ITEM NO.29 COURT NO.16 SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Special Leave to Appeal (Crl.) No(s). 13578/2024

(Arising out of impugned final judgment and order dated 23-08-2024 in CRMWP No. 8432/2023 passed by the High Court of Judicature at Allahabad)

NEETA SINGH & ORS. Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ORS. Respondent(s)

IA No. 225146/2024 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
IA No. 225144/2024 - EXEMPTION FROM FILING O.T.

Date : 15-10-2024 The matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPANKAR DATTA
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s) Mr. S. Nagamuthu, Sr. Adv.
Mr. Samant Singh, Adv.
Mr. Shreyas Kaushal, Adv.
Mr. Rajeev Singh, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

1. Criminal Miscellaneous Writ Petition No. 8432 of 2023 under Article 226 of the Constitution[1] was filed by the petitioners before the High Court of Judicature at Allahabad[2], challenging a First Information Report dated 16th February, 2023 lodged by the respondent no.4 under sections 406, 504 and 506, Indian Penal Code, 1860. The High Court, by the impugned judgment and order dated 23rd August, 2024[3], has dismissed the Writ Petition holding the same to have been

1 Writ Petition
2 High Court
3 impugned order

rendered infructuous in view of filing of charge-sheet dated 10th October, 2023 under section 173(2), Code of Criminal Procedure, 1973[4] as well as an order dated 21st October, 2023 passed by the competent criminal court taking cognizance of the offence.

2. Mr. Nagamuthu, learned senior counsel for the petitioners, argues that the High Court grossly erred in dismissing the Writ Petition. According to him, it is settled principle of law that a First Information Report[5] can be quashed by a high court even when a discharge application is pending. Support is sought to be drawn from the decision in ***Anand Kumar Mohatta vs. State (NCT of Delhi)***[6], more particularly paragraph '16' thereof. The decision in ***State of Haryana vs. Bhajan Lal***[7] is placed to remind us of the situations when a high court either under Article 226 of the Constitution or under Section 482, Cr. PC could exercise the power for quashing an FIR. He, thus, urges that merely because cognizance of the offence has been taken upon filing of the charge-sheet, the same *per se* did not have the effect of curtailing the authority of the High Court in any manner to interfere if the allegation that the FIR does not disclose any offence or that the FIR has been lodged to wreak vengeance is sufficiently proved, and a satisfaction is reached that continuance of proceedings on the basis thereof would amount to an abuse of the process of the court.

3. We have no doubt in our mind about the contours of jurisdiction of a high court when a challenge is presented asserting that the impugned FIR ought to be quashed on the settled parameters. However, sight cannot be lost of the settled legal position that it is entirely within the discretion of a high court

4 Cr. PC
5 FIR
6 (2019) 11 SCC 706
7 (1992) 1 SCC 335

whether to interfere or not when other remedies are available. If during the pendency of a writ petition under Article 226 of the Constitution before a high court where an FIR is challenged the investigation is completed and charge-sheet filed, in pursuance whereof the competent criminal court takes cognizance of the offence, the court would be disabled in proceeding with the writ petition owing to a judicial order having intervened. We can profitably refer to the decision of the bench of three Judges of this Court made on a reference in ***Radhey Shyam vs. Chhabi Nath***[8]. While disapproving the view expressed in ***Surya Dev Rai vs. Ram Chander Rai***[9], it was held that judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution and that jurisdiction under Article 227 is distinct from jurisdiction under Article 226[10]. We may also note from such decision that upon considering decisions of high authority, a principle of law was laid down that challenge to judicial orders could lie by way of an appeal or a revision or under Article 227 of the Constitution and not by way of a writ under Articles 226 and 32.

4. The underlying reason why judicial orders are not amenable to challenge in a writ petition under Article 226 of the Constitution seems to be that such orders cannot be legitimately claimed to have been passed by the presiding officer of a court in breach or violation of a fundamental right, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari in exercise of high prerogative writ jurisdiction of the high courts. After all, should any right of a person be infringed as a consequence of a judicial order, the laws provide for the fora where such order is amenable to challenge and it is such fora, which ought to be

8 (2015) 5 SCC 423
9 (2003) 6 SCC 675
10 para 29 of Radhey Shyam

approached for redress of one's grievance. This position flows from Constitution Bench decisions of this Court in ***Naresh Shridhar Mirajkar & Ors. vs. State of Maharashtra***[11] and ***Rupa Ashok Hurra vs. Ashok Hurra***[12], as well as the decision of a bench of three Judges in ***Sadhana Lodh vs. National Insurance Co. Ltd.*** [13].

