

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT JAMMU**

**LPA No. 23/2018 c/w  
LPA No. 14/2018  
LPA No. 42/2018**

Reserved on 09.10.2024  
Pronounced on: 18.10.2024

Dr. Sumit Sabarwal son of Sh. Vikram Sabarwal resident of 11/B Swarn Vihar, Roop Nagar, Jammu

... **Appellant**

Through: -Mr.Sunil Sethi Sr. Advocate with  
Mr. Paras Gupta Advocate.  
Mr. Amar Veer Manhas Advocate

Vs.

1 Dr. Om Parkash Gupta son of late Sh. Bihar Lal Ji Gupta resident of 10-A Kaleeth Nagar Jammu.

2. State of Jammu and Kashmir th. Commissioner/Secretary Home Department.

3. Director General of Police J&K State

4. Inspector General of Police, Jammu

5. Sr. Superintendent of Police Jammu

6. Senior Superintendent of Police Udhampur

7. SHO Police Station Tikri Udhampur.

...**respondents**

Through: -Mr. V. B.Gupta Advocate with  
Mr. Rahul Aggarwal Advocate  
Mr. Rupinder Singh Advocate

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

**JUDGMENT**

**Sanjay Dhar, J**

**LPA No. 23/2018**

1 Appellant Dr. Sumit Sabarwal has called in question order dated 26.02.2018 passed by the learned Single Judge whereby in a writ

petition (OWP No. 840/2016) filed by respondent No.1 against respondents No. 2 to 7, the Station House Officer of the concerned Police Station has been directed to register the First Information Report. The respondent-Inspector General of Police, Jammu has further been directed to constitute a Special Investigation Team to investigate the matter.

2           It appears that son of respondent No.1 (the writ petitioner) had died on 17.03.2013 and, with regard to the said incident, respondent No.1-the writ petitioner had submitted a number of representations to the concerned Police Station for investigating the circumstances about the death of his son. When no action was taken by the official respondents, the aforesaid writ petition came to be filed by respondent No.1 seeking issuance of writ in the nature of mandamus commanding the official respondents to convey to the Court, the status, stage and outcome/result of the inquiry/investigation with regard to the mysterious and suspicious death of petitioner's son late Dr.Nitan Gupta and his other associate, late Dr. Vikrant Sharma. The learned Single Judge of this Court, after hearing the parties and considering the material on record, issued the impugned directions upon the official respondents.

3           It seems that the appellant was not a party to the proceedings before the writ Court, but, in terms of order dated 17.05.2018 passed by this Court, he has been permitted to file an appeal against the impugned order passed by the writ Court. It is, in these circumstances, that the present appeal has been filed by the appellant.

4            Learned counsel appearing for respondent No.1 has raised a preliminary objection with regard to maintainability of the present appeal on the ground that a Letters Patent Appeal does not lie against an order/judgment passed by a Single Judge of this Court in exercise of his criminal jurisdiction. It has been contended that since the learned writ Court has passed the impugned directions while exercising his powers under the Code of Criminal Procedure, as such, no LPA would lie against the said order. Learned counsel for respondent No.1 has contended that the aforesaid position of law has been settled by this Court in numerous judgments, particularly in the cases of **Shamshada Akhter vs Aijaz Parvaiz Shah** (LPA No. 80/2021, decided on 16.08.2021), **Abdul Qayoom Khan and anr vs. State of J&K and others** (LPA No. 265/2022, decided on 02.08.2023), **Rohit Sharma vs Rukhsana Begum and another** (LPA No. 154/2023, decided on 04.10.2023) and **Khursheed Ahmad Chohan vs. UT of Jammu and Kashmir and others** (LPA No. 204/21023, decided on 19.09.2024). He has also relied upon a judgment of the Supreme Court in the case of **Ram Krishan Fouji vs State of Haryana and others, (2017) 5 SCC 533.**

5            On the other hand, learned Senior Counsel appearing for the appellant has contended that Clause 12 of the Letters Patent of High Court of Jammu & Kashmir and Ladakh is quite distinct from the corresponding clauses of Letters Patent conferring power of appeal against an order/judgment of a Single Judge pertaining to other High Courts of the Country. It has been contended that the exclusion of orders passed in criminal jurisdiction is specifically provided in the

relevant clauses of Letters Patents applicable to other High Courts, whereas the exclusion of orders/judgments passed in criminal jurisdiction is conspicuously absent in Clause 12 of the Letters Patent of High Court of Jammu & Kashmir and Ladakh, which confers power upon the High Court to hear an appeal against an order/judgment passed by a Single Judge. It has been further contended that, in view of the distinctive feature of Clause 12 of the Letters Patent of High Court of Jammu & Kashmir and Ladakh, the ratio laid down by the Supreme Court in **Ram Krishan Fauji's** case (supra) cannot be made applicable to the Letters Patent Appeals arising against an order passed by a Single Judge in criminal jurisdiction in the High Court of Jammu & Kashmir and Ladakh. Learned Senior Counsel has further contended that the Coordinate Division Benches of this Court in the cases, referred to and relied upon by the learned counsel appearing for respondent No.1, have not properly appreciated the legal position on the subject and, as such, the matter is required to be referred to a Larger Bench of this Court for an authoritative pronouncement on the issue.

