[3311]

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

MONDAY, THE SIXTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY THREE

PRESENT

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT APPEAL Nos.36, 37, 41, 42, 43 and 44 OF 2023

WRIT APPEAL NO: 36 OF 2023

Writ Appeal under clause 15 of the Letters Patent Preferred Against Order Dated 26.12.2022 in WP.No.43339 of 2022 on the file of the High Court.

Between:

1. The State of Telangana, Rep.by its Principal Secretary Home Department, Secretariat, Hyderabad.
2. The Director General of Police, Telangana State Hyderabad.
3. The Special Investigation Team, Headed by C.V.Anand, IPS, Commissioner of Police, Hyderabad.
4. The Asst. Commissioner of Police, Rajendranagar Division Rajendranagar, Hyderabad.
5. The Commissioner of Police, Cyberabad Police Commissionerate, Gachibowli, Hyderabad.
6. The Station House Officer, Moinabad Police Station.

...APPELLANTS/PETITIONERS

AND

1. Tushar Vellappally, s/o. Vellappally Natesan Age: 54 yrs, Occ: Business President Bharath Dharma Jena Sena 2312 Vellappali 7 Mararikukulam North Panchayath, Ambalappuzha, Aleppey, Kerala 6885.

....RESPONDENT/PETITIONER

2. Shri K.Chandrashekar Rao, S/o Late K. Raghav Rao, Age 68 yrs., Occ: Chief Minister of Telangana and President of Telangana Rashtra Samithi Pragathi Bhavan, Begumpet, Hyderabad

3. B. Pilot Rohit Reddy, S/o Vittal Reddy, Age: Major, Occ: MLA Tandur Assembly, R/o.Tandur, Vikarabad
4. The Central Bureau of Investigation, Rep. by its Director, New Delhi
5. Union of India, Represented by Secretary Department of Personnel Training New Delhi - 110001
6. Ramachandra Bharathi @ Satish Sharma KVK, S/o late N.Krishna Murthy, Age: 33 yrs, Occ. Priest, R/o.Door No.22971, Sector 31 Faridabad, Haryana State.
7. Kore Nandakumar @ Nandu, S/o Mr Shankarappa, Age: 48 yrs., Occ: Business, R/o. H.No.2-32/3/A, Sai Nagar Colony, Chaitanyapuri, Hyderabad
8. D.P.S.K.V.N.Simhayaji, S/o late D.V.Ramana Rao, Age: 46 yrs., Occ: Priest, R/o. H.No.8-1-261A, Bharati Nilayam K.T. Road, Tirupathi, A.P. State.

...RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated: 26.12.2022 in W.P.No.43339 of 2022.

Counsel for the Appellants: SRI DUSHYANT DAVE, SENIOR COUNSEL FOR SRI B.S. PRASAD, ADVOCATE GENERAL

Counsel for the Respondent No.1: SRI S.D. SANJAY TIWARI, SENIOR COUNSEL FOR Ms. BANDARU HIMA VARSHINI

Counsel for the Respondent No.3: SRI GANDRA MOHAN RAO, SENIOR COUNSEL FOR SRI A. PRABHAKAR RAO

Counsel for the Respondent No.4: SRI N. NAGENDRAN, S.C. FOR CBI

Counsel for the Respondent No.5: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondent Nos.2, 6 to 8: --

WRIT APPEAL NO: 37 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 26.12.2022 in W.P.No.40733 of 2022 on the file of the High Court.

Between:

1. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
2. The Director General of Police, Telangana State at Hyderabad.
3. The Commissioner of Police, Cyberabad Commissionarate, Gachibowli, Hyderabad.
4. The Asst. Commissioner of Police, Rajendranagar Division, Rajendranagar, Hyderabad.
5. The Station House Officer, Moinabad Police Station, Moinabad, Rangareddy District.

...APPELLANTS/PETITIONERS

AND

1. Ramchandra Bharathi @ Satish Sharma V.K., S/o Late Krishnamurthy, Aged 33 Yrs., Occ: Priest, R/o. D.No.22911, Sector 31 Faridabad, Hariyana State
2. Kore Nandu Kumar @ Nandu, S/o Shankarappa, Aged 48 Years Occ: Business, R/o. H.No.2-321 3/A Sainagar Colony, Chaitanyapuri Hyderabad
3. D.P.S.K.V.N. Simhayaji, S/o Late D.V.Ramana Rao, Aged 46 Years, Occ: Peetadhipathi at Tirupati R/o.H.No.8-1-2614, Bharath Nilayam K.T.Road, Tirupati, A.P.

....RESPONDENTS/PETITIONERS

4. The Union of India, Rep. by its Secretary, Dept. of Home Affairs, New Delhi.
5. The Central Bureau of investigation, Rep. by its Director, New Delhi.
6. Mr. Pilot Rohith Reddy, S/o. not known to the petitioner, aged major, occupation: MLA Tandur Assembly, R/o Tandur, Vikarabad District

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated: 26.12.2022 passed by the learned single judge in W.P. No. 40733/2022, pending disposal of the writ appeal.

Counsel for the Appellants: SRI DUSHYANT DAVE, SENIOR COUNSEL FOR SRI B.S. PRASAD, ADVOCATE GENERAL

Counsel for the Respondent Nos. 1 to 3:
SRI D.V. SITHARAM MURTHY, SENIOR COUNSEL FOR SRI M. V. V. BASWA RAJ

Counsel for the Respondent No.4: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondent No.5: SRI N. NAGENDRAN, S.C. FOR CBI

Counsel for the Respondent No.6: SRI GANDRA MOHAN RAO, SENIOR COUNSEL FOR SRI A. PRABHAKAR RAO

WRIT APPEAL NO: 41 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 26.12.2022 in W.P.No.43339 of 2022 on the file of the High Court.

Between:

Pilot Rohith Reddy, S/o P.Vittal Reddy, aged 39 years, occupation: MLA Tandur Assembly, Plot No.66, Sri Lakshmi Nagar Colony, Manikonda Jagir, Hyderabad

...APPELLANT/RESPONDENT NO.8

AND

1. Tushar Vellapally S/o.Vellapally Natesan, aged about 54 years, occ: Business, President, Bharath Dharma Jena Sena 23-2, Vellapally, 7 Mararikukulam, North Panchayath, Ambalappuzah, Allepally, Kerala 688544

....RESPONDENT/PETITIONER

2. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
3. The Director General of Police, Telangana State at Hyderabad.
4. The Special Investigating Team, Headed by C.V.Anand, IPS., Commissioner of Police, Hyderabad.
5. The Asst. Commissioner of Police, Rajendranagar Division, Rajendranagar, Hyderabad.
6. The Commissioner of Police, Cyberabad Commissionarate, Gachibowli, Hyderabad.
7. The Station House Office, Moinabad Police Station, Moinabad, Rangareddy District.
8. Sri.K.Chandra Sekhar Rao S/o.late K.Raghava Rao, Aged about 68 years, occ: Chief Minister of Telangana And President of Telangana Rashtra Samithi, Pragathi bhavan Begumpet, Hyderabad.
9. The Central Bureau of Investigation, Rep. by its Director, New Delhi

10. The Union of India, Rep. by its Secretary, Dept. of Home Affairs, New Delhi.

11. Ramchandra Bharahti @ Satish Sharma V.K. S/o Late Krishnamurthy, Aged 33 Yrs., Occ: Priest, R/o D.No.22911, Sector 31 Faridabad, Hariyana State

12. Kore Nandu Kumar @ Nandu, S/o Shankarappa, Aged 48 Years Occ: Business, R/o.H.No.2-321 3/A Sainagar Colony, Chaitanyapuri Hyderabad

13. D.P.S.K.V.N.Simhayaji, S/o Late D.V.Ramana Rao, Aged 46 Years, Occ: Peetadhipathi at Tirupati R/o H.No. 8-1-2614, Bharath Nilayam K.T.Road, Tirupati, A.P.

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated 26.12.2022 in W.P.No.43339/2022, pending disposal of the writ appeal.

Counsel for the Appellant:
SRI GANDRA MOHAN RAO, SENIOR COUNSEL FOR SRI A. PRABHAKAR RAO

Counsel for the Respondent No.1: SRI S.D. SANJAY TIWARI, SENIOR COUNSEL FOR M/S. BANDARU HIMA VARSHINI

Counsel for the Respondent Nos.2 to 7:
SRI DUSHYANT DAVE, SENIOR COUNSEL FOR SRI B.S. PRASAD, ADVOCATE GENERAL

Counsel for the Respondent No.9: SRI N. NAGENDRAN, S.C. FOR CBI

Counsel for the Respondent No.10: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondent Nos.8 & 11 to 13: --

WRIT APPEAL NO: 42 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 26.12.2022 in W.P. No. 40733 of 2022 on the file of the High Court.

Between:

Pilot Rohith Reddy, S/o P.Vittal Reddy, aged 39 years, occupation: MLA Tandur Assembly, Plot No.66, Sri Lakshmi Nagar Colony, Manikonda Jagir, Hyderabad

...APPELLANT/RESPONDENT NO.8

AND

1. Ramchandra Bharahti @ Satish Sharma V.K., S/o Late Krishnamurthy, Aged 33 Yrs Occ.Priest, R/o D.No.22911, Sector 31 Faridabad, Hariyana State
2. Kore Nandu Kumar @ Nandu, S/o Shankarappa, Aged 48 Years, Occ: Business, R/o. H.No.2-321 3/A Sainagar Colony, Chaitanyapuri Hyderabad
3. D.P.S.K.V.N. Simhayaji, S/o Late D.V.Ramana Rao Aged 46 Years, Occ: Peetadhipathi at Tirupati R/o H.No. 8-1-2614, Bharath Nilayam, K.T.Road, Tirupati A.P.
4. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
5. The Director General of Police, Telangana State at Hyderabad.
6. The Commissioner of Police, Cyberabad Commissionarate, Gachibowli, Hyderabad.
7. The Asst. Commissioner of Police, Rajendranagar Division, Rajendranagar, Hyderabad.
8. The Station House Office, Moinabad Police Station, Moinabad, Rangareddy District.
9. The Union of India, Rep. by its Secretary, Dept. of Home Affairs, New Delhi.
10. The Central Bureau of Investigation, Rep. by its Director, New Delhi.

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated 26.12.2022 in W.P. No.40733/2022, pending disposal of the writ appeal.

Counsel for the Appellant: SRI GANDRA MOHAN RAO,
SENIOR COUNSEL FOR SRI A. PRABHAKAR RAO

Counsel for the Respondent Nos. 1, 2 & 3: SRI L. RAVICHANDER,
SENIOR COUNSEL FOR SRI M. V. V. BASWA RAJ

Counsel for the Respondent Nos.4 to 8:
SRI DUSHYANT DAVE, SENIOR COUNSEL
FOR SRI B.S. PRASAD, ADVOCATE GENERAL

Counsel for the Respondent No.9: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondent No.10: SRI N. NAGENDRAN, S.C. FOR CBI

WRIT APPEAL NO: 43 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 26.12.2022 in W.P.No.43144 of 2022 on the file of the High Court.

Between:

1. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
2. The Director General of Police, Telangana State at Hyderabad.
3. The Commissioner of Police, Cyberabad Commissionarate, Gachibowli, Hyderabad.
4. The Assistant Commissioner of Police Rajendranagar Division, Rajendranagar, Hyderabad.
5. The Station House Officer, Moinabad Police Station, Moinabad Rangareddy District

...APPELLANTS/PETITIONERS

AND

1. Bhusarapu Srinivas, S/o Rajalingam, Age: 46 yrs., Occ: Advocate Fl/o. H.No.8-6-14912, Kothirampur Karimnagar. Presently residing at Flat No.1038, End ikose, Allaudd in County 'B' Block, Czech Colony, Sanathnagar, Hyderabad

....RESPONDENT/PETITIONER

2. The Union of India, Rep. by its Secretary, Department of Home Affairs New Delhi.
3. The Central Bureau of investigation, Rep. by its Director, New Delhi.
4. Pilot Rohit Reddy, S/o Vittal Reddy, Age: Major, Occ: MLA Tandur Assembly, R/o. Tandur, Vikarabad.
5. Ramachandra Bharathi @ Satish Sharma, KVK, S/o late N.Krishna Murthy, Age: 33 yrs, Occ: Priest, R1/o. Door No.22911, Sector 31 Faridabad, Haryana State.
6. Kore Nandakumar @ Nandu, s/o Mr.Shankarappa, Age: 48yrs, Occ: Business, R/o. H.No.2-32i31A, Sai Nagar Colony Chaitanyapuri, Hyderabad.
7. D.P.S.K.V.N.Simhayaji, s/o late D.V.Ramana Rao Age: 46 yrs., Occ: Priest, R/o. H.No.8-1-2614, Bharati Nilayam, K.T. Road, Tirupathi, A.P.State.
8. The Special Investigation Team (SIT), Headed by Sri C.V.Anand, Commissioner of Police, Hyderabad City, O/o at Commissionerate, Banjara Hills, Hyderabad.

9. Rema Raieshwari Member SIT, Occ: Superintendent of Police, Nalgonda.
10. Kamaleshwar Shingenavar, Member SIT Occ: DCP (Crime), Cyberabad.

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated 26.12.2022 in W.P.No.43144 of 2022.

Counsel for the Appellants: SRI DUSHYANT DAVE, SENIOR COUNSEL FOR SRI B.S. PRASAD, ADVOCATE GENERAL

Counsel for the Respondent No.1: SRI UDAYA HOLLA, SENIOR COUNSEL FOR SRI V. RAM MOHAN REDDY

Counsel for the Respondent No.2: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondent No.3: SRI N. NAGENDRAN, S.C. FOR CBI

Counsel for the Respondent No.4: SRI GANDRA MOHAN RAO, SENIOR COUNSEL FOR SRI A. PRABHAKAR RAO

Counsel for the Respondent Nos.5 to 10: --

WRIT APPEAL NO: 44 OF 2023

Writ Appeal under clause 15 of the Letters Patent preferred against the order dated 26.12.2022 in W.P.No.39767 of 2022 on the file of the High Court.

Between:

1. The State of Telangana, Rep. by its Principal Secretary, Home Department, Secretariat Building, Hyderabad.
2. The Director General of Police Telangana State at Hyderabad.
3. The Commissioner of Police Cyberabad Commissionarate Gachibowli Hyderabad.
4. The Assistant Commissioner of Police Rajendranagar Division Rajendranagar Hyderabad.
5. The Station House Officer, Moinabad Police Station, Moinabad, Rangareddy District.

...APPELLANTS/PETITIONERS

AND

1. Bharatiya Janata Party Telangana, Rep. by its State General Secretary Mr. Gujjula Premendar Reddy S/o Gujjula Venkata Krishna Reddy, Age 59 years Occ: General Secretary BJP R/o 1-7-1259/E1 Siri Enclave, Advocates Colony, Hanamkonda, Warangal Telangana - 506 001.

