "allows" felling of trees". The said cutting was forwarded to this Court by the petitioner who was then a practising advocate requesting the Court to treat the news item as Public Interest Litigation. A Division Bench treated the same as a writ petition by giving Special Civil Application No. 6156 of 1995. Some orders were passed and the matter was pending. On April 3, 1996, another news item appeared in "Gujarat Samachar" (vernacular daily) regarding rash and indiscriminate cutting of trees. A single Judge of this Court initiated suo motu proceedings by registering it as Special Civil Application No. 2798 of 1996. An order was passed, operative part of which, read as under:

...In view of the aforesaid facts and circumstances of the case, I taking a suo motu notice of the aforesaid news item at Annexure A, direct the Registrar of this Court to treat this as a writ petition and issue notice making it returnable on 26th April, 1996 at 11-00 a.m. to (1) Secretary, Forest Department, Gandhinagar (2) concerned Range Forest Officer of the area; and (3) J.K. Paper Mills, who shall file their respective affidavits with the allegations made in the aforesaid news item. I hereby further direct the Superintendent of Police, Central Bureau of Investigation, "Jivabhai Chambers", Ashram Road, Ahmedabad to inquire into the matter and find out as to (i) whether the facts narrated in the aforesaid news item are true? if yes, (ii) then to find out as to why, how and under what circumstances the alleged cutting of trees/seasame, etc.. in "Shulpaneshwar Sanctuary" was permitted, and (iii) at whose instance, that is to say which of the Government authority? and make a true and full disclosure by enclosing the notings, directions - in short whatever Government record available leading to the alleged illegal activity immediately (preferably within 24 hours from the date and time of receipt of this Order). The Superintendent of Police, CBI is hereby further directed to spring into action and inquire/investigate the case either personally or through any of his officer of personal confidence, right from the grass-root level to find out the clues which ultimately prevailed over the officers of the Forest Department permitting cutting of trees in "Shulpaneshwar Sanctuary", going to the logical extent of even prosecuting the concerned delinquents on the basis of material in support of the allegations and submit a report to this Court on 26-4-1996. In case, in the meanwhile, if any prima facie offence is made out, the SP-CBI shall also register the offences against all concerned....

52. In pursuance of the order passed by the learned single Judge of this Court, Central Bureau of Investigation (C.B.I.) investigated the matter and submitted a report on April 26, 1996.

53. The order passed by the learned single Judge initiating suo motu proceedings on the basis of newspaper item published in "Gujarat Samachar" was taken in appeal by the State of Gujarat as well as by aggrieved parties. The question before the Division Bench was whether the learned single Judge could have initiated the proceedings.

54. Considering the High Court Rules and various decisions of the Supreme Court, the Division Bench held that it was not open to the learned single Judge to initiate suo motu proceedings by treating the news item as Special Civil Application. It was urged that in that case proceedings were criminal proceedings and First Information Report was lodged by Central Bureau of Investigation and yet L.P.A.s were entertained and were finally allowed quashing and setting aside the order passed by the learned single Judge.

55. In our opinion, however, the above decision has no application in the present case. Looking to the facts, it is clear that the proceedings were entirely of a different nature. Neither a criminal complaint was filed before police nor before

C.B.I, nor before a Competent Court of law. Some news item was published in local newspaper. The said news item was treated as Special Civil Application in suo motu exercise of power under Article 226 of the Constitution by the learned single Judge. Only thereafter, certain proceedings followed and F.I.R. was registered showing the name of the learned Judge who passed the order as "First Informant". Thus, the order passed by the learned single Judge preceded and did not follow F.I.R. In these circumstances, in our opinion, the said decision has no relevance in the present case.

56. Reliance was also placed on an order passed by a Division Bench in Miscellaneous Criminal Application No. 984 of 1998 in L.P.A. No. 366 of 1998 dated April 7, 1998. In that case, an application was filed by an accused to enlarge him on bail in connection with C.R. No. 115 of 1997 registered at Modasa Police Station for offence punishable u/s 498-A read with Section 306 of IPC. The said application came to be rejected by the trial Court and being aggrieved by that order, he filed Misc. Cri. Appli. No. 908 of 1998. On March 19, 1998, the learned single Judge passed the following order:

Having heard the learned Counsels for the parties, I am of the opinion that the Chief Secretary of the Government of Gujarat may personally remain present in the Court so that the Court can ascertain how the liquor is available in the State where it is totally prohibited.

