

+HIGH COURT OF MADHYA PRADESH, JABALPUR**WRIT APPEAL NO.821/2019**

Pradeep Kori

-Versus-

State of Madhya Pradesh and another

CORAM:-

Hon'ble Shri Justice Ajay Kumar Mittal, Chief Justice.

Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

Shri Abhijeet Awasthy, Advocate for the appellant.

Shri H.S.Chhabra, Government Advocate for the respondent no.1/State.

Whether approved for reporting: Yes/Not.

Whether approved for reporting?	Yes
Law laid down	<i>The intra court appeal would not lie in respect of an order passed by the court in a proceedings connected with criminal jurisdiction.</i>
Significant paragraph Nos.	

J U D G M E N T**(14/01/2020)****Per: V.K.Shukla, J.**

The present appeal is filed under Section 2(1) of Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam,2005(hereinafter referred to as 'Adhiniyam, 2005'), being aggrieved by the dismissal of Misc.Cri.Case No. 8098/2016 vide order dated 08-02-2019, passed by the learned Single Judge, whereby the prayer for quashment of Criminal Case No.3218/2008 pending before the Court of Chief Judicial Magistrar, Betul for commission of offences

under Sections 420, 467, 468 and 471 of the Indian Penal Code has been rejected.

2. Learned counsel for the respondent/State raised a preliminary objection regarding maintainability of the present appeal under the provisions of Adhiniyam, 2005. He submits that the learned Single Judge has declined to interfere under Section 482 of the Code of Criminal Procedure and therefore, the present appeal is not maintainable in view of the provisions of Section 2 of Adhiniyam, 2005. It is stated that the writ appeal under Section 2 of Adhiniyam, 2005 is maintainable only against an order passed in exercise of the writ jurisdiction of the Constitution of India.

3. Per contra, learned counsel for the appellant submitted that the present appeal is maintainable in view of the judgment passed by a Coordinate Bench of this court in the case of **State of M.P. and others Vs. Sanjay Kumar Koshti, W.A.No. 538/2017 decided on 20-08-2018.**

4. We have heard the learned counsel for the parties. To appreciate the aforesaid submissions, the provision of Section 2 of Adhiniyam, 2005 is reproduced as under :

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

(1) An appeal shall lie from a Judgement or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High

Court:

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

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

Provided that any appeal may be admitted after the prescribed period of 45 days, if the petitioner satisfies the Division Bench that he had sufficient cause for not preferring the appeal within such period.”

On a bare reading of provisions of Section 2, it is manifest that an intra court appeal shall lie from a judgment or order passed by one Judge of the High Court in exercise of original jurisdiction under Article 226 of the Constitution of India, to a Division Bench comprising of two judges of the same High Court. It is further provided in the aforesaid provision that no such appeal shall lie against an interlocutory order or against an order passed in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

5. The submission of the learned counsel for the appellant that the powers exercised under Section 482 Cr.PC by the learned Single Judge in the present case declining quashing of the criminal proceedings initiated against him is akin to the provisions of Article 226 of the Constitution of India, we do not find any merit in the aforesaid submission. In the case of **Ram Kishan Fauji Vs. State of Haryana and others, (2017)5 SCC 533**, a question came for consideration before the Apex Court regarding maintainability of the Letters Patent Appeal

before the Division Bench against an order passed by the learned Single Judge in exercise of the criminal jurisdiction. In the said case, while considering the aforesaid issue, the Apex Court also considered the difference between exercise of power under Article 226 and Article 227 of the Constitution of India. It was held that under Article 226, the High Courts have power to issue directions, orders and writs to any person or authority including any Government whereas under Article 227 every High Court has power of superintendence over all courts and Tribunals throughout the territory in relation to which it exercises jurisdiction. The power to issue writs is not the same as the power of superintendence. It has been further held that a statement by a Single Judge that he has exercised power under Article 227 cannot take away the right of appeal against such judgment if the power is otherwise found to have been exercised under Article 226. In para-38, the Apex Court held that it is law that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution. The exercise of jurisdiction under Article 227 is distinct from jurisdiction under Article 226 of the Constitution. In para-45, the court recorded that the intra court appeal would not lie in respect of an order passed by the court in a proceedings connected with criminal jurisdiction. Para-45 reads as under:

“45. The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the

proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdiction is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in Hari Vishnu Kamath does not render any assistance to the argument advanced by the learned counsel for the respondent State.”

6. Similarly a question arose regarding maintainability of an intra court appeal under Section 2(1) of Adhiniyam, 2005 against an order passed by the learned Single Judge in writ jurisdiction arising out of an award of Labour Court before the Full Bench of this court in the case of **Shailendra Kumar Vs. Divisional Forest Officer and another, 2017(4) MPLJ, 109**. After referring to various pronouncements of the Apex Court dealing with the jurisdiction under Article 226 and 227, the Full Bench held that an order passed in a writ petition arising out of an award of a Labour Court is composite order under Article 226 and 227 of the Constitution. Therefore, intra court appeal against such order would be maintainable. It was also recorded that the orders passed by Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before High Courts are only under Article 227 of Constitution. Thus, no intra court appeal would be maintainable against an order passed by Single Judge in proceedings arising out of an order passed by Judicial Court, may be civil or criminal proceedings. Relevant para-18 of Full Bench is referred as under:

“18. We may clarify that the orders passed by the Judicial Courts, subordinate to a High Court even in criminal matters when challenged in proceedings before the High Courts are only under Article 227 of the Constitution of India. Thus, no intra court appeal would be maintainable against an order passed by the learned Single Judge in proceedings arising out of an order passed by the learned Single Judge in proceedings arising out of an order passed by Judicial Courts, may be civil or criminal proceedings.”

7. The judgment relied by the learned counsel for the appellant in the case of **Sanjay Kumar Koshti(supra)** would not apply to the facts of the present case. Therein, the learned Single Judge had heard the writ petition as well as connected petition under Section 482 CrPC simultaneously filed by the same applicant challenging the findings of the High Power Committee regarding caste certificate in a writ petition as well as quashing of registration of FIR under Section 482 CrPC and therefore, both the matters were heard analogously by the learned Single Judge. The writ petition was allowed quashing the findings of the High Power Committee in the writ jurisdiction. In view of the order passed in writ petition, quashing the findings of High Power Committee, the learned Single Judge had also allowed the connected 482 CrPC petition. In this background, the High Court had entertained the writ appeal against the order passed under Section 482 CrPC on the premises that the learned Single Judge has disposed of the 482 CrPC petition quashing the FIR only in view of the order passed in the writ petition. Therefore, the judgment passed in the case of **Sanjay Kumar Koshti(supra)** would not apply in the facts of the present case.

8. The law relating to maintainability of intra-court appeal in criminal matter is well settled in the case of **Ram Kishan Fauji(supra)** and also by the Full Bench of this court in the case of **Shailendra Kumar (supra)** where it has been laid down that no writ appeal would be maintainable against an order passed by the learned Single Judge in a proceedings arising out of an order passed by the Judicial Court in civil or criminal proceedings.

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

(AJAY KUMAR MITTAL)
CHIEF JUSTICE

(VIJAY KUMAR SHUKLA)
JUDGE

hsp.