...RESPONDENT/PETITIONER

2. The Union of India Rep. by its Secretary Department of Home Affairs New Delhi.
3. The Central Bureau of Investigation Rep. by its Director, New Delhi.
4. Mr Pilot Rohith Reddy, S/o. not known to the petitioner, aged major, Occupation: MLA Tandur Assembly, R/o.Tandur, Vikarabad District.
5. M. Rama Chandra Bharathi @ Satish Sharma S/o. Late M. Krishna
6. M. Kore Nandu Kumar @ Nandu, S/o. M. Shankar Appa, Occ: Business.
7. Mr. D.P.S. K. V. N. Simhayaji, S/o Late D. V. Ramana Rao

(Respondent Nos.5 to 7 are formal parties in this Appeal)

...RESPONDENTS/RESPONDENTS

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the order dated: 26.12.2022 in W.P.No.39767/2022, pending disposal of the writ appeal.

Counsel for the Appellants: SRI DUSHYANT DAVE, SENIOR COUNSEL FOR SRI B.S. PRASAD, ADVOCATE GENERAL

Counsel for the Respondent No.1:
SRI J. PRABHAKAR AND SRI C.DAMODAR REDDY, SENIOR COUNSEL FOR SRI BALASUBRAHMANYAM KUMARSU

Counsel for the Respondent No.2: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR GENERAL OF INDIA

Counsel for the Respondent No.3: SRI N. NAGENDRAN, S.C. FOR CBI

Counsel for the Respondent No.4: SRI GANDRA MOHAN RAO, SENIOR COUNSEL FOR SRI A. PRABHAKAR RAO

The Court made the following: JUDGMENT

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE SRI JUSTICE N.TUKARAMJI

WRIT APPEAL Nos.36, 37, 41, 42, 43 and 44 OF 2023

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

This judgment and order will dispose of writ appeal Nos.36, 37, 41, 42, 43 and 44 of 2023.

2. With the consent of learned counsel for the parties, all the writ appeals have been taken up for final hearing at the admission stage itself.

3. All the writ appeals arise out of the common judgment and order dated 26.12.2022 of the learned Single Judge disposing of writ petition Nos.39767, 40733, 42228, 43144 and 43339 of 2022.

4. In the course of hearing, Mr. Dushyant Dave, learned Senior Counsel for the appellants argued writ appeal No.37 of 2023 arising out of writ petition No.40733 of 2022 as the lead appeal.

5. We have heard Mr. Dushyant Dave, learned Senior Counsel appearing for Mr. B.S.Prasad, learned Advocate

General for the appellants in writ appeal Nos.36, 37, 43 and 44 of 2023; Mr. Gandra Mohan Rao, learned Senior counsel appearing for Mr. A.Prabhakar Rao, learned counsel for the appellant in writ appeal Nos.41 and 42 of 2023 and for respondent No.3 in writ appeal No.36 of 2023, respondent No.6 in writ appeal No.37 of 2023, respondent No.4 in writ appeal No.43 of 2023 and respondent No.4 in writ appeal No.44 of 2023/*de facto* complainant; Mr. D.V.Sitharam Murthy, learned Senior Counsel appearing for Mr. M.V.V.Baswa Rao, learned counsel for respondent Nos.1, 2 and 3 in writ appeal No.36 of 2023 (writ petitioners); Mr. L.Ravichander, learned Senior Counsel appearing for Mr. M.V.V.Baswa Rao, learned counsel for respondent Nos.1, 2 and 3 in writ appeal No.42 of 2023 (writ petitioners); Mr. J.Prabhakar and C.Damodar Reddy, learned Senior Counsel appearing for Mr. Balasubrahmanyam Kumarsu, learned counsel for respondent No.1 in writ appeal No.44 of 2023; Mr. S.D.Sanjay Tiwari, learned Senior Counsel appearing for Ms. Bandaru Hima Varshini, learned counsel for respondent No.1 in writ appeal Nos.36 of 2023 and 41 of

2023; Mr. Udaya Holla, learned Senior Counsel appearing for Mr. V.Ram Mohan Reddy, learned counsel for respondent No.1 in writ appeal No.43 of 2023; Mr. Gadi Praveen Kumar, learned Deputy Solicitor General of India for Union of India and Mr. N.Nagendran, learned counsel for Central Bureau of Investigation (CBI).

Facts:

6. As noted above, writ appeal No.37 of 2023 arises out of writ petition No.40733 of 2022. Writ petition No.40733 of 2022 was filed by respondent Nos.1, 2 and 3 as the writ petitioners seeking a declaration that the action of the State/appellants herein in undertaking biased and unfair investigation in F.I.R.No.455 of 2022 on the file of Moinabad Police Station is illegal and arbitrary being in gross violation of Articles 14 and 21 of the Constitution of India and also being contrary to the settled principles of free and fair investigation. Consequently, a direction was sought for to transfer investigation in F.I.R.No.455 of 2022 on the file of Moinabad Police Station to the Central Bureau of Investigation (CBI) or alternatively to constitute a

Special Investigation Team (SIT) to conduct enquiry in crime (F.I.R) No.455 of 2022 registered on the file of Moinabad Police Station under the supervision of a sitting Judge to ensure investigation in a free and fair manner.

7. It may be mentioned that F.I.R.No.455 of 2022 was registered on the file of Station House Officer, Moinabad Police Station, Cyberabad Police Commissionerate under Sections 120-B and 171-B read with Sections 171-E, 506 and 34 of the Indian Penal Code, 1860 (IPC) as well as Section 8 of the Prevention of Corruption Act, 1988. F.I.R.No.455 of 2022 was registered on the basis of the first information dated 26.10.2022 lodged by Mr. Pilot Rohit Reddy, respondent No.8 in writ petition No.40733 of 2022. In the first information, Mr. Pilot Rohit Reddy stated that he is a Member of Legislative Assembly (MLA) belonging to the Telangana Rashtra Samithi (TRS) party representing Tandur Assembly Constituency of Vikarabad District. On 26.09.2022 one Ramachandra Bharati @ Satish Sharma from Delhi and one Nanda Kumar from Hyderabad, both belonging to Bharatiya Janata Party (BJP), had met him.

They negotiated with the informant not to contest as a candidate from TRS party and to join BJP by resigning from TRS party. First informant was requested to contest the next elections from BJP for which he was offered Rs.100 crores. First informant was also assured that he would be given Central Government civil contract works and high Central Government positions for monetary benefits, thus luring him to join BJP. However, first informant was warned that if he did not join BJP, there would be criminal cases and raids against him by Enforcement Directorate (ED)/CBI; besides, the Telangana Government led by TRS party would be toppled. First informant stated that since the above inducement amounted to bribery by adopting unethical and undemocratic means, in the process encouraging corruption and polluting the body politic, he did not entertain such proposal. It was mentioned that on 26.10.2022, Ramachandra Bharati @ Satish Sharma and Nanda Kumar again contacted first informant and informed him that they were coming in the afternoon hours to his farm house located at Azeez Nagar, Moinabad for

negotiations. First informant was also requested to mobilise some more TRS MLAs by offering them bribes of Rs.50 crores each to join BJP. They had also induced the first informant and three other MLAs who came to the farm house to receive the offered amounts and to discharge their public duties in an improper and dishonest manner so that the Telangana Government led by TRS party could be destabilised. First informant was informed that Ramachandra Bharati @ Satish Sharma of Delhi, Nanda Kumar from Hyderabad and one Simhayaji Swamy of Tirupathi would come to his farm house to finalise the deal. Therefore, first informant requested the police authority to take necessary legal action against the above persons for indulging in unethical and undemocratic methods offering huge amounts as bribe.

8. Based on the above, F.I.R.No.455 of 2022 was registered by the Station House Officer of Moinabad Police Station under the above mentioned sections.

9. In the writ affidavit, it was averred that allegations made in the first information were false and politically

motivated. The F.I.R. was registered by the police at the behest of the ruling TRS party.

9.1. Respondent Nos.1, 2 and 3 stated in the writ affidavit that political motivation in lodging the F.I.R. is evident from the fact that even before the raid was conducted by the police, an officer of the rank of Commissioner of Police had addressed the media; the informant and other MLAs were not only let free but were escorted to Pragathi Bhavan i.e., to the official residence of the Chief Minister from the scene of the alleged crime. It was alleged that the Chief Minister, Commissioner of Police and MLAs belonging to the ruling party were involved in the conspiracy. No material evidence were seized from the informant and the three MLAs. All the four MLAs were not subjected to any enquiry by the official respondents.

9.2. Assistant Commissioner of Police, Rajendranagar Division, Cyberabad Commissionerate sought for remand of respondent Nos.1, 2 and 3. First Additional Special Judge for SPE and ACB at Hyderabad (ACB Judge) held that since the alleged offences are under Sections 120-B

and 171-B read with Section 171-E and Section 506 read with Section 34 IPC and Section 8 of the Prevention of Corruption Act, 1988 (briefly, 'the PC Act' hereinafter), the maximum punishment prescribed would be seven years. Therefore, guidelines of the Supreme Court in **Arnesh Kumar v. State of Bihar**[1] were required to be followed; it was mandatory to issue notice under Section 41-A of the Code of Criminal Procedure, 1973 (CrPC) to respondent Nos.1, 2 and 3. Hence, remand sought for respondent Nos.1, 2 and 3 was illegal as mandatory guidelines in **Arnesh Kumar** (supra) were not followed. Accordingly, ACB Judge declined the prayer of remand vide the order dated 27.10.2022. This came to be challenged by the State before this Court in criminal revision case No.699 of 2022. By order dated 29.10.2022, order dated 27.10.2022 of the ACB Judge was set aside by a learned Single Judge of this Court. Respondent Nos.1, 2 and 3 were directed to surrender before the police. Against this order, respondent Nos.1, 2 and 3 preferred special leave petition before the Supreme Court.

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[1] (2014) 8 SCC 273

9.3. Respondent Nos.1, 2 and 3 submitted that some audio tapes were released by the media wherein conversation of respondent No.8 with respondent Nos.1, 2 and 3 could be heard. This clearly showed that the phones were tapped. Such tapping of phones is unauthorised. In the circumstances, it was alleged that the manner in which investigation was being carried out gives an impression that the same was not being done in a fair manner and was done with a political motive. Investigation was being conducted under the close monitoring of the Hon'ble Chief Minister of Telangana for settling political scores. Investigation carried out was not done in a fair manner. Right of the accused for a fair and unbiased investigation was compromised. Therefore, respondent Nos.1, 2 and 3 sought for transfer of investigation to CBI. In this connection, reliance was placed on a number of decisions of the Supreme Court. It was prayed that the High Court should exercise its extraordinary jurisdiction under Article 226 of the Constitution of India and direct that the case be enquired into by a neutral agency like the CBI or by a

Special Investigation Team to be monitored by a sitting Judge.

10. The writ petition was contested by the appellants who were arrayed as respondent Nos.1 to 5 by filing affidavit. The affidavit was sworn by appellant No.4 i.e., Assistant Commissioner of Police, Rajendranagar Division, Cyberabad. Stand taken in the counter affidavit was that learned Single Judge had initially granted stay of investigation but subsequently lifted the stay vide the order dated 08.11.2022. This came to be challenged by Bharatiya Janata Party (BJP) before the Division Bench by filing writ appeal No.749 of 2022. In the meanwhile, a Special Investigation Team (SIT) was constituted by the Government of Telangana vide G.O.Ms.No.63 of the Home (Legal) Department, dated 09.11.2022. SIT was headed by Mr. C.V.Anand, IPS, Commissioner of Police, Hyderabad City and consisted of the following six members:-

1. Mrs. Rema Rajeshwari, IPS, Superintendent of Police;

2. Mr. Kalmeshwar Shingenavar, IPS, Deputy Commissioner of Police, Crimes, Cyberabad;

3. Mr. R.Jagadishwar Reddy, Deputy Commissioner of Police, Shamshabad, Cyberabad;

4. Mr. N.Venkateshwarlu, Superintendent of Police, Narayanpet;

5. Mr. B.Gangadhar, Assistant Commissioner of Police, Rajendranagar Division, Cyberabad; and

6. Mr. Laxmi Reddy, Station House Officer, Moinabad Police Station, Cyberabad.

10.1. In writ petition No.39767 of 2022 filed by BJP (Telangana), a Single Judge of this Court passed an order dated 29.10.2022 deferring investigation till filing of counter affidavit by the State Government. In the meanwhile, writ petition No.40733 of 2022 came to be filed by respondent Nos.1, 2 and 3 seeking investigation in crime No.455 of 2022 by a Special Investigation Team (SIT) constituted by the Court or by the CBI. Both the writ petitions were heard together. By the order dated 08.11.2022, learned Single Judge took the view that

continuing with the embargo on investigation was not justified. Accordingly, the stay granted on 29.10.2022 was lifted. Whereafter, Moinabad Police was allowed to go ahead with the investigation.

10.2. Assailing the aforesaid order, BJP (Telangana) filed writ appeal No.749 of 2022. When writ appeal No.749 of 2022 was being heard, a copy of G.O.Ms.No.63 dated 09.11.2022 issued by the Principal Secretary to the Government of Telangana, Home (Legal) Department, was placed before the Court. By the aforesaid G.O.Ms.No.63, a Special Investigation Team (SIT) was constituted to investigate crime No.455 of 2022 registered before Moinabad Police Station. The Division Bench vide the order dated 15.11.2022 issued certain directions allowing SIT so constituted to proceed with the investigation but such investigation was directed to be monitored by the learned Single Judge. Certain other additional directions were issued, such as, SIT should not report before any authority, political or executive etc.

10.3. SIT had proceeded to investigate crime No.455 of 2022. Respondent Nos.1, 2 and 3 were taken into custody by the police for two days i.e., 10.11.2022 and 11.11.2022. Their application for bail was dismissed by the Special Court on 14.11.2022, whereafter they were lodged in Chanchalguda jail.

10.4. In the meanwhile, a Division Bench of this Court passed order dated 15.11.2022 in writ appeal No.749 of 2022 directing that SIT so constituted shall conduct the investigation but the same would be under the direct supervision of the learned Single Judge. Certain additional directions were issued. Order dated 15.11.2022 was assailed by respondent Nos.1, 2 and 3 before the Supreme Court by filing special leave petition.

10.5. Against the dismissal of bail application vide the order dated 14.11.2022, respondent Nos.1, 2 and 3 had filed criminal revision case No.699 of 2022 before this Court. By the order dated 29.10.2022, criminal revision case No.699 of 2022 was dismissed by a learned Single Judge. Against the aforesaid order, respondent Nos.1, 2

and 3 filed S.L.P. (Criminal) No.10356 of 2022 before the Supreme Court. By a common order dated 21.11.2022 Supreme Court disposed of both the special leave petitions by setting aside the order dated 29.10.2022 passed in criminal revision case No.699 of 2022 as well as the order dated 15.11.2022 passed in writ appeal No.749 of 2022.