(Emphasis supplied)

57. Being aggrieved by that part of the order by which the Chief Secretary to the Government of Gujarat was directed to remain personally present in the Court, an appeal was filed by the State. Notice was issued, pursuant to which parties appeared. A preliminary objection was raised on behalf of the accused that L.P.A. was not maintainable as the order was passed by the learned single Judge in exercise of criminal jurisdiction. The argument of the learned Government Pleader, on the other hand, was that the direction to the Chief Secretary of the Government to remain personally present in the Court could not be said to be in exercise of criminal jurisdiction by the learned single Judge and did not fall under the bracketed portion of Clause 15 which excluded intra-Court appeal. The submission was that such direction was either under Article 226 of the Constitution or in suo motu exercise of power in public interest litigation. The Division Bench was of the opinion that the submission of the learned Government Pleader was well founded inasmuch as according to assignment of work, the learned single Judge was hearing bail matters. Had an order been passed granting or refusing to grant bail, it could have been said to be in exercise of criminal jurisdiction. But a direction to the effect that the Chief Secretary should remain personally present in the Court to explain as to how liquor was freely available in a dry State, could not be said to be an order in exercise of "criminal jurisdiction". Such direction, therefore, must either be in exercise of extraordinary power under Article 226 of the Constitution which is subject to intra-Court appeal or in exercise of suo motu power in public interest litigation.

In a latter situation, however, the matter could not have been placed nor could have been heard by a single Judge since as per roster, matters pertaining to Public Interest Litigation could be entertained only by a Division Bench of the First Court headed by Hon''ble the Chief Justice.

58. Considering the submission of the learned Government Pleader, the Division Bench, through C.K. Thakker, J. stated:

In the present case, in our considered view, the order was passed by the learned single Judge independent of the powers under the Code of Criminal Procedure, since the impugned direction, in our opinion *prima facie* cannot be said to be in exercise of criminal jurisdiction, a Letters Patent Appeal would be maintainable.

(Emphasis supplied)

59. On the other hand, our attention was invited to certain decisions in which intra-Court appeals were held not maintainable. In *Kranti Vinayak v. Rakshak Vinayak and Ors.* 1997 (2) GLH 732, an appeal was filed against summary dismissal of Special Criminal Application under Article 226 of the Constitution by a single Judge of this Court. In *Kranti Vinayak (supra)*, a complaint was filed for offences punishable under Sections 498-A and 120-B of I.P.C. and under Sections 3 and 4 of the Dowry Prohibition Act. Criminal proceedings were initiated and an investigation was ordered under Sub-section (3) of Section 156 of the Code as in the present case. "B" summary was granted by the learned Magistrate. The said order was challenged by the petitioner under Article 226 of the Constitution and the learned single Judge rejected the petition. When L.P.A. was filed, considering the relevant clauses of Letters Patent, the Division Bench held that intra-Court appeal was not maintainable since the order passed by the learned single Judge could be said to have been passed in exercise of criminal jurisdiction. Such order was, therefore, not subject to L.P.A.

60. In Letters Patent Appeal arising from Spl. Cri. App. No. 244 of 1980, decided by a Division Bench of B.J. Diwan, C.J. and G.T. Nanavati J. (as he then was) on 30th April 1981 also, a similar view was taken.

61. The said case was similar to the case on hand. In that case also, a petition was filed under Article 226 of the Constitution and a prayer was made to call for explanation of Public Officer-in-charge of Kalol Police Station as to why he was not arresting the offenders and not recovering "Muddamal" articles. A direction was, therefore, sought against the police officer of the said police station to arrest the offender and recover Muddamals relating to the case and for other consequential reliefs.

Holding the appeal non-maintainable, the Court observed:

The Letters Patent Appeal is not maintainable since the order which was passed by the learned single Judge was passed in the exercise of criminal jurisdiction though it was invoked under Article 226 of the Constitution. Under these circumstances, the Letters Patent Appeal is not maintainable and it is dismissed

since it is not maintainable.

(Emphasis supplied)

62. Finally, our attention was invited to L.P.A. Nos. 795, 796 and 806 of 1996 decided on September 10, 1996. Those appeals were preferred by Sick Textile Undertakings in the State of Gujarat. The Textile Commissioner issued a notification under Clause 8 of the Textile (Development and Regularisation) Order, 1993 issued under the Essential Commodities Act, 1955 making it obligatory on Textile Units to prepare a specific quality of yarn. As there was non-compliance with the said requirement, complaints were filed by the Additional Director, Regional Office, Textile Commissioner for commission of offences punishable under Sections 3 and 7 of the Essential Commodities Act, 1955. Being aggrieved by those complaints the appellants filed Special Criminal Applications by invoking Article 226 of the Constitution praying for quashing of F.I.R. filed by Additional Director. The learned single Judge dismissed the petitions observing that alternative remedy u/s 482 of the Code of Criminal Procedure, 1973 was available. The aggrieved petitioners filed intra-Court appeals. The question before the Division Bench was whether those L.P.A.s were competent.