5. Although ***Radhey Shyam*** (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a *fortiori*, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226.

6. Mr. Nagamuthu, in his usual fairness, rightly did not dispute that a judicial order is not amenable to challenge in a writ petition under Article 226.

7. Since the remedy under Article 226 is discretionary, the impugned judgment and order cannot also be faulted on the ground that discretion was arbitrarily exercised. Besides, dismissal of the Writ Petition as infructuous did not foreclose the rights of the petitioners to seek relief elsewhere, according to law.

8. Having read our mind, Mr. Nagamuthu has advanced an alternative argument. He contends that the High Court, upon noticing that the competent criminal court had taken cognizance of the offence, should have treated the Writ Petition as a petition either under Article 227 of the Constitution or under Section 482, Cr. PC and proceeded to determine as to whether the proceedings arising out of the impugned FIR should be allowed to continue or not. According

11 AIR 1967 SC 1
12 (2002) 4 SCC 388
13 (2003) 3 SCC 524

to him, the High Court is empowered and could have moulded the relief under Article 227 of the Constitution or under Section 482, Cr. PC and interfered with the charge-sheet as well as the cognizance taking order. Regard being had thereto and nomenclature of the petition not being of any relevance, it is contended that if otherwise the High Court was not found to be denuded of the power to interfere in another jurisdiction and rendering substantive justice to the parties being the primary consideration, the High Court in the present case ought not to have been guided by a mere technicality.

9. ***Pepsi Foods Ltd. vs. Special Judicial Magistrate*** [14] is the next decision cited by Mr. Nagamuthu. He places heavy reliance on paragraphs 22 and 26 thereof for the proposition that nomenclature under which a petition is filed is not quite relevant and if the high court finds that jurisdiction under Article 226 could not have been invoked, the court can certainly treat the petition as one under Article 227 or Section 482 Cr. PC.

10. Next, Mr. Nagamuthu refers to the decision in ***Kiran Devi vs. Bihar State Sunni Waqf Board***[15]. Stressing that it is a decision rendered by a Bench of three Judges (the unsaid hint being we are bound by it) and particularly relying on the contents of paragraphs 23 and 25 of such decision, it is again contended that nomenclature of the title of the petition filed before the high court is immaterial.

11. Based on the above, Mr. Nagamuthu urges that this is a fit case deserving interference of this Court to set things right.

12. It has been held in ***Pepsi Foods*** (supra) and ***Kiran Devi*** (supra) that nomenclature is not relevant and, as noted above, these decisions have been heavily relied upon by Mr. Nagamuthu. In fact, the argument of nomenclature

14 (1998) 5 SCC 749
15 (2021) 15 SCC 15

not being relevant is the sheet-anchor of his alternative argument. However, we need to ascertain under what circumstances did this Court say that nomenclature is not relevant.

13. In ***Pepsi Foods*** (supra), the relevant high court was approached with a petition under Articles 226 and 227. Interference was declined by the high court on the ground that the petitioners could not have invoked the jurisdiction under Article 226. However, this Court was of the view that the petition, filed in the high court under Articles 226 and 227, could well be treated solely under Article 227 of the Constitution and decided. The observation that nomenclature is not relevant was made on the logic that if the high court otherwise does possess jurisdiction to decide, nomenclature would not debar the court from exercising its jurisdiction unless there is a special procedure prescribed which procedure is mandatory (emphasis supplied).