10.6. It was stated that in the course of investigation, investigation officer recorded the statement of the *de facto* complainant, drew up the scene of crime observation panchnama, seized pre-arranged electrical supply gadgets from the hall along with two voice recorders from the *de facto* complainant. The seized materials clearly disclosed conversation of respondent Nos.1, 2 and 3 with the MLAs offering Rs.50 crores to each of the MLAs besides other monetary benefits in the event of switching over to BJP from TRS. The recorded voice of respondent No.1 disclosed that respondent Nos.1, 2 and 3 had carried out similar defection in Karnataka and in other States. Voice recorders clearly disclosed that respondent Nos.1, 2 and 3 were in touch with high political functionaries of BJP.

10.7. During the investigation, respondent Nos.1, 2 and 3 remained silent. Their mobile phones were seized. Print outs of screen shorts and materials relating to the case were taken out and seized. Voluminous documents were found and seized containing information relating to Telangana politics and details of 50 MLAs of TRS. One diary found in the vehicle of respondent Nos.1, 2 and 3 was seized. The laptop was also seized.

10.8. Evidence collected during investigation reveals that respondent Nos.1, 2 and 3 were attempting to overthrow a democratically elected government belonging to an opposition political party by adopting unconstitutional and undemocratic methods. Thus, respondent Nos.1, 2 and 3 have hatched a criminal conspiracy with other conspirators to lure MLAs of TRS. As part of the criminal conspiracy, respondent Nos.1 and 2 had started negotiations with the *de facto* complainant offering to pay him Rs.100 crores and Rs.50 crores to each MLA who wished to shift to BJP from TRS. Respondent Nos.1 and 2 had intimidated the *de facto*

complainant with raids by Enforcement Directorate (ED) and CBI if he did not accept the proposal.

10.9. *De facto* complainant had shared the above information with three of his colleague MLAs, namely, (1) Guvvala Balraj, (2) B.Harshavardhan Reddy and (3) Rega Kanta Rao. All of them came forward to assist the *de facto* complainant. Respondent Nos.1 and 2 had contacted the *de facto* complainant and informed him that they would visit his farm house along with respondent No.3 on 26.10.2022. At about 15.10 hours, respondent Nos.1, 2 and 3 had reached the farm house of the *de facto* complainant at Azeez Nagar, Moinabad Mandal and started negotiations with the *de facto* complainant to finalise the deal. After some time, the other three MLAs arrived at the farm house and joined the meeting. In the course of the meeting, respondent Nos.1, 2 and 3 had lured TRS MLAs to shift to BJP. At about 18.30 hours, respondent Nos.1, 2 and 3 were nabbed, incriminating materials were seized and seizure panchanama was drawn. Deponent stated that activities of respondent Nos.1, 2 and 3 *prima facie*

disclosed offences punishable under Sections 120-B and 171-B read with Section 171-E, 506 read with Section 34 IPC and Section 8 of the PC Act. After completing the formalities of arrest, respondent Nos.1, 2 and 3 were produced before the ACB Court. However, ACB Court refused to remand respondent Nos.1, 2 and 3 to judicial custody on the ground of violation of mandatory procedure under Section 41-A CrPC and ordered their release.

10.10. Aggrieved by the said order, State filed criminal revision case No.699 of 2022 before this Court and a learned Single Judge of this Court by order dated 28.10.2022 directed respondent Nos.1, 2 and 3 to surrender before the police and to produce them before the concerned magistrate.

10.11. Deponent had denied the allegation that investigation was being done in an unfair and biased manner. Prayer of respondent Nos.1, 2 and 3 for transfer of investigation to CBI or SIT was contested. Transfer of investigation cannot be a routine exercise and can be done only in exceptional circumstances.

10.12. Government of Telangana had issued G.O.Ms. No.51 dated 30.08.2022 withdrawing all previous general consents issued for entrusting investigation to CBI. Voluminous evidence had been gathered. Role of each and every person in the conspiracy was being examined. Suspects were put on notice under Section 41-A CrPC.

10.13. Therefore, it was contended that the writ petition was devoid of any merit and should be dismissed.

11. As already noticed above, similar writ petitions were filed wherein identical counter affidavits were filed by the State.

12. During the pendency of the related writ petitions, a press meet was organised by the Hon'ble Chief Minister of Telangana on 03.11.2022. In the press meet, he stated that voluminous evidence was collected in the criminal case and those were being sent to various constitutional functionaries across the country like Chief Justice of India, Chief Justice of High Courts, Judges, Chief Ministers etc.

13. Learned Single Judge summed up the sequence of events relevant for adjudication of the writ petitions in the following manner:

> 1. F.I.R. No.455 of 2022 was registered on 26.10.2022, on the complaint lodged by Mr. Pilot Rohit Redy, M.L.A., Tandur Assembly Constituency of Vikarabad belonging to TRS Party at 11.30 hours, by the Station House Officer, Moinabad Police Station.
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> 2. Observation Panchanama were commenced on 26.10.2022 at 12:30 hours and concluded at 14:30 hours wherein four (4) electronic spy gadgets were installed in the farmhouse of the *de facto* complainant Mr. Rohit Reddy at Moinabad by ACP, Rajendranagar. Apart from that two voice recorders were provided to the *de facto* complainant for recording conversation with the accused. These are in the nature of 'Pre Trap Proceedings'.
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> 3. Seizure proceedings/panchanama were drafted on 26.10.2022 at 19:00 hours and concluded at 08:30 hours on 27.10.2022 wherein electronic spy gadgets with video recordings (C-1 to C-4), voice recorders (C-5 and C6), mobile phones of the accused (C-7 to C-10), Laptop of the accused (C-11), documents, diary etc., in made up files and Hyundai Creta Car (C-12) were seized.
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> 4. On 29.10.2022 in W.P. No.39767 of 2022, this Court passed order deferring the investigation till

counter is filed. The matter was adjourned to 04.11.2022.

5. Press Meet was addressed by the Hon'ble the Chief Minister on 03.11.2022.

6. The order of this Court dated 29.10.2022 in W.P. No.39767 of 2022 deferring investigation was vacated by the order dated 08.11.2022.

7. The Hon'ble Chief Minister has circulated recorded videos of the trap proceedings in CDs and pen drives to the Hon'ble the Chief Justice of India, Hon'ble Judges of the Supreme Court, Hon'ble the Chief Justice of the High Court of Telangana State and other States and many constitutional functionaries all over the country.

8. W.A. No.749 of 2022 was filed by the accused persons challenging the order of this Court dated 08.11.2022 in W.P. No.39767 of 2022.

9. During hearing of writ appeal, Mr. Dushyant Dave, learned senior counsel, has expressed regrets on behalf of the Hon'ble Chief Minister of Telangana State for sending the recorded videos to various constitutional functionaries.

10. By the order dated 15.11.2022 in W.A. No.749 of 2022, Division Bench directed this Court to monitor investigation of the SIT in FIR No.455 of 2022 from time to time.

11.The accused persons approached the Hon'ble Supreme Court in S.L.P. (Criminal) No.10356 of 2022 challenging the order in W.A. No.749 of 2022.

12.The order of another learned single Judge of this Court in Criminal R.C. No.699 of 2022 (setting aside order of the trial Court refusing to accept remand) was also challenged by the accused persons before the Hon'ble Supreme Court.

13.Common order dated 21.11.2022 was passed by the Hon'ble Supreme Court in S.L.P. (Criminal) No.10356 of 2022 and Diary No.37248 of 2022 holding that observations made by the learned single Judge in Criminal R.C. No.699 of 2022 are contrary to the judgment in **Arnesh Kumar v. State of Bihar** ((2014) 8 SCC 273). The order passed in W.A. No.749 of 2022 was set aside by directing this Court to pass final orders in the writ petition seeking transfer of investigation.

14. After considering the rival pleadings and submissions as well as the judgments cited at the bar, learned Single Judge framed issues for consideration, including the issue as to whether Bharatiya Janata Party (BJP) has got *locus standi* to institute writ petition No.39767 of 2022. After due consideration and placing reliance on the decision of the Supreme Court in **Romila Thapar v. Union of India**[2] it was held that a third party cannot be permitted to espouse the cause of the accused when the accused themselves are pursuing

[2] (2018) 10 SCC 753

the writ petition. Following the law laid down by the Supreme Court in **Romila Thapar** (supra), writ petition No.39767 of 2022 was held to be not maintainable and was accordingly dismissed.

15. Insofar writ petition No.40733 of 2022 is concerned, the same was allowed by the learned Single Judge by holding as follows:-

> 36. FIR discloses commission of cognizable offence and investigation is bound to be done in accordance with law. Police excesses, investigation officers acting unusually and beyond jurisdiction violating judicial precedents can be remedied from time to time and rightly so, orders have been passed by this Court and other Benches of this Court granting interim protection of arrest pursuant to Section 41-A of Cr.P.C notices. It is stated that accused Nos.1 to 3 are released on bail. So far as other accused, against whom Section 41-A of Cr.P.C. notices were issued, are concerned, it is stated that stay has been granted by other Benches of this Court in separate cases. Thus, it cannot be said that any prejudice is caused to the accused on the aspect of violation of provisions of law, more particularly, Section 41-A Cr.P.C and judgment of the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar** ((2014) 8 SCC 273).
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> 37. The words spoken by the Hon'ble Chief Minister and agony expressed repeatedly saying that democracy is being murdered and several other statements imputing

the top leaders of the BJP in the contemporary political scenario are nothing unusual. With a conscious mind this Court refrains to make any further observations on the speech of the Hon'ble Chief Minister, though the same has been repeatedly pointed out by the learned counsel appearing for the petitioners, by keeping in mind the prejudice that may cause to the *de facto* complainant/victims.

38. In the above conspectus, the issue boils down to the third folder of CD/Pen Drives, which have been taken on record by this Court and circulated by the Chief Minister to the Hon'ble Chief Justice of India, the Hon'ble Chief Justice of this Court and the Hon'ble Chief Justices of other States. The controversy regarding poaching of MLAs is, no doubt, a serious one. The official press conference arranged by the Chief Minister and speaking about the sequence of events and the attempt made to poach ruling party MLAs is understandable. What is required to be seen is whether the procedure established by law has been breached. The manner in which the video recordings through electronic spy gadgets and the documents (C-1 to C-6) have been uploaded in the public domain tested on the view point of accused would certainly cause prejudice to them. Though the investigation is at the preliminary stage, crucial documents, which were in the nature of pre-trap proceedings, have come out open in public.

39. None of the learned counsel appearing for the State have clarified or explained to the Court as to how these CDs and pen drives had surfaced in the Press Meet of the Hon'ble Chief Minister. Not only in the pleadings,

even in the oral submissions, the respondents have maintained stoic silence and have chosen to be very cautious on the leakage of investigation material. A veiled attempt was made by the learned Additional Advocate General stating that the *de facto* complainant might have handed over the CDs/pen drives to the Hon'ble Chief Minister.

40. Mr. A. Prabhakar Rao, learned counsel appearing for the *de facto* complainant - respondent No.8 in W.P. No.39767 of 2022, has also stated that the *de facto* complainant might have handed over the CDs, but there is no clear assertion and evidence to that effect. The contentions of Mr. J. Prabhakar, learned senior counsel appearing for one of the petitioners, with reference to procedure of search and handing over only the list of documents to the *de facto* complainant under Cr.P.C. and instructions in the Police Manual have not been controverted by the learned counsel for the respondents. Moreover, nothing is argued before this Court as to at what stage and under what provisions of Cr.P.C., the *de facto* complainant could have access to the documents and material seized during the investigation. The crime was registered on 26.10.2022. The electronic spy gadgets were seized on 26/27.10.2022 containing the video recording (third file) which are in the nature of trap proceedings, and undoubtedly crucial and critical part of investigation, should not have been handed over to any third party. In the political tussle between the BJP and the TRS Party, the constitutional and statutory rights of the accused seems to have been forgotten. The investigation officers have committed serious lapses. It appears, to cover up such lapses, SIT was constituted on

09.11.2022. When accused are condemned publicly and branded as conspirators levelling serious allegations by none other than the Hon'ble Chief Minister by conducting Press Meet and circulating the videos to the important constitutional functionaries, even before charge sheet is filed and at the initial stages of the investigation, it cannot be said that investigation is being done in an unbiased and fair manner.

41. As contended by Mr. Mahesh Jethmalani, learned senior counsel, in W.P. No.40733 of 2022, actual bias need not be proved and it would suffice if legitimate and reasonable apprehension of bias, taint and unfair investigation is made out by the accused. In **Babubhai v. State of Gujarat** ((2010) 12 SCC 254), investigation was transferred. In the said decision, it was held that not only fair trial but investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. It is not necessary that actual bias should be proved and issue has to be examined from the view point of the accused to see whether any prejudice is caused or not. However, apprehension of the accused about unfair and biased investigation should not be unrealistic but genuine as held by the Hon'ble Supreme Court in **Mohan Lal v. State of Gujarat** ((2018) 17 SCC 627). In the instant case, the events which have unfolded from the date of registration of crime on 26.10.2022 till the Press Conference of the Hon'ble Chief Minister on 03.11.2022, making the investigation CDs/material public without any hesitation would cause reasonable apprehension in the mind of the accused about fair and unbiased investigation.

42. In these circumstances, this Court is of the view that serious prejudice is caused to the accused, who are branded publicly as conspirators, thereby, depriving their rights to effectively defend the criminal proceedings and availing their legal remedies under law. These events run contrary to the fundamental concept of criminal law jurisprudence that every accused is deemed to be innocent until proven guilty. As noted above, the learned counsel for the respondents have not pointed out any provisions of the Cr.P.C. nor offered any plausible explanation or theory as to how the third video CDs/pen drives which have been seized under mediators' report panchanama on 27.10.2022 in F.I.R. No.455 of 2022 have been handed over to the Hon'ble Chief Minister. Who has handed over the same, when and how, remains a mystery. In spite of that, to say that no prejudice is caused to the accused is unreasonable and unacceptable. If action of the police is not in accordance with the procedure established by law, even at the initial stages, this Court, exercising jurisdiction under Article 226 of the Constitution of India, should not shirk its responsibility to set rights things. The contention of the learned counsel for the State - Police that the petitioners have remedies under law and they may challenge the proceedings at the appropriate time and the investigation at this nascent stage should not be interfered cannot be sustained. The rights of the accused stand at a high pedestal in the criminal law jurisprudence as held by the Hon'ble Supreme Court in **Ankush Maruti Shinde v. State of Maharashtra** ((2019) 15 SCC 470). Having found serious lapses and leakage of investigation material/CDs, it is difficult to accept the contention of the learned counsel for the respondents - State that this Court should lay off its hands merely because the investigation

is at preliminary stage. Rights of the accused to have fair and unbiased investigation are defeated in this case which is in violation of Articles 14 and 21 of the Constitution of India.

43. In the opinion of this Court, constitution of SIT under G.O. Ms. No.63 which act under the Government will not alter the situation, more particularly, when an authority none other than the Hon'ble Chief Minister himself has openly circulated the videos and branded the accused and members of the organised crime as conspirators. The entire episode and turn of events is something unprecedented and incomprehensible and unhesitatingly, this Court holds that the accused have made out a case for transfer of investigation. So far as other points raised by the learned counsel regarding violation of G.O. Ms. No.268 etc., and that investigation by regular police is not permissible under the PC Act are not considered as the pleadings to that effect in the writ affidavits are very vague; in any event, these are not necessary to be dealt with in the light of the above observations.