63. Considering Clause 15 of the Letters Patent, in light of the fact that no intra-Court appeal would lie if it is filed against an order passed by the learned single Judge in exercise of criminal jurisdiction, the Division Bench (G.D. Kamat, C.J. and C.K. Thakker, J.) held that appeals were not maintainable. In deciding the question, the Bench considered various decisions including the decision of the Full Bench in Patel Kashiram Lavjibhai Vs. Narottamdas Bechardas and Others, to which reference will be made hereafter.

64. The Court, speaking through, one of us (Thakker, J.), stated:

In our considered opinion, the proceedings in the instant cases, in substance and in reality, can be said to be proceedings in exercise of criminal jurisdiction. Looking to the First Information Report, it is clear that it was alleged by the complainant that a notification dated March 20, 1995 was issued by the Textile Commissioner in pursuance of Clause 8 of the Textile (Development and Regularisation) Order, 1993 which is an order passed in exercise of powers u/s 3 of the Essential Commodities Act, 1955. It is further alleged that the accused are producers of yarn and are subject to the provisions of the Textile Commissioner's notification referred to above. In view of the above legal and statutory position, they were bound to fulfil obligations for packing hank yarn during the period of April-June, 1995, July-September 1995 and October-December 1995, and in spite of that they had not fulfilled the said obligations. The details of the backlog and instalment had also been given in Annexure II with First Information Reports. According to the complainant, in these circumstances, the accused failed to comply with the directions issued by the Textile Commissioner and thereby contravened the provisions of Clause 8 of the Textile Control Order and thereby they had committed offences punishable u/s 7 read with Section 3 of the

Essential Commodities Act, 1955. Thus, the proceedings have been initiated by the respondents against the appellants in the exercise of criminal jurisdiction.

(Emphasis supplied)

The Court, therefore, concluded:

For the reasons recorded hereinabove, we have no doubt in our minds that in substance and in reality, the proceedings can be said to have been initiated in exercise of criminal jurisdiction covered by the bracketed portion of Clause 15 of the Letters Patent. If it is so, obviously, Letters Patent Appeals do not lie. We accordingly hold that the appeals filed by the appellant companies under Clause 15 of the Letters Patent against the order passed by the learned single Judge are not competent.

(Emphasis supplied)

65. In our opinion, the above observations of the Division Bench reflected the correct position of law. An attempt was no doubt made that though the Full Bench decision in Patel Kashiram (supra) was considered by the Division Bench, attention of the Court was not invited to Jayantilal Maganlal Patel. In Jayantilal Maganlal Patel (supra), the Division Bench observed that criminal jurisdiction under Clause 15 of the Letters Patent would mean "the exercise of powers of appeal or revision by High Court under the relevant provision of Cr.P.Code and not in exercise of powers under Article 226 of the Constitution.

66. We may, however, reiterate what we have already stated that the above observations of the Division Bench must be considered in the light of the facts before the Court and in that case, the Court was called upon to decide the maintainability of L.P.A. against an order passed by the State Government refusing to decide an application for parole of a convict under the Prison Rules and the learned single Judge exercised jurisdiction by interfering with an administrative inaction. L.P.A. was, therefore, held maintainable in that case. The said decision is thus neither contrary to nor inconsistent with the decision of the Division Bench in L.P.A. No. 795 of 1996.

67. Our attention was also invited to a decision of the Supreme Court in State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj, for the proposition that proceedings under Article 226 of the Constitution are independent proceedings. Their Lordships indicated that the power conferred under Article 226 of the Constitution is in the nature of original jurisdiction and it cannot be confused with ordinary civil jurisdiction of the High Court.

68. In our opinion, the ratio laid down in Dr. Vijay Anand (supra) may be relevant, had we decided the point whether the proceedings can be said to be under Articles 226 or 227 of the Constitution of India. The ratio may be helpful in resolving the question of original jurisdiction of High Court under Article 226 in juxta-position of supervisory jurisdiction under Article 227 of the Constitution. As we had not expressed final opinion on that question, and we are disposing

appeals on the ground that the order passed by the learned single Judge can be said to have been passed in exercise of criminal jurisdiction, the case cited is not relevant.

69. Likewise, the ratio laid down in *Mohanbhai Ramjibhai v. Deputy Executive Engineer, Panchayat, R. & B. Division Dhangadhra* 1998 (2) GLH 44 is also of no assistance to the appellants. In that case, a petition was filed against the award passed by the Labour Court which was dismissed by the learned single Judge. L.P.A. against the said decision was allowed by the Division Bench. In that case, the main question was whether the petition could be said to be under Article 226 or under Article 227. It had nothing to do with exercise of criminal jurisdiction by the learned single Judge.

