

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 349 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER  
and  
MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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KRANTI VINAYAK

Versus

RAKSHA K VINAYAK  
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Appearance:

PARTY-IN-PERSON for Petitioner  
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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE S.D.PANDIT  
Date of decision: 30/06/97

ORAL JUDGEMENT

This appeal is filed against an order passed by the learned Single Judge on March 5, 1997 in Special Criminal Application No. 1371 of 1996. By that order, the learned Single Judge summarily rejected the petition

filed by the appellant petitioner.

2. We have heard Mr. Kranti Vinayak, Party-in-person at considerable length. We are of the opinion that since the order passed by the learned Single Judge was "in exercise of criminal jurisdiction", an appeal under Clause 15 of the Letters Patent (Bombay) was applicable to this case, Letters Patent Appeal is not competent. We, therefore, asked Mr. Vinayak, (party-in-person) to satisfy us as to how an LPA filed by him is maintainable.

3. He submitted that the petition filed by him was neither in exercise of Civil Jurisdiction nor in exercise of Criminal Jurisdiction but in extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, and hence, Letters Patent Appeal would lie. He also submitted that no adequate and full opportunity was afforded by the learned Single Judge, and thus, there is an error apparent on the face of record, which requires to be corrected. When an order is passed under Article 226, it is subject to L.P.A. He contended that initially when notice was issued by another Single Judge before whom the matter was placed, because of change in sitting, it was not open to another learned Single Judge, which is a a Coordinate Court to discharge notice and dismiss the petition. According to Mr. Vinayak, such power does not lie in a coordinate court as virtually it would amount to exercise of appellate power. He submitted that even if it is assumed that this Court has no jurisdiction, appeal cannot be dismissed and only order which can be passed by this Court is to return the appeal for presentation to proper Court. For this submission, he placed reliance on the provision of Rule 10 of Order 7 of the Code of Civil Procedure, 1908, which state that when the Court finds that it has no jurisdiction, the plaint cannot be dismissed but the plaintiff must be ordered to present it before appropriate Court. He also drew our attention to Clauses 26 and 41 of Letters Patent.

4. We are of the view that the Letters Patent Appeal filed in this Court is not maintainable. It is true that the petition was under Article 226 of the Constitution of India but in our considered view, an appeal lies only when such an appellate right is conferred by a statute, and such right is conferred only by Clause 15 of the Letters Appeal - Bombay, applicable to this Court. Clause 15 is relevant, which reads thus;

"15. And we do further ordain that an appeal shall lie to the said High Court of Judicature at Fort William in Bengal from the judgement (not being a judgement 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 hereinabove 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 1929} 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 judgements 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."

5. In our view, Clause-15 enables a Division Bench of this Court to entertain an appeal but at the same time, it excludes certain categories of cases and if a case falls in any of these categories, an appeal does not lie as such appeal is not competent. In those cases, obviously, an appellate Court cannot entertain appeal and go into the merits of the matter. Reliance placed on Clause 26 as well as Clause 41 is altogether irrelevant and ill-conceived as they speak of exercise of original criminal jurisdiction by a Single Judge of the High Court. The learned Single Judge has not exercised original criminal jurisdiction in the instant case and those two clauses do not carry the case of the appellate any further. In the present case, a complaint was filed for alleged offences punishable under Sections 498-A and 120-B of the Indian Penal Code and under Sections 3 and 4 of the Dowry Prohibition Act. It was registered as M. Case No. 38 of 1995 and proceedings were pending before a Court of Judicial Magistrate, Gandhinagar being Inquiry

No. 166 of 1995. Certain proceedings were taken and the investigation was ordered under sub-section (3) of Section 156 of the Code of Criminal Procedure, 1973 and "B" summary was granted. In these circumstances, the order passed by the learned Single Judge can be said to be "in exercise of criminal jurisdiction" which it is not subject to L.P.A.

6. Since we are of the view that LPA does not lie, without expressing any opinion on merits, we hold that the appeal deserves to be dismissed only on the ground that it is not maintainable.

7. For the foregoing reasons, we are of the view that the Letters Patent Appeal is not competent and deserves to be dismissed and is accordingly dismissed.

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Prakash\*