16. Finally by the impugned judgment and order dated 26.12.2022, learned Single Judge quashed G.O.Ms.No.63 issued by the Home (Legal) Department dated 09.11.2022 appointing SIT. Learned Single Judge directed that investigation in F.I.R.No.455 of 2022 shall be forthwith transferred to CBI which shall proceed with *de novo* investigation in F.I.R.No.455 of 2022. Learned Single Judge

also quashed the investigation carried out in F.I.R.No.455 of 2022 till date. In the process, learned Single Judge allowed writ petition No.40733 of 2022 and two other writ petitions. As already noticed above, writ petition No.39767 of 2022 was dismissed as not being maintainable. Further, in view of the above orders, learned Single Judge observed that no additional order was required to be passed in writ petition No.42228 of 2022; accordingly, the said writ petition was closed.

17. The present batch of writ appeals arise out of the common judgment and order dated 26.12.2022 passed by the learned Single Judge in the aforesaid writ petitions. Interestingly, writ appeal No.44 of 2023 has been filed by the State against the aforesaid judgment and order of the learned Single Judge dismissing writ petition No.39767 of 2022. It is not understood as to how the State can be said to be aggrieved by dismissal of the said writ petition and therefore how the writ appeal is maintainable.

Submissions:

18. Before Mr. Dushyant Dave, learned Senior Counsel appearing for the appellants in writ appeal No.37 of 2023 could make his submissions, Mr. D.V.Sitharam Murthy, learned Senior Counsel for respondent Nos.1, 2 and 3 raised a preliminary objection as to maintainability of the writ appeal. According to him, learned Single Judge had passed the order in a matter relating to criminal jurisdiction. Therefore, having regard to the mandate of Clause 15 of the Letters Patent, writ appeal would not be maintainable.

19. Mr. Dushyant Dave, at the outset has referred to the judgment and order of the learned Single Judge in detail. According to him, Hon'ble Chief Minister of Telagnana was not joined as a party respondent in the said proceedings. However, wild and vague allegations were made against the Hon'ble Chief Minister. Referring to the directions of the learned Single Judge in quashing constitution of SIT, further quashing investigation carried out by SIT and thereafter directing that investigation be carried out by

CBI, he submits that those are extraordinary directions. Such directions are totally uncalled for and unwarranted since there was no material before the learned Single Judge to transfer investigation to CBI. He submits that directing transfer of investigation from a high powered Special Investigation Team (SIT) constituted by the State Government to the CBI cannot be done in a routine manner. There is nothing extraordinary in this case to justify transfer of investigation. According to him, learned Single Judge had himself observed at various places of the judgment that holding of press conference by the Hon'ble Chief Minister cannot be construed to be an interference in investigation. It is a legitimate political activity. Chief Minister of a democratically elected government has every right to tell the people as well as his electorate that his elected government is under the threat of being overthrown by undemocratic methods. Insofar the third CD/pen drive is concerned, the contents thereof pertain to the conversation of the accused with the *de facto* complainant and others. Those materials were already in the public domain. Merely because these materials in the form of

CD/pen drive were sent by the Hon'ble Chief Minister to various constitutional functionaries would not vitiate the investigation by SIT to warrant transfer of investigation. He further submits that crime No.455 of 2022 arises out of trap proceedings. The accused were caught red-handed. Therefore, there is nothing so sacrosanct in the CD/pen drive that circulation of the same would vitiate the investigation carried out, those materials already being in the public domain, and therefore, there can be no valid reason that the investigation should be handed over to the CBI. Direction of the learned Single Judge to transfer investigation to CBI is all the more baffling because learned Senior Counsel for respondent Nos.1, 2 and 3 himself had given up the prayer for handing over of investigation to CBI.

19.1. Mr. Dushyant Dave, learned Senior Counsel has taken the Court to various grounds of appeal including the judgments referred to thereunder. While taking the Court to the grounds of appeal, learned Senior Counsel has referred to the decision of the Supreme Court in **Mohinder**

Singh Gill v. Chief Election Commissioner[3] to highlight the importance and significance of democracy. His submission is that parliamentary democracy is a basic structure of the Constitution of India. Therefore, trying to bribe and lure MLAs to change political loyalty is a complete antithesis to democratic principles and subversive to parliamentary democracy.

19.2. Insofar plea of *mala fides*/motive being attributed to the Hon'ble Chief Minister, he submits that mere allegations or suspicions would not be sufficient. Person against whom *mala fide* is attributed is a necessary party to the proceedings. Such a person must be put on notice and heard. In this connection, learned Senior Counsel has placed reliance on a decision of the Supreme Court in **Prakash Singh Badal v. State of Punjab**[4].

19.3. Relying on the decision of the Supreme Court in **E.P.Royappa v. State of Tamil Nadu**[5], he submits that burden of establishing *mala fides* is very heavy on the person who

[3] (1978) 1 SCC 405
[4] (2007) 1 SCC 1
[5] (1974) 4 SCC 3

alleges it. Allegations of *mala fides* are often easily made than proved. The very seriousness of such allegations demands proof of a high order of credibility.

19.4. None of the above aspects were considered by the learned Single Judge while directing transfer of investigation.

19.5. In the course of his submissions, Mr. Dushyant Dave, learned Senior Counsel has also placed reliance on the decision of the Supreme Court in **H.N.Rishbud v. State of Delhi**[6]. Referring to the said judgment, which dealt with investigation under the Prevention of Corruption Act, 1947, as well as under the Criminal Procedure Code, 1898, he submits that Supreme Court considered the question as to whether trial proceedings initiated on charge sheets which were filed on the basis of faulty investigation were legal and required to be quashed. After referring to various provisions of the Criminal Procedure Code, Supreme Court held that trial follows cognizance and cognizance is preceded by investigation. A defect or illegality in

[6] AIR 1955 SC 196

investigation, howsoever serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. An irregularity committed in the course of investigation does not affect the competence and jurisdiction of the court for trial. Result of the trial which follows such investigation cannot be mechanically set aside unless illegality in the investigation can be shown to have brought about miscarriage of justice.

19.6. Mr. Dushyant Dave, learned Senior Counsel contends that it is trite law that police has a statutory duty to investigate. Court should not interfere in such investigation except in rarest of the rare cases. Referring to the decision of the Supreme Court in **Union of India v. Prakash P. Hinduja**[7], he submits that the legal position has been settled by judicial authorities that the court would not interfere with the investigation or during the course of the investigation which would mean that from the time of lodging of F.I.R. till submission of report by the officer in charge of the police station in the court under Section 173(2) of the CrPC, this field is exclusively reserved for the investigating

[7] (2003) 6 SCC 195

agency. It is the duty of the police to collect evidence in the investigation and place it before the court; it is the criminal court which will decide the truthfulness of the accusations on the basis of evidence gathered by the police during investigation. Throughout the criminal proceedings, the accused will have adequate remedy by seeking discharge or quashing of proceedings, if the accused is of the belief that he is being unnecessarily entangled in a criminal case.

19.7. Adverting to the preliminary objection raised by Mr. D.V.Sitharam Murthy, Mr. Dushyant Dave submits that the writ appeal is clearly maintainable. Writ petition was filed seeking a writ of mandamus. Learned Single Judge has issued a writ of mandamus under Article 226 of the Constitution of India on the grievance expressed by the writ petitioners that their fundamental right to a fair investigation and reputation under Article 21 of the Constitution of India was being breached by the State. Therefore, against such an order of learned Single Judge, writ appeal is clearly maintainable. Learned Single Judge had not exercised criminal jurisdiction. If it is contended

that learned Single Judge had exercised criminal jurisdiction, then proceedings before the learned Single Judge would be a nullity in as much as, as per roster learned Single Judge did not have criminal jurisdiction. If this is the stand of the respondents in appeal, the same would be equally applicable to the writ proceedings on the basis of which writ petitioners would be non-suited. Therefore, it would be too farfetched to contend that learned Single Judge had exercised criminal jurisdiction because of which writ appeal under Clause 15 of the Letters Patent would not be maintainable.

20. Mr. Gandra Mohan Rao, learned Senior Counsel appearing for the *de facto* complainant, respondent No.6, who was respondent No.8 in the writ proceedings, submits that no notice was issued by the learned Single Judge to the *de facto* complainant. Non-issuance of notice to the *de facto* complainant is a material irregularity which has vitiated the judgment of the learned Single Judge. He has elaborately referred to the contents of the first information and submits therefrom that the *de facto* complainant was

very much a necessary party to the writ proceedings. In fact, the scene of the crime was at his farm house located at Azeez Nagar, Moinabad.

20.1. Referring to paragraph 19.2 of the judgment of the learned Single Judge, he submits that date of the judgment is 26.12.2022 and on the very same day, learned Single Judge had allowed I.A.No.2 of 2022 in W.P.No.43144 of 2022 taking on board the video recording uploaded in the CD in three separate files/folders by treating them as additional evidence. No opportunity was granted to the contesting parties to have their say in I.A.No.2 of 2022. This is a gross procedural irregularity committed by the learned Single Judge.

20.2. Adverting to the contents of the CDs, more particularly to those described in paragraph 20.3 of the judgment, learned Senior Counsel for respondent No.6 submits that those materials were already in the public domain. Therefore, reference made to it by the Hon'ble Chief Minister or circulating those materials by the Hon'ble Chief Minister cannot be faulted. Hon'ble Chief Minister

had highlighted the issue that what has happened in the present case is not a solitary instance or a minor attempt at bribery. It is a threat to democracy itself, seeking to overthrow a democratically elected government through bribes and intimidation.

20.3. Insofar handing over of investigation to CBI is concerned, learned Senior Counsel submits that even the writ petitioners were not specific about a CBI enquiry. He submits that Mr. Mahesh Jethmalani, learned Senior Counsel who had appeared for the writ petitioners/ respondent Nos.1, 2 and 3 herein had categorically submitted before the learned Single Judge which has been recorded in paragraph 10.5 of the judgment that the writ petitioners were not insisting that there should be investigation only by CBI; it was submitted that learned Single Judge may exercise discretion and transfer the investigation to any other agency.

20.4. Finding fault with the decision of the learned Single Judge in entrusting the investigation to CBI, learned Senior

Counsel for respondent No.6 seeks setting aside of the aforesaid order of the learned Single Judge.

21. Mr. D.V.Sitharam Murthy, learned Senior Counsel has appeared on behalf of respondent Nos.1, 2 and 3 i.e., the writ petitioners. Reiterating the preliminary objection raised by him at the threshold, he submits that the writ appeals are not maintainable. Learned Senior Counsel has placed reliance on the decision of the Supreme Court in **Ram Kishan Fauji v. State of Haryana**[8] in support of the aforesaid contention. Before taking the Court to the aforesaid decision, he has referred to Clause 15 of the Letters Patent of Telangana High Court. He submits that considering the limited scope and ambit of Letters Patent appeal, no such appeal would lie against the order passed by the learned Single Judge in a matter involving criminal jurisdiction, even though it is a decision under Article 226 of the Constitution of India. Referring to **Ram Kishan Fauji** (supra), learned Senior Counsel submits that Supreme Court has emphatically held that if the proceeding, nature

[8] (2017) 5 SCC 533

and relief sought for pertain to anything connected with criminal jurisdiction, an intra-court appeal would not lie.

21.1. He submits that a Full Bench of the Andhra Pradesh High Court in **Gangaram Kandaram v. Sunder Chikha Amin**[9] had held that issuing a writ of mandamus or certiorari by the High Court under Article 226 of the Constitution of India pertaining to a criminal complaint or proceeding cannot be said to be an order passed in exercise of criminal jurisdiction. Therefore, Andhra Pradesh High Court held that an appeal would lie under Clause 15 of the Letters Patent from the order of the learned Single Judge quashing investigation in a criminal case under Article 226 of the Constitution of India. However, Supreme Court noted that a Division Bench of the Gujarat High Court in **Sanjeev Rajendrabhai Bhatt v. State of Gujarat**[10] had held that 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 would still be a "criminal proceeding" within the

[9] 2000 (2) APLJ 1 (HC) : 2000 SCC OnLine AP 119
[10] (2000) 41 (1) GLR 206

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 would continue to remain a "criminal proceeding" covered by the bracketed portion of Clause 15 of the Letters Patent. Thereafter, Division Bench of Gujarat High Court ruled that as Clause 15 of the Letters Patent expressly bars an appeal against an order passed by a learned Single Judge of the High Court in exercise of criminal jurisdiction, Letters Patent appeal against such an order would not be maintainable.

21.2. Mr. D.V.Sitharam Murthy, learned Senior Counsel thereafter referred to the Full Bench decision of the Delhi High Court in **C.S.Agarwal v. State**[11]. He submits that Full Bench of the Delhi High Court had held that proceedings under Article 226 of the Constitution of India would be treated as original civil proceeding only when it concerns civil rights. If it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent appeal would lie when the learned Single Judge

[11] 2011 SCC OnLine Del 3136

decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can be stated that the learned Single Judge was exercising his criminal jurisdiction while one deals with such a petition being filed under Article 226 of the Constitution of India.

21.3. Learned Senior Counsel on the basis of the Supreme Court decision in **Ram Kishan Fauji** (supra) contended that the conception of "criminal jurisdiction" as used in Clause 15 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. What is relevant is the field in respect of which the jurisdiction is exercised. Supreme Court has held that Gujarat and Delhi High Court had correctly laid down the law; the view expressed by the Full Bench of the Andhra Pradesh High Court did not lay down the correct law. On the basis of the decision of the Supreme Court in **Ram Kishan Fauji** (supra), he submits that the writ appeal is not maintainable and therefore should be dismissed.

21.4. Insofar the contention of Mr. Candra Mohan Rao, learned Senior Counsel for the *de facto* complainant is concerned, Mr. D.V.Sitharam Murthy, learned Senior Counsel for respondent Nos.1, 2 and 3 submits that the *de facto* complainant was arrayed as respondent No.8 in writ petition No.40733 of 2022. He had himself appeared before the Court and had filed counter affidavit, which was considered by the learned Single Judge. When the *de facto* complainant had himself appeared and participated in the writ proceedings, he cannot turn around and now contend that notice was not issued or served upon him. Such a contention has to be recorded only to be rejected.

21.5. Adverting to page 63 of the paper book, he submits that the *de facto* complainant was represented by Mr. A.Prabhakar Rao, learned Senior Counsel who had argued the matter and his submissions were recorded by the learned Single Judge in paragraph 17 of the judgment.