70. Special attention was invited to a decision of Full Bench of this Court in *Patel Kashiram Lavjibhai Vs. Narottamdas Bechardas and Others*, . In that case, a reference was made by a Division Bench to a Full Bench in view of conflicting observations by two different Division Benches. In a decision of the Full Bench, the facts were not stated. We, therefore, called for the original matter which was Special Civil Application No. 1110 of 1970. Looking to the controversy raised in the petition, it was clear that it related to tenancy rights. The learned single Judge disposed of the matter against which L.P.A. was filed. The question before the Division Bench was whether L.P.A. was maintainable. The matter was referred to Full Bench with the following question:

Whether an appeal against the 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 is barred under Clause 15 of the Letters Patent (a) because the decision of the single Judge can be said to be given in the exercise of revisional jurisdiction of the High Court or (b) it is otherwise barred?

(Emphasis supplied)

71. The Full Bench considered the Articles 226 and 227 of the Constitution in the light of leading decisions of the Hon'ble Supreme Court and other High Courts and deduced the following principles in para 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.

(Emphasis supplied)

72. In para 19, the question which was referred was answered thus:

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.

(Emphasis supplied)

73. It was submitted by the learned Counsel for the appellants that the question referred to the Full Bench was a larger one and was not limited to exercise of jurisdiction under Article 226 or 227 of the Constitution. The Full Bench was called upon to consider as to whether an appeal would "otherwise" be barred. It was also submitted that the Full Bench was conscious and mindful of Clause 15. The Court quoted and considered the said clause and laid down certain principles. Principle No. 3 was clear and explicit and in the opinion of the Full Bench "An order made by a learned single Judge of the High Court in exercise of power 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."

74. In the submission of the learned Counsel for the appellants, exercise of powers under Article 226 of the Constitution is distinct, separate and independent of criminal jurisdiction. When a learned single Judge exercises power under Article 226 of the Constitution, he can be said to have exercised power only under that article which has nothing to do with exercise of criminal jurisdiction. This is what, according to them, the Full Bench of this Court has stated.

75. It was also submitted that since the point is concluded by the Full Bench of this Court, a Division Bench is bound by the law laid down in Palel Kashiram Lavjibhai (supra). It was urged that even if this Court is of the opinion that the observations made by the Full Bench were too wide and hence were required to be construed in the light of the facts before the Full Bench, the only course open is to refer the matter to a Larger Bench by directing the office to place the papers before the Hon'ble the Chief Justice for necessary orders. It is, however, not open to this Court to hold that L.P.A.s would not be tenable.

76. In support of the said argument, our attention was invited to a decision of the Supreme Court in State of Tripura Vs. Tripura Bar Association and Others, ,

wherein the Supreme Court observed that a judgment of Co-ordinate Bench is binding to other Co-ordinate Bench and the said Bench must follow the principle laid down by previous Bench. In case, it is of the view that the law laid down by a Co-ordinate Bench was not correct, it ought to refer the matter to a Larger Bench. In the instant case, according to the Counsel, there is no question of referring the matter to a Larger Bench inasmuch as the decision in Patel Kashiram Lavjibhai (supra) was by a Full Bench of three Judges and a Division Bench of two judges is bound to follow the decision of the Full Bench of three Judges. Similar observations were made by the Apex Court in Usha Kumar v. State of Bihar and Ors. 1998 (2) SCC 4, State of Andhra Pradesh Vs. v.C. Subbarayudu and Others, and S.M.D. Kiranpasha v. Government of Andhra Pradesh and Ors. 1990 (1) SCC 327.

77. So far as the above proposition of law is concerned, there cannot be two opinions. We are, however, unable to persuade ourselves that in Patel Kashiram Lavjibhai (supra), the Full Bench has held that L.P.A. would be maintainable even if an order was passed by a single Judge in exercise of "criminal jurisdiction". As stated above, the case before the Full Bench related to right in land and the question was whether the power exercised by the learned single Judge was under Article 226 or under Article 227 of the Constitution. It is well settled that the observations made by a Court have to be understood and applied in the context of the question raised before the Court. In our opinion, the Full Bench of this Court has not said anything with regard to maintainability of appeal against the order passed by a single Judge in exercise of criminal jurisdiction.

78. In the instant case, however, the facts are entirely different. The proceedings were initiated against both the appellants for offences punishable under I.P.C. and N.D.P.S. Act. In exercise of powers under Sub-section (3) of Section 156 of the Code of Criminal Procedure, investigation was ordered by the Chief Judicial Magistrate, Pali, and Criminal case was registered against the accused. The proceedings, thus, could be said to be criminal proceedings even when the accused approached this Court by filing Special Criminal Applications under Article 226/ 227 of the Constitution. The nature of the proceedings did not change and continue to remain as such, i.e. criminal proceedings.

