
(2020) 01 MP CK 0128

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 1401 Of 2019

Sumit Khaneja And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 24-01-2020

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005
— Section 2, 2(1)
Code Of Criminal Procedure, 1973 — Section 156(3), 482
Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 01 MP CK 0128

Hon'ble Judges : Ajay Kumar Mittal, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : Anil Khare, Tanvi Khare, H.K.Upadhyay, Siddharth Gupta

Final Decision : Dismissed

Judgement

V.K. Shukla, J

1. The present appeal is filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam,2005 (in short

â??Adhiniyam,2005â??) being aggrieved by the order dated 28-03-2019, passed by the learned Single Judge in Misc.Cr.Case No. 584/2019 and also

the order dated 28-03-2019 passed in W.P.No.26818/2018.

2. Misc.Cr.Case No.584/2019 was filed by one Mukesh Kumar Garg and others being aggrieved by the order dated 27-07-2018 passed in Criminal

Case No.27997/2018 by which the application under Section 156(3) of the Code of Criminal Procedure preferred by Mukesh Kumar Garg for

direction to the police for proper investigation was rejected.

3. It is stated that W.P.No.26818/2018 was filed by one Rahul Sethi being

aggrieved by the alleged delay caused by the respondent police authorities in completing the investigation ever after 12 months of lodging the FIR bearing Crime No.889/2017 dated 26-11-2017. It is submitted that the said FIR was lodged at the instance of complainant Mukesh Garg, in which Rahul Sethi portrayed himself as one of the aggrieved persons and further challenged the respondent police authorities for failing to take any action against the accused persons despite committing the offence. It is pleaded in the said petition that SVS Buildcon is a private limited company, in which the appellants nos. 1 and 2 are Directors and appellant no.3 is authorized signatory. It is stated that when SVS Buildcon ventured to develop the subject residential colony on the land bearing details as Khasra Nos. 552/2, 527/2, 553/1, measuring total of 7.17 hectares, village Bairagarh Chichli, Kolar Road, Bhopal, a Joint Venture Development Agreement was entered into between petitioner company and Khaneja Properties Pvt. Ltd. for development of residential colony on the aforesaid land, which was owned by Khaneja Properties as its land owner. It is further alleged in the said petition that a very organized fraud was played by the appellants with the member/purchasers of the respondent no.9 society. At the time of execution of tripartite agreement for grant of home loan, the appellants through various companies, like the SVS company acted in active collusion with the concerned banks, wherein without any collateral security, the aforesaid banks extended huge amount of loan facilities to their shell companies and its Directors. The home loans were sanctioned showing the purchasers as the actual beneficiaries of the loan amount.

4. The learned Single Judge by passing a detailed order in Misc.Cr. Case No.584/2019, a petition under Section 482 of the Code of Criminal Procedure Code, directed to hand over the investigation to the Central Bureau of Investigation(CBI) and the CBI was directed to collect all the material and take over the investigation and after investigation, to submit report in accordance with law within three months from the date of receipt of the order. The entire investigation relating to present matter pending before the State Police authorities has been handed over to the CBI.

5. In view of the order passed in the petition under Section 482 of CrPC, the learned Single Judge also disposed of the writ petition holding that no separate order is required to be passed in this writ petition, as the same is

identical to the petition under Section 482 CrPC, which was disposed of by order dated 28-03-2019.

6. Learned counsel for the respondents raised preliminary objection regarding maintainability of the intra court appeal against the order passed in a petition under Section 482 Cr.P.C. i.e. Misc.Cr.C.No.584/2019. He further submitted that the writ petition was disposed of in the terms of the main order passed in a petition under Section 482 of CrPC, therefore, the intra court appeal is not maintainable, as no intra court appeal lies in respect of an order passed by the court in proceedings connected with criminal jurisdiction.

7. Per contra, learned counsel for the appellants submitted that the intra court appeal is maintainable under Section 2 of the Adhiniyam, 2005. To bolster his submissions, he placed reliance on the judgment passed by a Coordinate Bench of this court in W.A.No.538/17 (M.P.State Level Committee for verification of caste certificate and others Vs. Sanjay Kumar Koshti) decided on 20-08-2018.

8. We have heard the learned counsel for the parties and bestowed our anxious consideration to the issue regarding maintainability of the appeal under Section 2(1) of the Adhiniyam,2005.

9. To appreciate the rival submissions, it is apposite to refer Section 2(1) of the Adhiniyam, 2005, which is reproduced as under :

â??2. Appeal to the Division Bench of the High Court from a Judgement or order of one Judge of the High Court made in exercise of original jurisdiction.-

(1) An appeal shall lie from a Judgement or order passed by one Judge of the High Court in exercise of original jurisdiction under Article

226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court:

Provided that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Artical 227 of the Constitution of India.

(2) An appeal under sub-section (1) shall be filed within 45 days from the date of order passed by a single Judge :

Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had

sufficient cause for not preferring the appeal within such period.â??

From a bare reading of Sub Section (1) of Section 2, it is luminescent that an appeal lies from a judgment or order passed by Single Judge in exercise of original jurisdiction under Article 226 of the Constitution of India to a Division Bench. In the present case, the learned Single Judge has passed the main order in exercise of powers under Section 482 of CrPC. and the writ petition was disposed of in view of order passed in a petition under Section 482 of CrPC.