21.6. On merit, he submits that learned Single Judge has pointed out several contradictions in the F.I.R. as well as in

the application seeking remand filed before the magistrate. Adverting to G.O.Ms.No.63 dated 09.11.2022 (pg. 438 of the paper book), he submits that while requesting the government to constitute a Special Investigation Team (SIT) to carry out proper investigation in crime No.455 of 2022, Director General of Police had opined that the case is sensitive, high profile and sensational in nature and as it involves investigation in multiple dimensions, which requires thorough scientific and evidence based investigation in an elaborate manner; it requires officers with experience and requisite expertise with specific skill sets to carry out investigation. Pausing here for a moment, learned Senior Counsel submits that his clients, i.e., respondent Nos.1, 2 and 3 (writ petitioners) are ordinary persons. Under no circumstances, can they be termed as high profile. Director General of Police had at the very threshold taken the view that the case would involve high profile people. This only discloses the pre-determined or pre-conceived nature of investigation sought to be carried out by the police and SIT. Such motivated investigation has rightly been interdicted by the learned Single Judge.

Concluding his submissions, learned Senior Counsel contends that writ appeals are liable to be dismissed both on the point of maintainability as well as on merits.

22. Mr. L.Ravichander, learned Senior Counsel has also appeared on behalf of the same set of respondents though in a different appeal being W.A.No.42 of 2023.

22.1. Assailing the submissions made on behalf of the *de facto* complainant that he was not put on notice, learned Senior Counsel has referred to page 8 of the paper book and submits therefrom that in writ petition No.40733 of 2022, the cause title clearly mentions that counsel for respondent No.8 (*de facto* complainant - Mr. Pilot Rohit Reddy) was Mr. A.Prabhakar Rao, whose presence was duly noted. Adverting to paragraph 40 of the judgment of the learned Single Judge at page 103 of the paper book, Mr. L.Ravichander, learned Senior Counsel submits that submissions of Mr. A.Prabhakar Rao, learned Senior Counsel appearing for the *de facto* complainant were duly recorded and considered by the learned Single Judge. Therefore, non-issuance of formal notice to the *de facto*

complainant had caused no prejudice to him and this cannot be put up as a ground of appeal to the well reasoned findings of the learned Single Judge.

22.2. Adverting to paragraph 21 of the judgment of the learned Single Judge at page 73 of the paper book, learned Senior Counsel submits that it was specifically pleaded in paragraph 5 of the writ affidavit in W.P.No.43144 of 2022 and again in paragraphs 6, 7 and 8 of the writ affidavit in W.P.No.43339 of 2022 that the Assistant Commissioner of Police, Rajendranagar had handed over the investigation material in pen drives to the Hon'ble Chief Minister of the Telangana, who inturn had sent those materials in the form of CDs to various constitutional functionaries of the country. He submits that the State could not deny such assertion of the writ petitioners. He has also referred to G.O.Ms.No.63 dated 09.11.2022 constituting the SIT and submits therefrom that before investigation could progress, Director General of Police had already formed an opinion that high profile people are involved in this case. Therefore

the investigation was already motivated. Such motivated investigation would be an abuse of the criminal process.

22.3. Learned Senior Counsel submits that the investigation initiated by the police or by the SIT is completely tainted. No fair investigation is possible. Placing reliance on an English decision in **R. v. Sussex Justices**[12], he submits that justice should not only be done but should manifestly and undoubtedly be seen to be done. This has been relied upon by the Supreme Court in **Justice P.D.Dinakaran v. Judges Inquiry Committee**[13].

22.4. Refuting the submissions of Mr. Dave that on one hand allegation of *mala fides* were made against the Hon'ble Chief Minister by the writ petitioners but on the other hand he was not arrayed as a party to the writ proceedings, Mr. L.Ravichander, learned Senior Counsel for respondent Nos.1, 2 and 3 submits that while this is factually incorrect in as much as the Hon'ble Chief Minister was in fact arrayed as a respondent in the writ petitions, but the point is that allegations made by respondent Nos.1,

[12] (1924) 1 KB 256
[13] (2011) 8 SCC 380

2 and 3 are based on legal malice. Placing reliance on the decision of the Supreme Court in **Kalabharati Advertising v. Hemant Vimalnath Narichania** (decided on 06.09.2010), he submits that the State is under an obligation to act fairly without any ill-will or malice – in fact or in law. Elaborating further, he submits that legal malice or malice in law means something done without lawful excuse. It is an act done wrongfully and wilfully without reasonable or probable cause and not necessarily an act done from ill-feeling and spite. It is a deliberate act in disregard to the rights of others. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for purposes foreign to those for which it is in law intended. It means a conscious violation of the law to the prejudice of another.

22.5. Insofar appellate jurisdiction is concerned, he submits that this Court is exercising jurisdiction under Clause 15 of the Letters Patent. If two views are reasonably

possible, then the view taken by the learned Single Judge should not be disturbed or substituted by a different view taken by the appellate bench. He submits that view taken by learned Single Judge is a reasonable and a plausible view and therefore, the same should not be disturbed. Further, insofar jurisdiction of the High Court under Clause 15 of the Letters Patent is concerned, the same can be exercised by the Division Bench only if the judgment of the learned Single Judge is totally perverse. In this connection, he has placed reliance on a Division Bench decision of the Andhra Pradesh High Court in **N.Seshaiah v. South Central Railway** (Writ Appeal No.207 of 2019, decided on 18.09.2019).

22.6. Before concluding, he submits that appellants had filed a memo before the learned ACB Judge informing him that police intended to add a few more persons as accused. ACB Judge had passed a detailed order refusing to accept such memo of the appellants. In the said order, he had also questioned the very constitution of SIT. Assailing such order of the learned ACB Judge, State had filed a criminal

revision case before the learned Single Judge of this Court which has been dismissed. Therefore, *de hors* the judgment of the learned Single Judge, in view of the decision of this Court confirming the view taken by the learned ACB Judge, there is no way that SIT can function as an investigating agency.

23. Mr. C.Damodar Reddy, learned Senior Counsel has appeared for Bharatiya Janata Party (BJP). BJP had filed writ petition No.39767 of 2022 challenging the biased and unfair investigation in F.I.R.No.455 of 2022 and had sought for transfer of investigation to CBI or alternatively, for constitution of SIT by the Court. However, learned Single Judge by the aforesaid judgment and order has dismissed the writ petition as not being maintainable. He submits that it is indeed very surprising that against such dismissal order, State has filed appeal being writ appeal No.44 of 2022. This writ appeal has got no merit at all and should be dismissed. He submits that several sweeping and unsubstantiated allegations have been made against his client and therefore, it is his duty to put the record

straight. He submits that TRS party itself has scant regard for democracy. In the past, it had resorted to unethical practices to lure MLAs from other political parties. One such M.L.A. who has defected from the Congress party to the TRS party is the *de facto* complainant himself. His disqualification application under the anti-defection law is still pending. It, therefore, does not lie in his mouth to speak about democracy or threat to democracy.

24. Mr. Uday Holla, learned Senior Counsel representing Mr. Bhusarapu Srinivas, learned counsel for respondent No.1 in writ appeal No.43 of 2023 submits that there is complete misuse of State machinery by the Telangana Government. To serve a notice under Section 41A of the Code of Criminal Procedure, 1973 (CrPC) upon his client, Assistant Commissioner of Police in the SIT went with a huge posse of policemen to his residence. It is a clear case of intimidation. Being a practising advocate, he is in no way connected with the controversy. Unnecessarily, he is sought to be dragged into the case. There is absolute lack of objectivity by the State police. Therefore, he had

challenged the notice issued under Section 41A of CrPC by filing W.P.No.42228 of 2022. However, learned Single Judge in paragraph 44.3 of the judgment and order held that in view of the orders passed in the other writ petitions quashing SIT and transferring investigation to CBI, no orders were required to be passed in W.P.No.42228 of 2022, which was accordingly closed.

25. We have also heard Mr. S.D.Sanjay Tiwari, learned Senior Counsel representing respondent No.1 in writ appeal No.36 of 2023 which has arisen out of W.P.No.43339 of 2022. While reiterating the submissions made by learned Senior Counsel for the respondents, he has also added that learned Single Judge has considered all aspects of the matter in a thorough and dispassionate manner. Thereafter, learned Single Judge had come to a definite conclusion that under the police or under the SIT, there can be no fair investigation. Rights of the accused would be severely jeopardised under such investigation. Therefore, learned Single Judge has rightly quashed constitution of SIT and directed handing over of

investigation to CBI. CBI is an independent investigating agency constituted under the Delhi Special Police Establishment Act, 1946. Investigation by CBI will reveal the truth or otherwise of the allegations made by the *de facto* complainant. *De facto* complainant had made an accusation; if truth is on his side, he need not worry as to which agency investigates the truth of his accusation. He, therefore, submits that all the writ appeals should be dismissed.

26. In his reply submissions, Mr. Dushyant Dave, learned Senior Counsel for the appellants has referred to Clause 15 of the Letters Patent and thereafter submits that judgment and order of the learned Single Judge cannot be said to have been rendered in exercise of criminal jurisdiction. Adverting to the pleadings and relief sought for by the writ petitioners in the writ petition, he submits that those are purely civil and public law remedy. There was no exercise of criminal jurisdiction by the learned Single Judge. Relief sought for by the writ petitioners was not to quash F.I.R. or the investigation. What they had

complained before the learned Single Judge was violation of their statutory and fundamental rights. The writ petitions were clearly filed under Article 226 of the Constitution of India seeking a mandamus for transfer of investigation which prayer was purely constitutional and civil in nature. Writ petitioners did not challenge the F.I.R nor the investigation. Therefore, it cannot be said that learned Single Judge had exercised criminal jurisdiction. Learned Senior Counsel has placed reliance on the decision of **Praga Tools Corporation v. C.A.Imanual**[14] and also on the decision in **Umaji Keshao Meshram v. Radhikabai**[15] to contend that the writ appeal is clearly maintainable.

26.1. Learned Senior Counsel has made elaborate submissions on merit as well. Referring to the decision of the Supreme Court in **Romila Thapar** (supra), he submits that though the accused has a right to fair and impartial investigation besides freedom from unlawful arrest, the accused cannot seek that investigation should be carried out by a particular agency.

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[14] (1969) 1 SCC 585
[15] 1986 (Supp) SCC 401

26.2. Reverting back to the appeal papers, he submits that from page 305 of the paper book it is seen that in the remand application of the investigating officer, CD was submitted before the remand magistrate. He submits that from the remand application dated 27.10.2022, second remand application dated 29.10.2022 and the proceedings before the learned Single Judge on 03.11.2022, it would be evident that all the materials were in public domain. Nothing remained confidential. He submits that BJP rushed to the court by filing writ petition No.39767 of 2022 immediately on the very next day of lodging of F.I.R. If the BJP contends that it has got nothing to do with the accused persons, then there is no reason for it to become so apprehensive. He submits that the present is clearly a trap proceeding in which the accused persons had participated voluntarily. Thus, the offence stood committed. In this context, the press meet by the Hon'ble Chief Minister is really immaterial. Adverting to the decision in **State of Haryana v. Bhajan Lal**[16], he submits that the allegations clearly make out commission of cognizable

[16] 1992 Supp (1) SCC 335

offence. Police has a statutory duty to investigate. Court should not interfere in the investigation. In that case, Supreme Court clarified that personal animosity of the complainant would by itself not be a ground to discard the complaint containing serious allegations which have to be tested and weighed after the evidence is collected. Learned Senior Counsel has referred to the decision in **Supreme Court Advocates-on-Record Association v. Union of India**[17] and submits that independence of the judiciary as a part of the basic structure of the Constitution is to secure the rule of law essential for preservation of the democratic system. He submits that there is no room for any compromise with the basic scheme of our constitution. No person is above the law and cautioned that the courts should be unbending before power, economic or political.

26.3. Proceeding further, learned Senior Counsel has pointed out that learned Single Judge had merely referred to certain decisions, such as, **Babubhai v. State of Gujarat**[18],

[17] (1993) 4 SCC 441
[18] (2010) 12 SCC 254

Mohan Lal v. State of Gujarat[19] and **Pooja Pal v. Union of India**[20] without any proper analysis as to the applicability of the said decisions in the facts of the present case and thereafter reached the impugned conclusions which cannot be justified in law as well as on facts.

26.4. Mr. Dave, learned Senior Counsel has submitted a set of fresh material papers, wherefrom he submits that certain highly objectionable statements have been made by one of the persons to whom notice under Section 41A of CrPC was issued. He has virtually threatened the investigation team as well as the *de facto* complainant that they would have to face the consequences of dragging his name into the case. Such statements made when the hearing of the appeals is in progress virtually amounts to committing criminal contempt as defined under Section 2(c) of the Contempt of Courts Act, 1971.

26.5. Referring to a decision of the Supreme Court in **State of West Bengal v. Sampat Lal**[21], Mr. Dave submits that

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[19] (2018) 17 SCC 627
[20] (2016) 3 SCC 135
[21] (1985) 1 SCC 317

Supreme Court had placed or rather reposed full confidence in the State police holding that there was no necessity of the CBI being called in as was done by the High Court. That was a case where Calcutta High Court had acted upon letters which alleged that two young boys by names, Tirthankar Das Sharma and Sanjib Chatterjee living in Barrackpore area, were found missing. Subsequently, dead bodies of the two boys were found from the railway track. Those were disposed of by the local police without taking any steps for identification. The letters alleged that parents of the two boys had approached various authorities including the Chief Minister, but no importance was given. It was alleged that Chief Minister had made a statement even before completion of investigation that it was a case of suicide. The letters were treated as writ petition, whereafter a learned Single Judge of the Calcutta High Court directed CBI to cause an enquiry and to report back to the Court. Division Bench of the Calcutta High Court clarified that direction by the learned Single Judge was to the Deputy Inspector General of CBI to act as special officer for the purpose of carrying

out the investigation. When the Deputy Inspector General expressed his unwillingness to carry out the investigation, the Division Bench opined that some other special officer would have to be appointed. Whereafter the matter came to the Supreme Court. In the facts of that case, Supreme Court found that there was no adequate material on record for the learned Single Judge to appoint a special officer. Police had already commenced investigation. Supreme Court held that investigation is a matter for the police under the scheme of CrPC. Interference by the High Court into police investigation was not approved. Therefore, Supreme Court set aside the order of the High Court appointing special officer reposing considerable faith in the State police. Supreme Court had observed that the police authorities would take the investigation as a challenge and justify their stand that they were competent to investigate and that there was no necessity of the CBI being called in. Mr. Dave points out that even in this case, the Chief Minister had made a statement on the floor of the Assembly even when the investigations were ongoing, that the incident appeared to be a case of suicide and not

murder. Even in such a case, Supreme Court did not approve taking over of investigation from the State police. Besides, as held by the Supreme Court in **Arnab Goswami v. Union of India**[22], no transfer of investigation can be ordered merely because a party has levelled some allegations against the local police.

26.6. Insofar the present case is concerned, Mr. Dave submits that there are senior officers in the SIT. No allegations have been made against them. In the circumstances, no case was made out for handing over of investigation to CBI. Learned Single Judge had fallen into serious error in directing so. State police should not have been divested of its legitimate power to investigate the cognizable offence. Learned Single Judge failed to exercise his discretion based on sound judicial principles.