79. We may profitably refer in this connection to a decision of the Supreme Court in S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, . In that case, proceedings were initiated under the Income Tax Act, 1922. At the conclusion of the proceedings before the High Court under Article 226, a certificate of fitness was sought under Article 133(1)(c) read with Article 132(1) of the Constitution. The question before the Court was whether the proceedings before the High Court under Article 226 were "civil proceedings". Dealing with the said question in the light of relevant constitutional provisions, the Constitution Bench observed that whether the proceedings were civil or not would depend upon the nature of the right violated and the appropriate relief which might be claimed and not upon the nature of the tribunal which was

invested with authority to grant relief.

Regarding criminal proceedings, the Court stated:

A criminal proceeding on the other hand is ordinarily one in which, if carried out to its conclusion, it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of the property.

80. In our considered opinion, in the instant case, the proceedings can be said to be criminal proceedings inasmuch as, carried to its conclusion, they may result into imprisonment, fine etc. as observed by the Supreme Court in *Narayana Row*.

81. From the totality of facts and circumstances, we have no hesitation in holding that the learned single Judge has passed an order in exercise of criminal jurisdiction. At the cost of repetition, we reiterate what we have already stated earlier that the proceedings were of a criminal nature. Whether a criminal Court takes cognizance of an offence or sends a complaint for investigation under Sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 does not make difference so far as the nature of proceedings is concerned. Even if cognizance is not taken, that fact would not take out the case from the purview of criminal jurisdiction.

82. In our judgment, a proceeding under Article 226 of the Constitution arising from an order passed or made by a Court in exercise or purported exercise of power under the Code of Criminal Procedure is still a "criminal proceeding" within the meaning of Clause 15 of the Letters Patent. A proceeding seeking to avoid the consequences of a criminal proceeding initiated under the Code of Criminal Procedure will continue to remain "criminal proceeding" covered by the bracketed portion of Clause 15 of the Letters Patent.

83. As Clause 15 of the Letters Patent expressly bars an appeal against the order passed by a single Judge of the High Court in exercise of criminal jurisdiction, LPAs are not maintainable and deserve to be dismissed only on that ground. We accordingly hold that the Letters Patent Appeals are not maintainable at law and they are liable to be dismissed.

84. It is now time to consider the second question whether the learned single Judge has committed an error of law in holding that the High Court of Gujarat had no territorial jurisdiction in the matter.

85. Before we proceed to consider that question, we may note an objection raised on behalf of the learned Counsel for the appellants that once this Court holds that Letters Patent Appeals are not maintainable, the Court cannot enter into merits of the matter. For that, our attention was invited to few cases.

86. In *Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar*, the Apex Court observed that the High Court was right in holding that since Revenue Court alone had jurisdiction over the subject-matter of the suit, an order of returning plaint for presentation to the proper Court was in accordance with law.

The Court proceeded to state:

The last point urged is that when the civil Court had no jurisdiction over the suit, the High Court could not have dealt with the cross-objection filed by the appellant with respect to the adjustment of certain amount paid by the respondent. This contention is correct. When the Court had no jurisdiction over the subject-matter of the suit it cannot decide any question on merits. It can simply decide on the question of jurisdiction and coming to the conclusion that it had no jurisdiction over the matter had to return the plaint.

[Emphasis supplied]

87. With respect, we are unable to appreciate how the above observations can be pressed in service in the instant case. If we are entering into merits of the matter, the above decision would indeed help the appellants. But we are not at all entering into merits or expressing any opinion on the rival contentions of the parties. We are merely considering the alternative argument that even if appeals are maintainable, whether the learned single Judge was right in not entertaining the petitions and in holding that this Court had no territorial jurisdiction in the matter. We refrain from making any observation on correctness or otherwise of the allegations and counter-allegations of the parties. In these circumstances, in our opinion, the ratio laid down in *Athmanathaswami* (supra) would not apply.

88. *Rajasthan Bank Ltd. and Anr. v. M.D. Omana*, (1997) 11 SCC 635 is also not relevant to the point. In that case, the Supreme Court held that when a petition was dismissed by a learned single Judge on the ground that it was not maintainable, and in L.P.A., the Division Bench reversed that order holding that the petition could lie, it was incumbent on the Bench to send the matter back to the learned single Judge to decide it on merits. In that case, a petition was not decided by the learned single Judge on merits. The ratio laid down in *Rajasthan Bank* (supra) also does not apply to the facts of the case inasmuch as the matter was dismissed by the learned single Judge on the ground of want of territorial jurisdiction of this Court and we are considering only that question.