6 We have given our anxious consideration to the rival contentions. The determination of the issue, as to whether a Letters Patent Appeal would lie against an order passed by a Single Judge of this Court, in exercise of his criminal jurisdiction, to the Division Bench, is dependent upon the interpretation of Clause 12 of the Letters Patent of High Court of Jammu & Kashmir and Ladakh, which reads as under:

*"12. And we do further ordain that an appeal shall lie to the said High Court of judicature 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 and 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) of any judge of the said High Court or one judge of any Division Court and that notwithstanding anything herein before 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, a consistently with the provisions of the civil procedure code, made in the exercise of appellate jurisdiction in respect of a decree or order made 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 the judges of the said High Court or of such division court shall be to us, our Heirs or Successors and be heard by our Board of Judicial Advisers for report to us."*

7 It would also be apt to notice Clause 10 of the Letters Patent as applicable to the erstwhile Punjab and Lahore High Courts, that was subject matter of interpretation before the Supreme Court in **Ram Krishan Fauji's case** (supra). The same reads as under:

***“10. Appeals to the High Court from Judges of the Court:***

*And we do further ordain that an appeal shall lie to the said High Court of Judicature at Lahore from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the said High Court, and not being an order made in the exercise of revisional jurisdiction, and not being a sentence or order passed or made in exercise of the power of superintendence under the provisions of [Section 107](#) of the Government of India*

*Act, or in the exercise of criminal jurisdiction) of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, and that notwithstanding anything hereinbefore provided an appeal shall lie to the said High Court from a judgment of one Judge of the said High Court or one Judge of any Division Court, pursuant to Section 108 of the Government of India Act, made on or after the first day of February, one thousand nine hundred and twenty-nine 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.”*

8 On a plain reading of afore-quoted clause 10 of the Letters Patent applicable to Punjab and Lahore High Courts and comparing it with Clause 12 of the Letters Patent applicable to this Court, it is clear that the expression “*or in the exercise of criminal jurisdiction*” is conspicuously absent in Clause 12 of the Letters Patent of this Court. This aspect of the matter has been noticed by the Coordinate Division Benches of this Court in all the cases, referred to and relied upon by learned counsel for respondent No.1.

9 In **Shamshada Akhter’s** ‘s case (supra), this Court was seized of a matter in which the orders passed by the subordinate criminal Courts were subject matter of challenge before the learned Single Judge of this Court in a petition under Section 482 of Cr.P.C. This Court, after analyzing the legal position, came to the conclusion that the powers of superintendence vested in the High Court are akin to the inherent powers under Section 482 of the Code of Criminal

Procedure and, consequently, in view of exclusion of orders made in exercise of powers of superintendence from the purview of Letters Patent Appeal, in terms of Clause 12 of the Letters Patent of this Court, no LPA would lie challenging such orders.

10 In **Abdul Qayoom Khan's** case (supra), a Coordinate Division Bench of this Court, while holding that the Division Bench of the High Court in its Letters Patent jurisdiction merely reviews the order passed by the Single Judge to assess if there is any error apparent on the face of the record that it must correct, came to the conclusion that in view of the bar contained in Section 362 of the Cr.P.C, it is not open to the High Court to review the orders passed by a Single Judge by exercising its Letters Patent jurisdiction as the same would be in violation of the statutory bar contained in Section 362 of the Cr.PC. In the other judgments, referred to and relied upon by respondent No.1, the Coordinate Division Benches of this Court have reiterated and reaffirmed the aforesaid position of law.

11 So far as the judgment in **Shamshada Akhter's** case (supra) is concerned, it has been provided in the said judgment that the decision and conclusions recorded therein would be applicable only to the Letters Patent Appeals that were the subject matter of the said case and it has been made clear that any other issue that has not been raised in the said appeals for consideration are left open and will be decided in appropriate cases. So, the judgment in **Shamshada Akhter's** case (supra) would not come in the way of this Bench to consider the issues that have been raised by the learned counsels appearing for the parties before us. However, in **Abdul Qayoom's** case (supra), the Coordinate

Division Bench of this Court has not left the adjudication of the issue at hand open to any further discussion by another Coordinate Bench.