26.7. Mr. Dave has also placed before the Court a recent decision of the Supreme Court in **State of Jharkhand v. Shiv Shankar Sharma**[23]. He submits that allegations made in that case against the Chief Minister were very vague and

[22] (2020) 14 SCC 12
[23] 2022 SCC OnLine SC 1541

generalised. Those were not at all substantiated by anything worthy to be called an evidence. Bald allegations of corruption and siphoning of money by shell companies were made without substantiating the allegations in any manner whatsoever. The shell companies were not even made parties to the writ petition. In the facts of that case, Supreme Court held that it was not proper for the High Court to entertain such public interest litigation (PIL) directing CBI investigation based on mere allegations. Accordingly, order of the High Court was set aside. He submits that present case is also similar to the one in **Shiv Shankar Sharma** (supra).

26.8. A great deal of emphasis has been laid by Mr. Dave on non-issuing of notice to the Hon'ble Chief Minister of Telangana though allegations of *mala fides* were made against him. Placing reliance on the decisions of the Supreme Court in **State of Punjab v. Chaman Lal Goyal**[24] and **Nisha Priya Bhatia v. Union of India**[25], he submits that mere charge of *mala fides,* that too, in a vague manner is not

[24] (1995) 2 SCC 570
[25] (2020) 13 SCC 56

adequate. Nothing has been stated in the writ affidavit as to which of the officers in SIT is ill-disposed towards the writ petitioners and in what manner. In the absence of any clear allegation and in the absence of impleading such a person so as to enable him to answer the charge against him, charges of *mala fides* cannot be sustained. Such allegations of *mala fides* cannot be taken forward. That apart, he submits that as has been held by the Supreme Court in **Sheonandan Paswan v. State of Bihar**[26], a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of *mala fides* or political vendetta.

26.9. Placing reliance on the decision of the Supreme Court in **Lalita Kumari v. Government of Uttar Pradesh**[27], he submits that registration of F.I.R. is mandatory under Section 154 of CrPC if the information discloses commission of cognizable offence. No preliminary enquiry is necessary or permissible in such a situation. If F.I.R. is not registered, action is to be taken against erring police officers. Scope of

[26] (1987) 1 SCC 288
[27] (2014) 2 SCC 1

preliminary enquiry is not to verify the necessity or otherwise of the information received but only to ascertain whether the information reveals commission of any cognizable offence.

26.10. After referring to the pleadings in the writ affidavit and the counter affidavit and also reiterating his earlier submissions based on the Supreme Court decision in **Mohinder Singh Gill** (supra) as to the duty of the court to uphold the rule of law, he submits that findings and conclusions of the learned Single Judge are a bundle of contradictions. Those are required to be set aside.

26.11. Explaining the rationale for filing a separate writ appeal against the decision of the learned Single Judge dismissing the writ petition filed by BJP as being not maintainable, Mr. Dave submits that earlier BJP had filed writ appeal against the decision of the learned Single Judge withdrawing the order for deferment of investigation. Division Bench had held that SIT constituted by the State should investigate the crime, but SIT would report to the learned Single Judge and not to any other authority. This

decision was accepted by BJP in as much as they did not file SLP before the Supreme Court. SLP was filed by respondent Nos.1, 2 and 3 before the Supreme Court. Therefore, the order of the Division Bench *qua* BJP has attained finality. Since BJP had sought for investigation by SIT and that having been granted by the Division Bench, writ petition filed by BJP should have been disposed of with suitable observations and directions, instead learned Single Judge dismissed the writ petition as being not maintainable. This distinction, he submits, is subtle but significant. It is for this reason that State has filed appeal even against dismissal of the writ petition filed by BJP.

27. Mr. Gandra Mohan Rao, learned counsel for the *de facto* complainant i.e., respondent No.6 has referred to Rules 8 and 10 of the High Court Writ Rules and submits that notice to the respondent is mandatory. He has referred to ground Nos.19 and 20 in writ appeal No.42 of 2023 in this regard. He has also placed reliance on a Calcutta High Court decision in **DGP v. Gopal Kumar Agarwal**[28] and submits that learned Single Judge did not exercise any criminal

[28] 2020 SCC OnLine Cal 755

jurisdiction. Thus the writ appeals are maintainable. In any view of the matter, transfer of investigation to another agency, in this case to CBI, is not to be done in a routine and mechanical manner. It is only in rarest of the rare case that there should be transfer of investigation. Therefore, finding fault with the approach of the learned Single Judge, he submits that the same needs to be corrected in appeal.

27.1. In similar circumstances, in **Gopal Kumar Agarwal** (supra), Calcutta High Court has held that writ appeals are maintainable and not barred by Clause 15 of the Letters Patent. Calcutta High Court had examined the decision of the Supreme Court in **Ram Kishan Fauji** (supra) but noticed that order of the learned Single Judge had neither resulted in initiation of criminal proceedings nor quashing of criminal proceedings. Present appeals stand on similar footing as in **Gopal Kumar Agarwal** (supra).

28. Submissions made by learned counsel for the parties have received the due consideration of the Court. Mr. Dushyant Dave, learned Senior Counsel for the appellants in writ appeal No.37 of 2023 has filed written

submissions after conclusion of the arguments. Similarly, Mr. V.Ram Mohan Reddy, learned counsel representing respondent No.1 in writ appeal No.43 of 2023 has submitted written arguments. The written submissions and arguments have been duly considered.

Analysis:

29. At the outset, we may first deal with the preliminary objection raised by Mr. D.V.Sitharam Murthy, learned Senior Counsel representing respondent Nos.1, 2 and 3 to the effect that the writ appeals filed being intra-court appeals under Clause 15 of the Letters Patent are not maintainable in as much as substance of the judgment and order of the learned Single Judge out of which the appeals arise pertain to criminal jurisdiction. It is contended that subject matter of the writ petitions and the direction of the learned Single Judge relate to criminal jurisdiction. Against such an order of the learned Single Judge, no intra-court appeal would lie. This is the preliminary objection raised by respondent Nos.1, 2 and 3.

30. Letters Patent for the High Court of Judicature for the Presidency of Madras dated 28.12.1865 is applicable to the High Court for the State of Telangana at Hyderabad. Clause 15 of the aforesaid Letters Patent deals with appeal from the courts of original jurisdiction to the High Court in its appellate jurisdiction. Clause 15 being relevant, the same is extracted as under:

> ***15. Appeal from the Courts of Original Jurisdiction to the High Court in its appellate jurisdiction:-*** And we do further ordain that an appeal shall lie to the said High Court of Judicature at Madras from the judgment not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of Section 107 of the Government of India Act, or in the exercise of criminal jurisdiction of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act made (on or before the 1st 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 or of such Division Court shall be to Us, Our Heirs or Successors in Our or Their Privy Council as hereinafter provided.

30.1. From a perusal of the above, what Clause 15 provides for is that an appeal shall lie to the High Court from a judgment of one judge of the said High Court or one judge of any Division Court. However, no such appeal shall lie if the judgment is passed in the exercise of appellate jurisdiction in respect of decree or order impugned in the exercise of appellate jurisdiction by a Court subject to superintendence of the said High Court; no appeal shall lie against an order made in the exercise of revisional jurisdiction; no such appeal shall lie against an order passed or made in the exercise of the power of superintendence under the provisions of the Government of India Act, 1935; or if an order is made in the exercise of criminal jurisdiction of one Judge of the said High Court.

31. In **Umaji Keshao Meshram** (supra), the question which fell for determination of the Supreme Court was whether an appeal lies under Clause 15 of the Letters Patent of the Bombay High Court to a Division Bench of two judges of that High Court from the judgment of the Single Judge of that High Court in a petition filed under Article 226 or 227 of the Constitution of India. Supreme Court noted that Letters Patent of the Calcutta, Bombay and Madras High Courts are *mutatis mutandis* in the same terms with minor variations mostly as a result of amendments subsequently made. Supreme Court analysed Clause 15 of the Letters Patent and thereafter held as follows:-

> 9. When analysed and broken up into its competent parts clause 15 in its finally amended and operative form reads as follows:
>
> An appeal shall lie to the High Court of Judicature at Bombay—
>
> (1) from a judgment
>
> (2) of one Judge of the High Court
>
> (3) pursuant to Section 108 of the Government of India Act of 1915
>
> (4) not being—
>
> (*a*) a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate

> jurisdiction by a court subject to the superintendence of the High Court,
> (*b*) an order made in the exercise of revisional jurisdiction,
> (*c*) a sentence or order passed or made in the exercise of the power of superintendence under the provisions of 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.

31.1. In that case, having regard to the question before the Supreme Court the deliberation was confined to the distinction between Articles 226 and 227 of the Constitution of India and maintainability of an intra-court appeal against the judgment of a learned Single Judge passed under Article 227 of the Constitution of India. It was in that context, Supreme Court observed that under Article 226, High Courts have power to issue directions, orders and writs to any person or authority including any government but 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. By no stretch of

imagination, can a writ in the nature of *habeas corpus* or *mandamus* or *quo warranto* or prohibition or *certiorari* be equated with the power of superintendence. These are writs which are directed against persons, authorities and the State. On the other hand, the power of superintendence conferred upon every High Court by Article 227 is the supervisory jurisdiction intended to ensure that subordinate courts and tribunals act within the limits of their authority and according to law. The two processes are not the same. It is well settled that a proceeding under Article 226 of the Constitution of India is an original proceeding and when it concerns civil rights, it is an original civil proceeding. Therefore, Supreme Court held that where a petition is filed under Article 226 of the Constitution of India and is according to the rules of a particular High Court heard by a learned Single Judge, an intra-court appeal will lie from that judgment if such a right of appeal is provided in the Charter of that High Court, whether such Charter be Letters Patent or a statute. Clause 15 of the Letters Patent of the Bombay High Court gives in such a case a right of intra-court appeal and

therefore, the decision of a learned Single Judge of that High Court given in a petition under Article 226 of the Constitution of India would be appealable to a Division Bench of that High Court. However, a proceeding under Article 227 of the Constitution is not an original proceeding. After due analysis, Supreme Court concluded that an intra-court appeal does not lie against the judgment of a learned Single Judge of the Bombay High Court given in a petition under Article 227 of the Constitution of India by reason of such appeal being expressly barred by Clause 15 of the Letters Patent. Therefore, such an intra-court appeal would not be maintainable.

32. Before proceeding further, it would be apposite to briefly dilate on the contours of a civil proceeding under Article 226 of the Constitution of India as the same is necessary to be understood to make a contra-distinction to what is termed as a criminal proceeding under Article 226 of the Constitution.

33. In **S.A.L.Narayan Row v. Ishwarlal Bhagwandas**[29], Bombay High Court had decided a challenge made to an order passed by the Commissioner of Income Tax under Section 32-A of the Indian Income Tax Act, 1922. Bombay High Court quashed the aforesaid order. Against that, revenue preferred an appeal before the Supreme Court on certificate granted by the High Court. At the appellate stage, assessee raised an objection that the appeal was not maintainable because the High Court had no power to certify a proposed appeal against an order in a proceeding under Article 226 of the Constitution of India in as much as the proceeding before the High Court was not a "civil proceedings" within the meaning of Article 133 of the Constitution of India. After adverting to Article 133 of the Constitution, which deals with appellate jurisdiction of the Supreme Court in appeals from High Courts in regard to civil matters, Supreme Court delved into the meaning of the expression "civil proceeding" as appearing in the aforesaid article. It was in that context, Supreme Court opined that there is no ground for restricting the expression "civil proceeding" only

[29] AIR 1965 SC 1818

to those proceedings which arise out of civil suits or proceedings which are tried as civil suits nor is there any rational basis for excluding from its purview proceedings instituted and tried in the High Court in exercise of its jurisdiction under Article 226 of the Constitution of India, where the aggrieved party seeks relief against infringement of civil rights by authorities purporting to act in exercise of powers conferred on them by revenue statutes. Therefore, the preliminary objection raised by the assessee was rejected.

34. A Division Bench of the Gujarat High Court in **Sanjeev Rajendrabhai Bhatt** (supra) examined maintainability of Letters Patent appeals before it. Two questions were framed. Firstly, 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 of India or in the exercise of supervisory jurisdiction under Article 227 of the Constitution of India? Second question was 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.

34.1. A brief recital of the relevant facts is necessary. Sanjeev Rajendrabhai Bhatt was serving as a District Superintendent of Police at Palanpur at the relevant time. One Sumersingh Rajpurohit was initially arrested on 03.05.1996 under the Narcotic Drugs and Psychotropic Substances Act, 1985. Investigation was carried out thereafter. However, in the identification parade, Sumersingh Rajpurohit could not be identified by the witnesses. Therefore, police submitted a report under Section 169 of the Code of Criminal Procedure, 1973 before the Special Court at Palanpur for release of Sumersingh Rajpurohit, who was released on bail by the Additional Sessions Judge, Palanpur, whereafter he was finally discharged. Sumersingh Rajpurohit filed a complaint before the competent Chief Judicial Magistrate against Sanjeev Rajendrabhai Bhatt in which a direction was issued for registration of offence and for investigation by an officer not below the rank of Director General of Police. When Sanjeev

Rajendrabhai Bhatt filed a revision application before the Additional Sessions Judge, an order was passed maintaining the direction of the Chief Judicial Magistrate except that portion which stated that investigation be carried out by an officer not below the rank of Director General of Police. It was thereafter that F.I.R. was registered under various sections of the Indian Penal Code, 1860 (IPC) read with certain sections of the Narcotic Drugs and Psychotropic Substances Act, 1985. Since Sanjeev Rajendrabhai Bhatt apprehended arrest, he approached the Gujarat High Court by filing Special Criminal Application seeking a writ of mandamus or prohibition restraining the investigating officer from carrying on any further investigation, besides High Court was called upon to quash and set aside the order of the Chief Judicial Magistrate as well as the subsequent F.I.R. Though initially, a learned Single Judge of the Gujarat High Court had issued a direction not to arrest the petitioner Sanjeev Rajendrabhai Bhatt, subsequently the Special Criminal Application was dismissed on the ground of lack of territorial jurisdiction as it was stated that the cause of

action arose in the State of Rajasthan. It was from this order that Letters Patent appeal was preferred before the Division Bench. After adverting to various legal provisions and judicial pronouncements, the Division Bench of the Gujarat High Court held that it was not necessary to express final opinion on the question as to whether the petition filed before the learned Single Judge can be said to be under Article 226 or Article 227 of the Constitution of India, as the Division Bench was of the opinion that even on other grounds, the Letters Patent appeal was not maintainable. It was thereafter that the Division Bench of the Gujarat High Court proceeded to deal with the second question as to whether the order passed by the learned Single Judge could be said to be an order passed in the exercise of "criminal jurisdiction" as referred to in Clause 15 of the Letters Patent. Division Bench distinguished the earlier Full Bench decision of the Gujarat High Court in **Patel Kashiram Lavjibhai v. Narottamdas Bechardas**[30]. It was noted that reference was made to the Full Bench on the question as to whether an appeal against the decision of a

[30] (1978) 19 GLR 1047 (FB)

learned Single Judge of the Gujarat High Court under Article 226 of the Constitution of India was barred under Clause 15 of the Letters Patent because the decision of the learned Single Judge was rendered in the exercise of revisional jurisdiction or it was otherwise barred? It was in that context, the Full Bench had answered the reference by holding that the appeal would lie under Clause 15 of the Letters Patent against a decision of a learned Single Judge in the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. In that context, it was opined that decision of the learned Single Judge could not be said to be given in the exercise of revisional jurisdiction of the High Court. After analysing the Full Bench decision, the Division Bench observed that the Full Bench did not hold that a Letters Patent appeal would be maintainable even if an order was passed by a learned Single Judge in exercise of "criminal jurisdiction". Decision of the Full Bench was silent as regards maintainability of an appeal against the order passed by a learned Single Judge in exercise of "criminal jurisdiction". Distinguishing between civil proceedings and criminal proceedings in the

context of Article 226 of the Constitution of India, Division Bench of the Gujarat High Court held that a criminal proceeding 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. Therefore, Division Bench opined that the said proceedings dealt with by it were criminal proceedings in as much as if the proceedings were carried out to its conclusion those might result in imprisonment, fine etc. It was thereafter held as follows:

> 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.