89. The question, therefore, is whether a question relating to territorial jurisdiction of the Court can be said to be "merits" of the matter. In our considered opinion, it is not. To us, it is clear that the point regarding territorial jurisdiction of the Court also relates to maintainability of the matter. Moreover, before the learned single Judge, it was the only question inasmuch as the first question regarding maintainability of L.P.A., was obviously not present. The learned single Judge, therefore, decided the matter considering territorial jurisdiction of the Court and held that since the High Court of Gujarat had no jurisdiction over the matter, the petitions could not be entertained. As in our opinion, territorial jurisdiction is also a question relating to maintainability of petitions as well as L.P.A.s, it can be considered by the Court and accordingly, we proceed to consider it.

90. As already discussed in earlier part of the judgment, Article 226 of the

Constitution empowers every High Court to issue certain writs, directions or orders. Clause (1) states that notwithstanding anything in Article 32, every High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, such writs, directions or orders for protection of fundamental rights or for any other purpose.

91. Clause (2) deals with territorial jurisdiction of the Court and it reads as under:

The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

[Emphasis supplied]

92. From Clause (2), it becomes clear that the power conferred by Clause (1) of Article 226 can be exercised by a High Court in relation to the territories within which the cause of action wholly or partly has arisen. The question, therefore, is whether cause of action either in whole or in part can be said to have arisen within the territorial jurisdiction of this Court as contended by the learned Counsel for the appellants or no cause of action had arisen within the jurisdiction of this High Court as contended by Mr. Rathod.

93. We have already narrated the facts in the beginning. On those facts, it was submitted by the appellants that an offence punishable under N.D.P.S. Act, 1985 was committed at Palanpur, within the territorial jurisdiction of this Court. Proceedings were initiated at Palanpur, appellant of L.P.A. No. 906 of 1998 was serving in the police department at Palanpur and appellant of L.P.A. No. 930 of 1998 was serving at Ahmedabad, i.e. in Gujarat. It was also submitted that a complaint filed by Sumersingh Rajpurohit was in connection with an incident which took place at Palanpur. His only case was that though he was innocent, he was falsely implicated by the appellants. According to the appellants, in these circumstances, no complaint could have been filed against them in Rajasthan. It was, alternatively, argued that even if this Court does not enter into a larger question, the appellants could have invoked jurisdiction of this Court under Article 226 of the Constitution. It was stated that after the complaint was filed and investigation was ordered by the Chief Judicial Magistrate, Pali, Rajasthan, consequential actions were taken and appellants were informed about it in Gujarat. A letter of request was received by the appellant of L.P.A. No. 930 of 1998 in Gujarat through the Registrar of this Court. Similarly, the Director General of Police, Gujarat was intimated to relieve appellant of L.P.A. No. 906 of 1998, so that an appropriate action could be taken against him and he could be arrested. Thus, personal liberty was likely to be deprived in the State of Gujarat pursuant to an order passed by the Chief Judicial Magistrate, Pali. In these circumstances, according to the appellants, in any case, part of cause of action

had accrued within the territorial jurisdiction of this Court. If it was so, the argument proceeded, the learned single Judge was not right in holding that the High Court of Gujarat had no territorial jurisdiction and the petitions were not maintainable.

94. On this point our attention was invited to various decisions. In *Smt. Manjulaben and Another Vs. C.T.A. Pillay and Others*, , a Division Bench of this Court was called upon to consider whether a petition for a writ of habeas corpus could lie in the High Court of Gujarat. In that case, the husband of the petitioner was detained under the provisions of the Maintenance of Internal Security Act, 1971 (M.I.S.A.). Initially, he was detained from Baroda. He was then taken from Baroda (Gujarat) to Jaipur (Rajasthan). After the period of detention was over, he was to be released but again a fresh order of detention was passed and he was served with the order in Jaipur and his detention was continued. He filed a petition in this Court challenging the validity of detention. A preliminary objection was raised by the authorities regarding territorial jurisdiction of this Court. The contention was, however, negated by the Court holding that it had jurisdiction inasmuch as initial detention at Baroda could be said to be a part of cause of action within the jurisdiction of this Court.

95. Relying on *Manjulaben* (supra), it was submitted on behalf of the appellants that when a letter of request was written to the appellant of L.P.A. No. 930 of 1998 through the Registrar of this Court and the proceedings were taken against him, a part of cause of action could be said to have arisen in Gujarat. Likewise, in L.P.A. No. 906 of 1998, an intimation to the Director General of Police to relieve the appellant was sent so that he could be arrested, at least cause of action in part could be said to have arisen within the territorial limits of the State of Gujarat.

96. We are unable to uphold the contention. In our opinion, the question is not whether any consequential action was taken within the territorial limits of this Court but the nature of proceedings initiated against the appellants and a complaint filed by Sumersingh Rajpurohit on which an order under Sub-section (3) of Section 156 of the Code of Criminal Procedure was passed by the Chief Judicial Magistrate, Pali. The learned single Judge, in our view, rightly observed in the impugned order that no jurisdiction could be conferred upon this Court merely because the petitioners apprehended arrest or right to life or liberty guaranteed under Article 21 of the Constitution was jeopardised on account of summons issued and/or letter of request written. When a complaint was filed by Sumersingh Rajpurohit in the Court of Chief Judicial Magistrate, Pali, which was entertained and order u/s 156(3) of the Code was passed directing investigation to be made, no cause of action can be said to have arisen in whole or in part within the territorial limits of this Court. The ratio laid down in *Manjulaben* (supra), therefore, cannot help the appellants.