14. Bearing the aforesaid dictum in mind, it would be useful at this stage to refer to the decision of a Division Bench of the High Court at Calcutta in ***Sohan Lal Baid vs. State of West Bengal***[16]. Speaking through Hon'ble P.D. Desai, CJ., the Division Bench held that adjudication of a matter by a learned Judge without allocation made of such matter to such Judge by the Chief Justice would be void. The aforesaid view was approved by this Court in ***State of Rajasthan vs. Prakash Chand***[17]*.* Upon survey of a number of precedents, it was held by this Court as follows:

> "59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusions should be read with the text of the judgment:
> (*1*) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

16 AIR 1990 Calcutta 168
17 (1998) 1 SCC 1

(*2*) That the Chief Justice is the master of the roster. He *alone* has the prerogative to constitute benches of the court and allocate cases to the benches so constituted.
(*3*) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.
(*4*) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.
(*5*) ***
(*6*) That the puisne Judges cannot 'pick and choose' any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.
(*7*) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.
***"

15. In view of the decision in ***Prakash Chand*** (supra), we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject matter of the petition is and who is entrusted to hear and decide it. A Judge of a high court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by this Court in the opening sentence of paragraph 26 of ***Pepsi Foods*** (supra) to be of extreme significance.

16. Turning to the decision in ***Kiran Devi*** (supra), we find the same to have

been rendered on an appeal arising out of proceedings initiated before the relevant high court under section 83(9) of the Wakf Act, 1995. The opening sentence of paragraph 23 does reveal acceptance of the argument of learned counsel for the respondents that the nomenclature of the title of the petition filed before the high court is immaterial. However, paragraph 22 sheds light on why this Court said what it said. The same is quoted below:

> "22. Therefore, when a petition is filed against an order of the Wakf Tribunal before the High Court, the High Court exercises the jurisdiction under Article 227 of the Constitution of India. Therefore, it is wholly immaterial that the petition was titled as a writ petition. It may be noticed that in certain High Courts, petition under Article 227 is titled as writ petition, in certain other High Courts as revision petition and in certain others as a miscellaneous petition. However, keeping in view the nature of the order passed, more particularly in the light of proviso to sub-section (9) of Section 83 of the Act, the High Court exercised jurisdiction only under the Act. The jurisdiction of the High Court is restricted to only examine the correctness, legality or propriety of the findings recorded by the Wakf Tribunal. The High Court in exercise of the jurisdiction conferred under proviso to sub-section (9) of Section 83 of the Act does not act as the appellate court."
>
> (emphasis supplied)

It is, therefore, clear that this Court made the observation having noticed the special nature of jurisdiction conferred on a high court by section 83(9) of the Wakf Act, which bars any appeal being instituted challenging any decision or order of a Wakf Tribunal. The nature of jurisdiction that the high court could exercise, per the proviso to sub-section (9), was the power of superintendence conferred by Article 227 and, therefore, no litigant could challenge any decision/order of the Tribunal by styling a petition as one filed under Article 226. It is in such circumstances that the argument of nomenclature not being relevant was accepted. However, since we are not concerned with section 83(9) of the Wakf Act, the observation relied upon must remain confined to petitions arising out of such provision.

17. Even otherwise, the Writ Petition in the present case was placed before

and decided by a Division Bench of the High Court. Mr. Nagamuthu could not show that the Hon'ble the Chief Justice of the High Court had entrusted the same Division Bench to hear and decide petitions under Article 227 so that such bench could proceed to hear the petition treating it as one under Article 227. If the Division Bench did not have assignment to hear any petition under Article 227 and dismissed the Writ Petition as infructuous, without entering into the merits of the controversy, it amounts to sound exercise of discretion and cannot be faulted.

18. The argument of nomenclature not being relevant, in view of the above discussions, cannot be accepted in all cases and is, thus, rejected.

19. We, therefore, hold that the High Court was absolutely right in dismissing the Writ Petition as infructuous noticing that a judicial order had intervened between presentation of the Writ Petition and consideration thereof. No substantial question of law is involved and hence the special leave petition stands dismissed.

26. However, as and by way of clarification, we observe that neither this order of dismissal of the special leave petition nor the impugned order of the High Court shall preclude the petitioners to challenge the order dated 21st October, 2023 taking cognizance of the offence including the FIR and the charge-sheet in appropriate proceedings in accordance with law, if so advised.

27. Pending applications, if any, stand disposed of.

(JATINDER KAUR)
P.S. to REGISTRAR

(SUDHIR KUMAR SHARMA)
COURT MASTER (NSH)