34.2. Thus, the Division Bench of the Gujarat High Court held that order of the learned Single Judge was passed in exercise of criminal jurisdiction. A proceeding under Article 226 of the Constitution of India arising from an order passed or made by a Court in exercise or purported exercise of power under the CrPC would still be a "criminal proceeding" within the meaning of Clause 15 of the Letters Patent. As Clause 15 of the Letters Patent expressly bars an appeal against an order passed by a learned Single Judge of the High Court in exercise of criminal jurisdiction, Letters Patent appeals against such an order of a learned

Single Judge would not be maintainable and those are liable to be dismissed.

35. A Full Bench of the Andhra Pradesh High Court in **Gangaram Kandaram** (supra) was considering a question as to whether an appeal under Clause 15 of the Letters Patent of the High Court would lie against an order of a learned Single Judge interfering with an ongoing investigation under CrPC. In other words, the question was whether a proceeding for quashing of investigation in a criminal case under Article 226 of the Constitution of India is a civil proceeding and judgment delivered therein would be a judgment in a civil proceeding in exercise of original jurisdiction of the High Court for the purposes of appeal under Clause 15 of the Letters Patent. Full Bench of the Andhra Pradesh High Court held as follows:

> 14. With regard to the second question as to whether the appeal under clause 15 of Letters Patent of the Court lies against the judgment in such a case. In other words, whether the proceedings for quashing of the investigation in a criminal case under Article 226 of the Constitution is a civil proceeding and the judgment as above is a judgment in a civil proceeding in exercise of the original jurisdiction of the Court for

the purpose of appeal under clause 15 of Letters Patent.

15. As per Clause 15 of Letters Patent, no appeal shall lie against the judgment of one Judge of the said High Court or one Judge of any Division Bench passed in exercise of appellate jurisdiction in respect of decree or order made in exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court and not being an order made in exercise of the revisional jurisdiction and not being a sentence or order passed or made in exercise of power of superintendence of Section 107 of Government of India Act or in exercise of criminal jurisdiction. An appeal shall lie to the Division Bench under Clause 15 of Letters Patent from the judgment of one Judge of the High Court or one Judge of any Division Bench. The appeal from Judgments of Single Judges of the High Court shall lie to the Division Bench except the judgments prohibited by Clause 15. The learned Single Judge while exercising the extra-ordinary jurisdiction under Article 226 quashed the criminal proceedings. In our view, the exercise powers under Article 226 of the Constitution by issuing a writ in quashing the FIR is not in exercise of criminal jurisdiction. No doubt against the order under Section 482 of Criminal Procedure Code or against the proceedings under Contempt of Court, no appeal will lie under Clause 15 of Letters of Patent, but against the judgments quashing the FIR in exercise of the original jurisdiction of the Court under Article 226, Writ Appeal lies under Clause 15 of Letters Patent. Issuing a writ of mandamus or certiorari by the High

> Court under Article 226 pertaining to a criminal complaint or proceeding cannot be said to be an order passed in exercise of criminal jurisdiction. Therefore, we hold that an appeal lies under Clause 15 of Letters Patent.
>
> 16. The learned counsel for the appellant relied upon a judgment of Madras High Court in *Re. S. Govindaswamy Nathan* (AIR 1955 Madras 121). That case arose out of contempt proceedings in respect of a criminal sessions jurisdiction of the High Court but not against an order passed under Art. 226 of Constitution of India, and therefore, the said judgment has no application to the facts of the present case.
>
> 17. We accordingly answer the second question that an appeal under clause 15 of Letters Patent of the Court lies against the judgment in such a case.

35.1. After analysing Clause 15 of the Letters Patent, the Full Bench observed that exercise of power under Article 226 of the Constitution of India by issuing a writ quashing F.I.R. was not in exercise of criminal jurisdiction. Though against an order under Section 482 CrPC or against proceedings under the Contempt of Courts Act, 1971, no appeal would lie under Clause 15 of the Letters Patent but against a judgment quashing F.I.R. in exercise of the original jurisdiction of the High Court under Article 226 of

the Constitution of India, writ appeal would lie under Clause 15 of the Letters Patent. Issuing a writ of *mandamus* or *certiorari* by the High Court under Article 226 pertaining to a criminal complaint or proceeding cannot be said to be an order passed in exercise of criminal jurisdiction. Therefore, the Full Bench of Andhra Pradesh High Court held that an appeal would lie against such an order of the learned Single Judge under Clause 15 of the Letters Patent.

36. This question was also considered by a Full Bench of the Delhi High Court in **C.S.Agarwal** (supra). C.S.Agarwal had filed the writ petition before the Delhi High Court under Article 226 of the Constitution of India read with Section 482 of CrPC for quashing of FIR lodged against him under various sections of IPC. However, the writ petition was dismissed. Against that order, he filed a Letters Patent appeal before the Division Bench. Respondents took a preliminary objection as to maintainability of the Letters Patent appeal contending that judgment of the learned Single Judge was rendered in exercise of criminal

jurisdiction. Therefore, Letters Patent appeal against such a judgment would not be maintainable. Division Bench after hearing the matter, referred the same to the Full Bench on the following question:

> Whether the writ petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure for quashing FIR would amount to invoking 'original jurisdiction' or these proceedings are to be treated as invoking 'criminal jurisdiction'?

36.1. Full Bench heard the submissions made and considered Clause 10 of the Letters Patent constituting the High Court of Judicature at Lahore which is applicable to the High Court of Delhi. We may mention at this stage that Clause 10 of the Letters Patent of the Lahore High Court as made applicable to the Delhi High Court is *pari materia* to Clause 15 of the Letters Patent of Madras High Court made applicable to the High Court for the State of Telangana at Hyderabad. After adverting to Clause 10 of the aforesaid Letters Patent, Full Bench noted as follows:

> 8. This clause clearly prohibits maintainability of an intra-court appeal if the impugned judgment is passed in exercise of:
>
> 1. revisional jurisdiction

2. the power of superintendence
3. criminal jurisdiction

36.2. In the above backdrop, Full Bench examined the question as to whether the judgment passed by the learned Single Judge in the writ petition filed by C.S.Agarwal was in exercise of "criminal jurisdiction". Thereafter, Full Bench held as follows:

> 19. No doubt, as per the aforesaid pronouncements explaining the nature of power conferred under Article 226 of the Constitution, the High court in such proceedings exercises original jurisdiction. At the same time, it is also clarified that the said jurisdiction is not to be confused with the "original civil jurisdiction" of the High Court. Further, proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. A fortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can be said that the Single Judge was exercising his "criminal jurisdiction" while dealing with such a petition filed under Article 226 of the Constitution.
>
> 20. For this reason, we cannot agree with the extreme position taken by the appellants that the exercise of

powers under Article 226 of the Constitution would never tantamount to exercising criminal jurisdiction, irrespective of the nature of proceedings. We, further, are of the opinion that if such a petition relates to criminal proceedings while dealing with this petition under Article 226 of the Constitution, the Court would be exercising "criminal jurisdiction". In this context, it would be relevant to refer to the judgment of the Supreme Court in S.A.L. Narayan Row v. Ishwarlal Bhagwandas [AIR 1965 SC 1818]. In that case, proceedings were initiated under the Income Tax Act, 1922. At the conclusion of proceedings before the High Court under Article 226, a certificate for fitness was sought under Article 131(1)(c) read with Article 132(1) of the Constitution. The question before the Apex Court was as to whether the proceedings before the High Court under Article 226 are "civil proceedings". The Constitution Bench opined that whether the proceedings are civil or not depends upon the nature of the right violated and the appropriate relief which may be claimed and not upon the nature of the Tribunal which is invested with authority to grant relief. In the process, following pertinent observations were made which are apposite in our context:

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

The Court was, thus, categorical that even in a petition under Article 226 of the Constitution when the High Court is exercising extraordinary jurisdiction,

> the nature of proceedings, whether civil or criminal, would depend upon the nature of right violated and the nature of relief sought in the said petition.

36.3. Full Bench of the Delhi High Court also considered the Full Bench decision of the Andhra Pradesh High Court in **Gangaram Kandaram** (supra) as well as the decision of the Division Bench of the Gujarat High Court in **Sanjeev Rajendrabhai Bhatt** (supra). Agreeing with the view taken by the Division Bench of the Gujarat High Court in **Sanjeev Rajendrabhai Bhatt** (supra), Full Bench of the Delhi High Court expressed its inability to subscribe to the view taken by the Full Bench of the Andhra Pradesh High Court, whereafter it was held as follows:

> 29. It would be necessary to clarify here that it cannot be said that in any of the cases under Article 226 of the Constitution, the Court is exercising 'criminal jurisdiction'. It would depend upon the rights sought to be enforced and the nature of relief which the petitioner seeks in such proceedings. For example, if a writ petition seeking writ of habeas corpus is filed, while dealing with such a petition, the Court is not exercising criminal jurisdiction as no criminal proceedings are pending. In fact, the order of preventive detention is made without any trial under the criminal law. Likewise, when a person is convicted and sentenced after the conclusion of criminal trial

> and such an order of conviction has attained finality and he files writ petition under Article 226 of the Constitution challenging the orders of the Government refusing to grant parole while dealing with such a petition, the Single Judge is not exercising criminal jurisdiction, as no criminal proceedings are pending.

36.4. Finally, Full Bench of the Delhi High Court opined that learned Single Judge was exercising criminal jurisdiction while dealing with the writ petition of C.S.Agarwal filed under Article 226 of the Constitution of India. Consequently, the Letters Patent appeal was held to be barred and not maintainable; the same was accordingly dismissed.

37. All the above three decisions i.e., Division Bench decision of the Gujarat High Court in **Sanjeev Rajendrabhai Bhatt** (supra), Full Bench decision of the Andhra Pradesh High Court in **Gangaram Kandaram** (supra) and Full Bench decision of the Delhi High Court in **C.S.Agarwal** (supra) were examined by the Supreme Court in **Ram Kishan Fauji** (supra).

38. In **Ram Kishan Fauji** (supra), Chief Secretary to the Government of Haryana had made a reference to the

Lokayukta of Haryana under Section 8(1) of the Haryana Lokayukta Act, 2002 to enquire into certain allegations. Lokayukta, Haryana after issuing public notice and after carrying out enquiry, recommended registration of FIR for offences punishable under the provisions of the Prevention of Corruption Act, 1988 and for investigation by a senior competent officer of impeccable integrity. It was at this stage, Ram Kishan Fauji filed a writ petition before the High Court for quashing said order of Lokayukta. Learned Single Judge quashed the FIR on the grounds and reasons mentioned in the order (**Ram Kishan Fauji v. State of Haryana ((2015 SCC On Line P&H 5058)**). This order came to be assailed before the Division Bench. Division Bench condoned the delay in filing the appeal and also stayed operation of the judgment passed by the learned Single Judge. Though Ram Kishan Fauji filed an application for vacation of the interim stay, the same was declined by the Division Bench. Subsequently, while making the interim stay absolute after admitting the Letters Patent appeal, the Division Bench directed the Director General of Police, Haryana to constitute a fresh Special Investigation Team to

ensure absolute objectivity in the ongoing investigation comprising three senior IPS officers not belonging to the State of Haryana. Questioning the sustainability of the order passed by the Division Bench, Ram Kishan Fauji moved the Supreme Court.

38.1. Singular contention before the Supreme Court was that the Letters Patent appeal preferred before the Division Bench was not maintainable in as much as learned Single Judge had exercised criminal jurisdiction. Supreme Court considered various decisions and examined the meaning of the expression "civil proceeding" in contra-distinction to "criminal proceeding". It was held as follows:

> 31. The aforesaid authority makes a clear distinction between a civil proceeding and a criminal proceeding. As far as criminal proceeding is concerned, it clearly stipulates that a criminal proceeding is ordinarily one which, if carried to its conclusion, may result in imposition of (*i*) sentence, and (*ii*) it can take within its ambit the larger interest of the State, orders to prevent apprehended breach of peace and orders to bind down persons who are a danger to the maintenance of peace and order. The Court has ruled that the character of the proceeding does not depend upon the nature of the tribunal which is invested with the authority to grant relief but

upon the nature of the right violated and the appropriate relief which may be claimed.

38.2. Supreme Court held that to determine the maintainability of the Letters Patent appeal from an order of the learned Single Judge, the determining factor is the real nature of the order passed by the learned Single Judge; neither mentioning in the cause title of the application nor granting ancillary order by the learned Single Judge would be relevant. In each case, the Division Bench must consider the substance of the judgement under appeal to ascertain whether the learned Single Judge has mainly or principally exercised jurisdiction under Article 226 of the Constitution of India or under Article 227 of the Constitution of India. Maintainability of a Letters Patent appeal would depend upon the pleadings in the writ petition; the nature and character of the order passed by the learned Single Judge; the type of directions issued regard being had to the jurisdictional perspective in the constitutional context.

38.3. Insofar exercising of criminal jurisdiction under Article 226 of the Constitution of India is concerned,

Supreme Court was of the view that if the proceeding, nature and relief sought for pertains to anything connected with criminal jurisdiction, an intra-court appeal would not lie as the same is not provided under Clause 10 of the Letters Patent. Posing the question as to whether learned Single Judge had exercised civil jurisdiction or criminal jurisdiction, Supreme Court referred to the decision of the Division Bench of the Gujarat High Court in **Sanjeev Rajendrabhai Bhatt** (supra) as well as to the Full Bench decision of the Delhi High Court in **C.S.Agarwal** (supra) and re-produced the following opinion of the Full Bench of the Delhi High Court with approval:

> 19. ... proceedings under Article 226 of the Constitution would be treated as original civil proceedings only when it concerns civil rights. A fortiori, if it concerns a criminal matter, then such proceedings would be original criminal proceedings. Letters Patent would lie when the Single Judge decides the writ petition in proceedings concerning civil rights. On the other hand, if these proceedings are concerned with rights in criminal law domain, then it can be said that the Single Judge was exercising his "criminal jurisdiction" while dealing with such a petition filed under Article 226 of the Constitution.