97. Reliance was also placed on a decision of a single Judge of this Court in *All India Bajaj Electricals Employees Federation Vs. Chief Labour Commissioner and*

Others, . Considering Clause (2) of Article 226 of the Constitution, it was held by this Court that a High Court had jurisdiction to entertain a petition where cause of action wholly or partly arose within the territorial jurisdiction of this Court.

98. Similar view was taken by a Division Bench in *Modern Food Industries (India) Ltd. Vs. M.D. Juvekar*, . It was held that if a part of cause of action had arisen within the territorial jurisdiction of a High Court, the Court could exercise powers under Clause (2) of Article 226 of the Constitution.

99. In the instant case, however, a complaint which this Court was called upon to consider was a complaint of Sumersingh Rajpurohit filed at Pali within the territorial jurisdiction of the High Court of Rajasthan. On that complaint, an order was passed by the Chief Judicial Magistrate under Sub-section (3) of Section 156 of the Code of Criminal Procedure. It has also come on record that the said order was modified in Revision Application No. 24 of 1996 by the Additional Sessions Judge. It is also not disputed that one of the accused has approached the High Court of Rajasthan for quashing the complaint filed by Sumersingh Rajpurohit by invoking Section 482 of Code of Criminal Procedure, and it is pending.

100. In our considered view, in the instant case, the incident in which Sumersingh Rajpurohit was involved in N.D.P.S. Act is not at all material. So far as the proceedings initiated by Sumersingh Rajpurohit against the appellants are concerned, his complaint and averments made therein only are relevant. In the present proceedings, the Court is not called upon to consider correctness of the allegations levelled against Sumersingh Rajpurohit in a case registered against him at Palanpur. The Court is considering the allegations and averments made by Sumersingh Rajpurohit against the appellants and other persons in C.R. No. 403 of 1996 filed in the Court of Chief Judicial Magistrate, Pali. When a grievance was made in connection with that case, and it was contended that the proceedings in pursuance of C.R. No. 403 of 1996 were null and void, *de hors act*, not taken by the Competent Court and the order u/s 156(3) was contrary to law and it would affect Fundamental Right of the appellants guaranteed under Article 21 of the Constitution, the Court has to consider those averments and allegations which have been made basis for filing C.R. No. 403 of 1996. In our opinion, therefore, the learned single Judge was perfectly justified in holding that this Court has no territorial jurisdiction over the matter.

101. In this connection, we may also refer to a recent decision of the Apex Court in *State of Assam and Another Vs. Dr. Brojen Gogol and Others*, . In that case, police authorities of Assam suspected that the respondent-accused were extending aid to banned militant group in Assam. Assam Police, hence wanted to interrogate them. The accused apprehended arrest. They therefore, approached the High Court of Bombay by filing applications for anticipatory bail u/s 438 of Code of Criminal Procedure, 1973. The prayer was granted by the learned single Judge. That order was challenged by the State of Assam by filing appeals in the Supreme Court. One of the contentions raised by the appellant was as to jurisdiction of the High Court of Bombay in entertaining and deciding applications

for anticipatory bail in respect of activities alleged to have been committed by the accused within the territorial limits of the State of Assam.

102. Though no final opinion was expressed and the question was left open, in paras 10 & 11 of the reports, the Hon'ble Court observed:

We do not think it necessary to decide whether the Bombay High Court has jurisdiction to entertain the applications filed by the respondents. All the same, the question of granting anticipatory bail to any person who is allegedly connected with the offences in question must for all practical purposes be considered by the High Court of Guwahati within whose territorial jurisdiction in such activities could have been perpetrated. In view of the conceded position that appellants were not heard by the High Court, we set aside the impugned orders on that ground alone. The applications are to be disposed of after hearing the appellants also. For that purpose, we order that the applications for anticipatory bail filed by the respondents would stand transferred to the High Court of Guwahati where those applications would be heard by a Division Bench of that High Court and appropriate orders be passed thereon. We request the Chief Justice of the High Court of Guwahati to allot these cases to a Division Bench to hear the applications, preferably on 4-11-1997.

In order to avoid conflicting decisions and opinions, we think it necessary that all future petitions for anticipatory bail made by any one in common or related matters referring to such activities committed within the territorial limits of the Guwahati High Court shall be heard only by the same Division Bench. We further direct that no such application for anticipatory bail shall be entertained by any Court other than the Division Bench of the High Court of Guwahati indicated above.

