IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANAND PATHAK
&
HON'BLE SHRI JUSTICE ANAND SINGH BAHRAWAT

ON THE 19th OF JANUARY, 2026

WRIT APPEAL NO. 137 of 2026

SANJAY SINGH JADON
Vs.
THE STATE OF MADHYA PRADESH & ORS.

APPEARANCE:

Shri MPS Raghuvashi – Senior Advocate with Shri Mohd. Amir Khan – Advocate for the appellant.

Shri Ankur Mody – Additional Advocate General for the respondents/State.

ORDER

Per*: *Justice Anand Pathak

1. The present writ appeal under Section 2 (1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyyaypeeth Ko Appeal) Adhiniyam, 2005 is preferred by the appellant being crestfallen by the order dated 07-01-2026 passed by learned Single Judge in writ petition No.49073/2025 whereby the writ petition preferred by the appellant (hereinafter referred to as the petitioner) has been dismissed.

2. Appellant has preferred the writ petition seeking direction to the respondents for filing Expunge Report (ER) against the petitioner with a further direction that investigation against the petitioner be not permitted to continue. Said writ petition was under Article 226 of the Constitution of India and since nature of case was against investigation and related direction, therefore, it was placed before

learned Single Judge, who is looking after the criminal matters.

3. Petition preferred by the appellant as petitioner was disposed of with the direction to the police authorities/competent authority/respondents to conduct free and fair investigation in the matter to reach to a final conclusion at the earliest in accordance with law. Against the said direction, appellant has preferred this appeal with limited purpose that a time limit be prescribed in the said direction given by learned Writ Court.

4. Learned counsel for the respondents/State opposed the prayer on the ground of maintainability of appeal. According to him, although petition was preferred under Article 226 of the Constitution but the relief was akin to the relief which is claimed under Section 482 of Cr.P.C., therefore, against the said order, writ appeal is not maintainable.

5. Heard learned counsel for the parties.

6. Petitioner preferred the petition under Article 226 of the Constitution of India and sought the following reliefs:

> "*(i) That, the respondents be directed to file expunge report/ E.R. against the petitioner, as they themselves have reached to the conclusion that no fraud has been detected.*
>
> *(ii) That, it may also be held that investigation against the petitioner cannot be permitted to continue at the cost of his right for unlimited period.*
>
> *(iii) That, other relief which is just and proper in the facts and circumstances of the case may also be granted."*

7. Once a petition in the nature of Section 482 of Cr.P.C. is preferred and decided by learned Single Judge, then even if it is a petition under Article 226 of the Constitution, the question of maintainability

gains ground. Such appeal at the instance of petitioner who availed the remedy effectively under Section 482 of Cr.P.C. (even in the garb of writ petition under Article 226 of Constitution) is not maintainable.

8. We can profitably rely upon the judgment of Apex Court in the case of **Ram Kishan Fauji Vs. State of Haryana and others, (2017) 5 SCC 533** wherein some what, similar question arose for consideration before the Apex Court. The question was regarding maintainability of Letters Patent Appeal (LPA) against the order passed by learned Single Judge while exercising criminal jurisdiction. Apex Court held in following manner:

> ***"28.*** *The Court in Ishwarlal Bhagwandas case referred to Article 133 of the Constitution and took note of the submission that the jurisdiction exercised by the High Court as regards the grant of certificate pertains to judgment, decree or final order of a High Court in a civil proceeding and that "civil proceeding" only means a proceeding in the nature of or triable as a civil suit and a petition for the issue of a high prerogative writ by the High Court was not such a proceeding. Additionally, it was urged that even if the proceeding for issue of a writ under Article 226 of the Constitution may, in certain cases, be treated as a civil proceeding, it cannot be so treated when the party aggrieved seeks relief against the levy of tax or revenue claimed to be due to the State. The Court, delving into the nature of civil proceedings, noted that :*
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> *"8. ... The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The*

expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof."

29. *After so stating, the Court elucidated the nature of criminal proceeding and, in that regard, ruled thus:*

"8. ... A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed."

30. Explicating the concept further, the Court opined that: (Ishwarlal Bhagwandas case)

"8. … The character of the proceeding, in our judgment, depends not upon the nature of the tribunal which is invested with authority to grant relief, but upon the nature of the right violated and the appropriate relief which may be claimed."

It further held that a civil proceeding is, therefore, one in which a person seeks to enforce by appropriate relief the alleged infringement of his civil rights against another person or the State, and which, if the claim is proved, would result in the declaration, express or implied, of the right claimed and relief such as payment of debt, damages,

compensation, delivery of specific property, enforcement of personal rights, determination of status, etc.

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.***

9. The Apex Court also discussed earlier judgment passed in the case of **CIT Vs. Ishwarlal Bhagwandas, AIR 1965 SC 181**8 and held in following manner:

"***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, 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. 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 v. State of U.P. And Hema Mishra v. State of U.P. 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."*

10. After the judgment of Apex Court in the case of **Jamshed N. Guzdar Vs. State of Maharashtra, (2005) 2 SCC 591**, Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 (hereinafter referred to as "the Adhiniyam, 2005") came into existence for intra court appeal. Section 2 of the Adhiniyam, 2005 provides a mechanism of intra court appeal in following manner:

> ***2.*** *Appeal to the Division Bench of the High Court from a Judgment or order of one Judge of the High Court made in exercise of original jurisdiction:-* ***(1)*** *An 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:*
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> *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.

Explanation*:- The fact that the petitioner was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this sub-section.*

(3) *An appeal under sub-section (1) shall be filed, heard and decided in accordance with the procedure as may be prescribed by the High Court.*

11. It provides an appeal only arising out of order passed under Article 226 of the Constitution of India. As per discussion held in **Ram Kishan Fauji (supra)** proceedings under Article 226 of Constitution would be original/civil proceedings and here powers exercised by learned Single Judge is of original/criminal jurisdiction. Therefore, this distinction is to be kept in mind while considering the moot question. This aspect is discussed by the Full Bench in the case of **Shailendra Kumar Vs. Divisional Forest Officer and another, 2017(4) MPLJ 109**. In para 18 the Full Bench held in following manner:

"***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 Judicial Courts, may be civil or criminal proceedings."

12. Relying upon the said judgment, the Division Bench in the case of **Pradeep Kori Vs. State of M.P. and another, 2020(4) MPLJ 332** also held that writ appeal is not maintainable out of the order passed by learned Single Judge in criminal proceedings.

13. Once a litigant exercised extraordinary/inherent/supervisory criminal jurisdiction before learned Single Judge under Section 482 of Cr.P.C., then no appeal would lie before the Division Bench.

14. *Resultantly*, writ appeal preferred by the appellant is hereby dismissed on the ground of **maintainability**. However, respondents to comply the order passed by learned Writ Court.

15. Appeal stands **dismissed.**

(ANAND PATHAK)
JUDGE

(ANAND SINGH BAHRAWAT)
JUDGE

Anil*