12 We have gone through the judgment passed in **Abdul Qayoom's** case (supra) and, it appears to us that the saving clause contained in the initial part of Section 362 of the CrPC has escaped the notice of the Coordinate Division Bench. To make the things clear, it would be apt to notice the provision contained in Section 362 of the Cr.PC, which read as under:

***“362. Court not to alter judgement:***

*Save as otherwise provided by this Code or by any other law for the time being in force, no Court when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error”.*

13 It is clear from the afore-quoted provision that it begins with the words “Save as otherwise provided by this Code or by any other law for the time being in force”. This expression means that rigor regarding alteration or reviewing a judgment or final order, as contained in Section 362 of the Cr.PC, is relaxed in two conditions; (i) if it is provided by the Cr.P.C, and (ii) if it is provided by any other law for the time in force. Thus, although Section 362 puts an embargo on the criminal Court to alter or review its judgment or final order disposing of the case, yet, it engrafts the exceptions as indicated therein. The legislature was aware that there are, and there may be situations where the alteration or review of a criminal Court's judgment is contemplated in the Code itself or in any other law for the time being in force.



14 The High Court derives its intra-Court Appeal jurisdiction under Clause 12 of the Letters Patent granted to the High Court of Judicature of erstwhile Jammu and Kashmir State, by the erstwhile Maharaja of the State on 28.08.1943. A Letters Patent is the charter under which the High Court is established, and the powers given to the High Court under the Letters Patent are akin to the constitutional powers of a High Court. In **Sharda Devi vs State of Bihar, (2002) 3 SCC 705**, it has been held that when a Letters Patent grants to the High Court a power of Appeal, against a judgment of a Single Judge of the same High Court, the right to entertain the appeal would not get excluded unless the statutory enactment concerned excludes an appeal under the Letters Patent. Again in **P.S. Sathappan vs Andhra Bank Ltd. & Ors, (2004) 11 SCC 672**, the Supreme Court has held that a Letters patent cannot be ousted by implication. Similar position of law has been reiterated by the Supreme Court in the case of **Fuerst Day Lawson Limited vs. Jindal Exports Limited, (2011) 8 SCC 333**.

15 Letters Patent of a High Court is definitely a law in force within the meaning of Section 362 of the Cr.PC. Therefore, in the absence of a specific exclusion contained in the aforesaid provision, *prima facie*, it appears to us that Section 362 of the Cr.PC would not act as a bar to exercising the Letters Patent jurisdiction against an order of a Single Judge made in exercise of criminal jurisdiction. We are also, *prima facie*, of the view that a Letters Patent Appeal has a wider scope than a review petition in the sense that under the Letters Patent jurisdiction, a Division Bench of the Court can not only interfere in the judgment/order of a Single Judge on the ground of patent error, but it

would also be open to a Letters Patent Bench to interfere in the orders of the Single Judge if the same are found to be illegal or perverse. Similarly, we also express our doubts about the correctness of the observations of the Coordinate Division Bench in **Shamshada Akhter's** case (supra) that, because Clause 12 of the Letters Patent mentions the word "judgment" and not "order", as such, a Letters Patent Appeal would not lie against an order passed by a Single Judge exercising jurisdiction under Section 482 of the Cr.PC

16 In view of the foregoing discussion, we express our doubt about the correctness of the ratio laid down by the Coordinate Division Benches of this Court on the question of maintainability of a Letters Patent Appeal against an order/judgment passed by a Single Judge in criminal jurisdiction. In our opinion, the issue is required to be decided independently by a Larger Bench. We, therefore, refer the following questions, to be decided by a Larger Bench of this Court:

(i) Whether a Letters Patent Appeal under Clause 12 of the Letters Patent applicable to this Court is maintainable against an order/judgment passed by a Single Judge in exercise of its criminal jurisdiction;

(ii) If answer to the aforesaid question is in affirmative, what category of judgments/orders passed by a Single Judge in exercise of its criminal jurisdiction would be amenable to Letters Patent jurisdiction by a Larger Bench of the High Court.

17 The Registry is directed to place the matter before the Hon'ble the Chief Justice for passing appropriate orders relating to reference of above questions of law to a Larger Bench in terms of proviso to Rule 33 of J&K High Court Rules, 1999.

**LPA No. 14/2018 & LPA No. 42/2018**

The issue involved in these appeal is identical to the issue as discussed above, therefore, both these appeals shall be considered along with LPA No. 23/2018.

**(Sanjay Dhar)**  
**Judge**

**(Sanjeev Kumar)**  
**Judge**

**Srinagar**  
**18.10.2024**  
*“Sanjeev”*

*Whether the order is speaking:                      Yes*  
*Whether the order is reportable:                      Yes*