38.4. After thorough consideration of the above three decisions, Supreme Court held as follows:

> 56. As we find from the decisions of the aforesaid three High Courts, it is evident that there is no disagreement or conflict on the principle that if an appeal is barred under Clause 10 or Clause 15 of the Letters Patent, as the case may be, no appeal will lie. The High Court of Andhra Pradesh, however, has held that when the power is exercised under Article 226 of the Constitution for quashing of a criminal proceeding, there is no exercise of criminal jurisdiction. It has distinguished the proceeding for quashing of the FIR under Section 482 CrPC and, in that context, has opined that from such an order, no appeal would lie. On the contrary, the High Courts of Gujarat and Delhi, on the basis of the law laid down by this Court in *Ishwarlal Bhagwandas* [*CIT* v. *Ishwarlal Bhagwandas*, (1966) 1 SCR 190 : AIR 1965 SC 1818], have laid emphasis on the seed of initiation of criminal proceeding, the consequence of a criminal proceeding and also the nature of relief sought before the Single Judge under Article 226 of the Constitution. The conception of "criminal jurisdiction" as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised, is relevant. The contention that solely because a writ petition is filed to quash an investigation, it would have room for intra-court appeal and if a petition is filed under inherent jurisdiction under Section 482 CrPC, there would be

no space for an intra-court appeal, would create an anomalous, unacceptable and inconceivable situation. The provision contained in the Letters Patent does not allow or permit such an interpretation. When we are required to consider a bar or non-permissibility, we have to appreciate the same in true letter and spirit. It confers jurisdiction as regards the subject of controversy or nature of proceeding and that subject is exercise of jurisdiction in criminal matters. It has nothing to do whether the order has been passed in exercise of extraordinary jurisdiction under Article 226 of the Constitution or inherent jurisdiction under Section 482 CrPC.

57. In this regard, an example can be cited. In the State of Uttar Pradesh, Section 438 CrPC has been deleted by the State amendment and the said deletion has been treated to be constitutionally valid by this Court in *Kartar Singh* v. *State of Punjab* [*Kartar Singh* v. *State of Punjab*, (1994) 3 SCC 569 : 1994 SCC (Cri) 899]. However, that has not curtailed the extraordinary power of the High Court to entertain a plea of anticipatory bail as has been held in *Lal Kamlendra Pratap Singh* [*Lal Kamlendra Pratap Singh* v. *State of U.P.*, (2009) 4 SCC 437 : (2009) 2 SCC (Cri) 330] and *Hema Mishra* [*Hema Mishra* v. *State of U.P.*, (2014) 4 SCC 453 : (2014) 2 SCC (Cri) 363]. But that does not mean that an order passed by the Single Judge in exercise of Article 226 of the Constitution relating to criminal jurisdiction, can be made the subject-matter of intra-court appeal. It is not provided for and it would be legally inappropriate to think so.

> 58. In view of the aforesaid premised reasons, we hold that the High Courts of Gujarat and Delhi have correctly laid down the law and the view expressed [*Gangaram Kandaram* v. *Sunder Chikha Amin*, 2000 SCC OnLine AP 119 : (2000) 2 An LT 448] by the Full Bench of the High Court of Andhra Pradesh is incorrect.

38.5. Thus, Supreme Court is clear in its enunciation that conception of criminal jurisdiction as used in Clause 10 of the Letters Patent is not to be construed in the narrow sense. It encompasses in its gamut the inception and the consequence. It is the field in respect of which the jurisdiction is exercised which is relevant. After holding that High Courts of Gujarat and Delhi have correctly laid down the law and the view expressed by the Full Bench of the Andhra Pradesh High Court is incorrect, Supreme Court in the facts of that case has held that learned Single Judge in exercise of jurisdiction under Article 226 of the Constitution of India had passed an order in a criminal proceeding; what matters is the nature of the proceeding and that is the litmus test.

39. The aforesaid decision of the Supreme Court in **Ram Kishan Fauji** (supra) has been followed by the Punjab and Haryana High Court in **Jalaluddin v. State of Haryana**[31]. In that case, petitioner had sought for a direction to entrust investigation of pending F.I.R.No.90 dated 23.06.2017 registered before Faridabad Police Station to an independent agency like CBI. When learned Single Judge dismissed the writ petition, petitioner filed intra-court appeal. Following the law laid down by the Supreme Court in **Ram Kishan Fauji** (supra), a Division Bench of the Punjab and Haryana High Court observed that maintainability of an intra-court appeal will depend on the Bench adjudicating the *lis* as to how it understands and appreciates the order passed by the learned Single Judge; there cannot be any strait jacket formula. Thereafter, it has been held as follows:

> 19. If the facts of the case in hand are examined in the light of prayer made in the writ petition keeping in view the enunciation of law by Hon'ble the Supreme Court in *Ram Kishan Fauji's case* (supra), in our opinion, the order passed by the learned Single Judge was in exercise of criminal jurisdiction. Undisputedly,

[31] 2018 SCC OnLine P&H 828

in the case in hand, FIR had already been registered and the trial is in progress. The appellant claimed that his son was murdered. Prayer was for transfer of investigation to an independent agency, like Central Bureau of Investigation. Investigation of a crime would fall within the criminal jurisdiction. Either the prayer made by the appellant is allowed and after further investigation by an independent agency, fresh/ supplementary challan is presented or the trial continues in pursuance to the challan already presented, the result would be either acquittal or conviction of the accused, hence, the subject-matter is nothing else but criminal in nature.

20. The contention raised by learned counsel for the appellant that writ petition has been filed alleging violation of Article 21 of the Constitution of India may not come to the rescue of the appellant to hold that intra-court appeal is maintainable. Violation of fundamental rights is the ground raised for maintaining a petition for claiming relief from the court, but what is required to be seen is the substance of the case.

21. For the reasons mentioned above, in our view, the present intra-court appeal is not maintainable, hence, the same is dismissed.

39.1. Thus, Punjab and Haryana High Court has held that order passed by the learned Single Judge declining to transfer investigation to CBI was passed in exercise of criminal jurisdiction. Though handing over of pending

investigation to an independent agency would not amount to discontinuance of investigation, however it would result either in acquittal or conviction of the accused. Hence, the subject matter has been held to be criminal in nature. As to the contention advanced that the writ petition was filed alleging violation of Article 21 of the Constitution of India, Division Bench of the Punjab and Haryana High Court has held that violation of fundamental rights is a ground raised for maintaining a petition for claiming relief from the court but what is required to be seen is the substance of the case. In that view of the matter, Punjab and Haryana High Court held that the intra-court appeal was not maintainable and accordingly dismissed the same.

40. Similar view has been taken by the Madras High Court in **V.Kumar v. Superintendent of Police, CBI**[32]. That was a case where learned Single Judge in a petition under Article 226 of the Constitution of India had declined the prayer of the petitioner to transfer investigation to CBI. Against such an order, intra-court appeal was filed. Likewise, a Division Bench of this Court in **Kushi Chand**

[32] MANU/TN/6728/2021

Vadde v. S.Sreedhar Rao (W.A.No.257 of 2022, decided on 12.04.2022) has also taken a similar view.

41. However, there is one decision which has taken a contrary view and that is the decision of the Calcutta High Court in **Gopal Kumar Agarwal** (supra). In that case, appeal was filed against the judgment and order of the learned Single Judge directing investigation of Raniganj P.S. Case No.372 of 2017 by the CBI in place of Crime Investigation Department (CID), State of West Bengal. This order came to be challenged in an intra-court appeal. A Division Bench of the Calcutta High Court posed the question to itself as to whether or not learned Single Judge had passed the impugned order in exercise of criminal jurisdiction. Distinguishing the decision of the Supreme Court in **Ram Kishan Fauji** (supra), Division Bench of the Calcutta High Court in the facts of that case held that order of the learned Single Judge neither resulted in initiation of a criminal proceeding nor in quashing of a criminal proceeding. Adverting to the averments in the writ petition, it was mentioned that the petitioner did not pray for

quashing of criminal proceedings. All that was sought for was transfer of investigation to an independent agency. Learned Single Judge was of the view that the investigation was not being conducted in a proper manner. Accordingly, direction was issued to handover the investigation to CBI. Division Bench of the Calcutta High Court opined that this did not amount to exercise of criminal jurisdiction by the learned Single Judge. Learned Single Judge had exercised supervisory jurisdiction under Article 226 of the Constitution of India in directing change of the investigating agency. Criminal investigation was already in progress. Investigation was not initiated as a result of the order of the learned Single Judge.

42. We are afraid, Division Bench of the Calcutta High Court had followed the same line of reasoning as was adopted by the Full Bench of the Andhra Pradesh High Court in **Gangaram Kandaram** (supra) which has been specifically held by the Supreme Court as not laying down the correct law. At the cost of repetition, as held by the Supreme Court in **Ram Kishan Fauji** (supra) it needs to be

mentioned that what is required to be examined is the nature of the proceedings; the substance of the case and the nature and character of the order passed by the learned Single Judge which is under appeal. Conception of criminal jurisdiction as used in Clause 15 of the Letters Patent is not to be construed in a narrow sense. What is relevant is the field in respect of which the jurisdiction is exercised by the learned Single Judge. For that the averments made in the writ petition, the relief sought in the writ petition and the decision of the learned Single Judge would have to be assessed in a cumulative and conjoint manner. This is the litmus test.

43. Calcutta High Court in **Gopal Kumar Agarwal** (supra) did not consider applicability of the above litmus test. Therefore, we are unable to persuade ourselves to adopt the view expressed by the Calcutta High Court in **Gopal Kumar Agarwal** (supra) which according to us runs contrary to the ratio laid down by the Supreme Court in **Ram Kishan Fauji** (supra).

44. Having surveyed the legal provisions, the decisions cited at the bar and based on the above analysis, let us now examine the facts of the present case.

45. Writ petition No.40733 of 2022 was filed by respondent Nos.1, 2 and 3 seeking a writ of mandamus declaring the action of the State police in undertaking investigation in F.I.R.No.455 of 2022 registered before Moinabad Police Station as biased and unfair; violating their fundamental rights under Articles 14 and 21 of the Constitution of India. They, therefore, sought for a direction to transfer the investigation to the CBI or to constitute a Special Investigation Team (SIT) under the supervision of a sitting Judge to ensure free and fair investigation.

46. In the writ affidavit filed in support of the above prayer, it was alleged that the complaint lodged by the *de facto* complainant against respondent Nos.1, 2 and 3 were false and politically motivated. Investigation by the State police would not be done in a fair manner. Right of the accused (respondent Nos.1, 2 and 3) to a fair and unbiased

investigation has been compromised. State Government is directly involved in F.I.R.No.455 of 2022.

47. Learned Single Judge after a thorough analysis held that the FIR disclosed commission of a cognizable offence; therefore, investigation is bound to be done in accordance with law. However, materials gathered during the investigation in the form of CDs/pen drives were circulated by the Hon'ble Chief Minister to different constitutional functionaries. Crucial documents relating to investigation have been put out in the public domain. According to the learned Single Judge, learned Senior Counsel appearing for the State could not explain regarding leakage of investigation materials. Thereafter, learned Single Judge noted that the electronic spy gadgets were seized on 26/27.10.2022 containing the video recordings which are in the nature of trap proceedings. These materials are crucial and critical components of investigation. Such materials should not have been handed over to any third party. This was a serious lapse committed by the investigation. To cover up such lapse, SIT was constituted.

Thereafter, learned Single Judge came to the conclusion that before investigation could proceed to an advanced stage, persons holding high office such as Hon'ble Chief Minister of Telangana had condemned the accused publicly by branding them as conspirators and guilty. In the circumstances, learned Single Judge opined that investigation was not being done in an unbiased and fair manner. When an authority as high as the Hon'ble Chief Minister had openly circulated videos containing investigation material, branding the accused as conspirators and members of an organised gang, a case for transfer of investigation was made out. It was thereafter that learned Single Judge passed the following order:

> 44.1. For the aforesaid reasons, W.P. Nos.40733, 43144 and 43339 of 2022 are allowed. G.O.Ms. No.63 Home (Legal) Department dated 09.11.2022 appointing SIT is quashed. The investigation in FIR.No.455 of 2022 shall be forthwith transferred to the Central Bureau of Investigation, who shall proceed with *de novo* investigation taking into consideration the report lodged by Mr. Pilot Rohit Reddy in FIR.No.455 of 2022, observation panchanama dated 26.10.2022 and mediator's panchanama dated 27.10.2022. The remaining investigation done by Assistant Commissioner of Police, Rajendranagar

Division; the Station House Officer, Moinabad Police Station, and the SIT are also quashed.

48. Thus, learned Single Judge set aside G.O.Ms.No.63 dated 09.11.2022 appointing SIT while directing transfer of investigation in F.I.R.No.455 of 2022 to CBI; further quashed investigation carried out by the State police till then, directing that CBI shall now proceed with *de novo* investigation in F.I.R.No.455 of 2022.

Conclusion:

49. From a careful and conjoint analysis of the averments in the writ affidavit, relief sought for in the writ petition and the order passed by the learned Single Judge, we have no hesitation in our mind that the order passed by the learned Single Judge was in the context of a criminal subject matter and certainly in the exercise of "criminal jurisdiction" in the broader sense as explained by the Supreme Court in **Ram Kishan Fauji** (supra).

50. Learned Single Judge has held that rights of respondent Nos.1 to 3 being accused in Crime No.455 of 2022 were being compromised by leakage of investigation

materials and open branding of them as culprits even before charge sheet is filed. Further, learned Single Judge has quashed the investigation carried out by the police in FIR No.455 of 2022 while directing CBI to conduct *de novo* investigation. This is nothing but a decision rendered in the realm of criminal field; thus exercising criminal jurisdiction within the meaning of Clause 15 of the Letters Patent. Applying the litmus test, it is evident from a combined examination of the substance of the case and the nature and character of the order passed by the learned Single Judge that the judgment under appeal is clearly within criminal law domain.

51. In our considered opinion, there can be no two views in this regard. Therefore, the intra-court appeals challenging the judgment and order of the learned Single Judge dated 26.12.2022 would be clearly barred by Clause 15 of the Letters Patent and would not be maintainable.

52. Since we have arrived at the aforesaid conclusion, it is not necessary for us to delve into the merit of the

challenge or to the other aspects as argued by learned counsel for the parties.

53. Following the above, all the writ appeals are hereby dismissed as being not maintainable. However, there shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

After pronouncement of the judgment, Mr. B.S.Prasad, learned Advocate General for the State of Telangana prayed for staying the judgment for some time to enable the appellants to avail further remedy.

Having considered the matter in detail and having pronounced the judgment, we are not inclined to stay the same.

Accordingly, prayer made is rejected.

Sd/- B. SATYAVATHI
DEPUTY REGISTRAR

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DATED:06/02/2023

COMMON JUDGMENT

WA NOs.36, 37, 41, 42, 43 AND 44 OF 2023

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