103. Finally, it may be appropriate to refer to *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, . In that case, Oil and Natural Gas Commission issued an advertisement inviting tenders for setting up a Unit at Hajira in Gujarat. The tenders were to be sent at Delhi and the final decision was also to be taken by a Steering Committee at Delhi. The Head Office of the Commission was situated at Deharadun (U.P.). The petitioner, a resident of Calcutta read the advertisement at Calcutta, submitted his offer from Calcutta office, made representation from that place and finally received a communication about rejection of his tender at Calcutta.

He, therefore, filed a petition in the High Court of Calcutta contending that at least a part of cause of action had arisen there. The High Court entertained a petition and granted interim relief. The Commission approached the Supreme Court.

104. Allowing the appeal and setting aside the order passed by the High Court and deprecating such practice of invoking jurisdiction even in cases where no part of cause of action had arisen within the territorial jurisdiction of a High Court, the Supreme Court stated:

From the facts pleaded in the writ petition, it is clear that NICCO invoked the jurisdiction of the Calcutta High Court on the plea that a part of the cause of action had arisen within its territorial jurisdiction. According to NICCO, it became aware of the contract proposed to be given by ONGC on reading the advertisement which appeared in the Times of India at Calcutta. In response thereto, it submitted its bid or tender from its Calcutta office and revised the rates subsequently. When it learnt that it was considered ineligible, it sent representations, including fax messages, to EIL, ONGC, etc. New Delhi, demanding justice. As stated earlier, the Steering Committee finally rejected the offer of NICCO and awarded the contract to CIMMCO at New Delhi on 27-1-1993. Therefore, broadly speaking, NICCO claims that a part of the cause of action arose within the jurisdiction of the Calcutta High Court because it became aware of the advertisement in Calcutta, it submitted its bid or tender from Calcutta and made rejection of its offer. The advertisement itself mentioned that the tenders should be submitted to EIL at New Delhi; that those would be scrutinised at New Delhi and that a final decision whether or not to award the contract to tenderer would be taken at New Delhi. Of course, the execution of the contract work was to be carried out at Hajira in Gujarat. Therefore, merely because it read the advertisement at Calcutta and submitted the offer from Calcutta and made representations from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. So also the mere fact that it sent fax messages from Calcutta would not, in our opinion, constitute facts forming an integral part of the cause of action. Besides, the fax message of 15-1-1993, cannot be construed as conveying rejection of the offer as that fact occurred on 27-1-1993. We are, therefore, of the opinion that even if the averments in the writ petition are taken as true, it cannot be said that a part of the cause of action arose within the jurisdiction of the Calcutta High Court.

(Emphasis supplied)

105. From the above observations, it is very clear that merely because the advertisement was read at a particular place, or an offer was made or communication relating to that offer was received by the bidder does not constitute even a part of cause of action within the meaning of Clause (2) of Article 226 of the Constitution conferring territorial jurisdiction on the Court.

106. In the instant case, a complaint was filed by Sumersingh Rajpurohit in the Court of Chief Judicial Magistrate, Pali (Rajasthan), an order under Sub-section (3) of Section 156 of the Code of Criminal Procedure was also made by the Chief Judicial Magistrate, Pali, which was modified by the Additional Sessions Judge and C.R. No. 603 of 1996 was registered at Pali. Hence, no cause of action, either as a whole or in part can be said to have arisen within the territorial jurisdiction of this Court and the learned single Judge has not committed any error of law in dismissing both the petitions on the ground of want of territorial jurisdiction of this Court. We, therefore, confirm the said decision.

107. For the foregoing reasons, we hold that Letters Patent Appeals are not

maintainable and they are liable to be dismissed. We also hold that even if Letters Patent Appeals are competent and maintainable, the learned single Judge was right in holding that the High Court of Gujarat has no territorial jurisdiction in the matter and Letters Patent Appeals cannot be entertained. Accordingly, both the L.P.A.s are dismissed. In the facts and circumstances, there shall be no order as to costs.

108. The learned Counsel for the appellants pray for leave to appeal to Supreme Court under Article 134-A read with Article 132 of the Constitution. We have decided the matter on well settled principles of law and according to us, the points raised by the appellants do not involve a substantial question of law of general importance, which in our opinion, needs to be decided by the Hon''ble Supreme Court. Hence, leave is refused.

The learned Counsel for the appellants finally stated that the appellants intend to approach higher forum. They, therefore, prayed that ad interim relief granted earlier, may be continued for some time so as to approach the Hon''ble Supreme Court. In our opinion, the prayer is reasonable. In the facts and circumstances of the case, ad interim relief granted earlier is ordered to continue till 30th November, 1998.