10. Learned counsel for the appellants vehemently argued that the intra court appeal would be maintainable because though the learned Single Judge has passed the order handing over of the investigation to the CBI in a petition under Section 482 CrPC but in fact he has exercised the powers under Article 226 of the Constitution of India. To buttress his submissions, he heavily placed reliance on the judgment passed by a Coordinate Bench of this court in the case of Sanjay Kumar Koshti(supra). The judgment relied by the learned counsel for the appellant in the case of Sanjay Kumar Koshti(supra) would not apply to the facts of the present case. Therein, the learned Single Judge had heard the writ petition as well as connected petition under Section 482 CrPC simultaneously filed by the same applicant challenging the findings of the High Power Committee regarding caste certificate in a writ petition as well as quashing of registration of FIR under Section 482 CrPC and therefore, both the matters were heard analogously by the learned Single Judge. The writ petition was allowed quashing the findings of the High Power Committee in the writ jurisdiction. In view of the order passed in writ petition, quashing the findings of High Power Committee, the learned Single Judge had also allowed the connected 482 CrPC petition. In this background, the High Court had entertained the writ appeal against the order passed under Section 482 CrPC on the premises that the learned Single Judge has disposed of the 482 CrPC petition quashing the FIR only in view of the order passed in the writ petition. Therefore, the judgment passed in the case of Sanjay Kumar Koshti(supra) would not apply in the facts of the present case. Further the appellants are not even party to the writ petition.

11. In the present case, the learned Single Judge has passed the main order in the criminal jurisdiction under Section 482 CrPC whereby a challenge

was made to the order dated 27-07-2018 passed in a criminal case on an application filed under Section 156(3) of Cr.P.C. seeking direction to the

police for investigation which was rejected. The learned Single Judge considering the allegations made in the FIR and the arguments advanced on

behalf of the parties held that prima facie there appears to be a case of fraud and cheating whereby huge amount of large number of people has been

put to stake and transferred the investigation to the CBI. In view of the aforesaid order, the writ petition was also disposed of being identical to the

petition under Section 482 of CrPC as subject matter of both was almost identical.

12. Prima facie on going through the order passed in the petition under Section 482 of CrPC and the order passed in the writ jurisdiction, it is manifest

that the learned Single Judge has exercised its jurisdiction in proceedings connected with criminal jurisdiction.

13. The submission of the learned counsel for the appellant that the powers exercised under Section 482 Cr.PC by the learned Single Judge in the

present case declining quashing of the criminal proceedings initiated against him is akin to the provisions of Article 226 of the Constitution of India, we

do not find any merit in the aforesaid submission. In the case of Ram Kishan Fauji Vs. State of Haryana and others, (2017) 5 SCC 53, 3 a question

came for consideration before the Apex Court regarding maintainability of the Letters Patent Appeal before the Division Bench against an order

passed by the learned Single Judge in exercise of the criminal jurisdiction. In the said case, while considering the aforesaid issue, the Apex Court also

considered the difference between exercise of power under Article 226 and Article 227 of the Constitution of India. It was held that under Article

226, the High Courts have power to issue directions, orders and writs to any person or authority including any Government whereas under Article 227

every High Court has power of superintendence over all courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The

power to issue writs is not the same as the power of superintendence. It has been further held that a statement by a Single Judge that he has

exercised power under Article 227 cannot take away the right of appeal against such judgment if the power is otherwise found to have been exercised

under Article 226. In para-38, the Apex Court held that it is law that judicial orders of the civil court are not amenable to writ jurisdiction under Article

226 of the Constitution. The exercise of jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution. In para-45, the

court recorded that the intra court appeal would not lie in respect of an order passed by the court in proceedings connected with criminal

jurisdiction. Para-45 reads as under:

“45. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ

jurisdiction has been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief

sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra court appeal would not lie

as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdiction is not provided for,

it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in Hari Vishnu Kamath does not render any

assistance to the argument advanced by the learned counsel for the respondent State.”

14. Similarly a question arose regarding maintainability of an intra court appeal under Section 2(1) of Adhinyam, 2005 against an order passed by the

learned Single Judge in writ jurisdiction arising out of an award of Labour Court before the Full Bench of this court in the case of Shailendra Kumar

Vs. Divisional Forest Officer and another, 2017(4) MPLJ, 109. After referring to various pronouncements of the Apex Court dealing with the

jurisdiction under Article 226 and 227, the Full Bench held that an order passed in a writ petition arising out of an award of a Labour Court is

composite order under Article 226 and 227 of the Constitution. Therefore, intra court appeal against such order would be maintainable. It was also

recorded that the orders passed by Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before High

Courts are only under Article 227 of the Constitution. Thus, no intra court appeal would be maintainable against an order passed by Single Judge in

proceedings arising out of an order passed by Judicial Court, may be civil or criminal proceedings. Relevant para-18 of Full Bench is referred as

under:

“18. We may clarify that the orders passed by the Judicial Courts, subordinate

to a High Court even in criminal matters when challenged

in proceedings before the High Courts are only under Article 227 of the Constitution of India. Thus, no intra court appeal would be

maintainable against an order passed by the learned Single Judge in proceedings arising out of an order passed by the learned Single

Judge in proceedings arising out of an order passed by Judicial Courts, may be civil or criminal proceedings.â??

15. The law relating to maintainability of intra-court appeal in criminal matter is well settled in the case of Ram Kishan Fauji(supra) and also by the

Full Bench of this court in the case of Shailendra Kumar (supra) where it has been laid down that no writ appeal would be maintainable against an

order passed by the learned Single Judge in a proceeding arising out of an order passed by the Judicial Court either in civil or criminal proceedings.

Recently, the same view has been reiterated by a Coordinate Bench of this court in W.A.No.821/2019 (Pradeep Kori Vs. State of Madhya Pradesh

and another) decided on 14-01-2020.

16. Accordingly, the writ appeal is not maintainable and the same is dismissed.