

GAHC010198442023



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**WRIT APPEAL NO.370 OF 2023**

**.....Appellant**

**-Versus-**

1. The State of Assam, represented by the  
Secretary, Ministry of Home, Dispur, Assam.

**.....Respondents**

**- B E F O R E -**  
**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE KARDAK ETE**

For the Appellant : Mr. Deba Prasad Dutta, appellant in person.

For the Respondent(s) : Mr. D.K. Sarmah and Mrs. R.B. Bora, Additional Senior  
Government Advocates, Assam.

Date of Judgment & Order : 4<sup>th</sup> October, 2023.

## **JUDGMENT & ORDER (ORAL)**

**[Sandeep Mehta, C.J.]**

This intra-Court writ appeal arises from an order dated 08.06.2023 passed by the learned Single Bench of this Court in the criminal writ jurisdiction being WP(Crl.) No.5/2023. The said writ petition filed by the petitioner (appellant herein) appearing in person seeking quashing of the FIR as well as the charges framed against him by the trial Court was dismissed by the learned Single Judge vide order dated 08.06.2023.

On the previous date of hearing, we had instructed the Registry to make a report regarding maintainability of the writ appeal.

2. Office note dated 03.10.2023 indicates that Rule 2(2) of Chapter V-A of the Gauhati High Court Rules are silent as to whether an intra-Court appeal would lie against an order passed in a criminal matter by Hon'ble Single Judge of this Court under Article 226 of the Constitution of India.

3. The Hon'ble Supreme Court in the case of ***Ram Kishan Fauji -Vs- State of Haryana & Ors.***, reported in ***(2017) 5 SCC 533*** has laid down that Letters Patent Appeal (LPA) does not lie against an order passed by learned Single Judge of the High Court in exercise of the criminal jurisdiction. In the said case, the writ petition before the learned Single Judge of the High Court was filed under Article 226 of the Constitution of India and the Division Bench entertained a Letters Patent Appeal against the order of the learned Single Judge. The judgment of the Division Bench of Punjab & Haryana High Court was reversed by a three Judges Bench of the Hon'ble Supreme Court laying down that a letters patent appeal which is akin to an

intra-Court writ appeal would not lie to the Division Bench against an order passed by the Single Bench of the High Court in exercise of criminal jurisdiction.

4. The appellant appearing in person has placed reliance on the following judgments to contend that this intra-Court writ appeal should be entertained:-

(i) ***State of Madhya Pradesh & Ors. -Vs- Visan Kumar Shiv Charan Lal :: Civil Appeal No.7134/2008.***

(ii) ***Surya Dev Rai -Vs- Ram Chander Rai & Ors.,*** reported in ***AIR 2003 SC 3044.***

(iii) ***Dhariwal Tobacco Products Limited & Ors. -Vs- State of Maharashtra & Anr.,*** reported in ***(2009) 2 SCC 370;***

(iv) ***Prabhu Chawla -VS- State of Rajasthan & Anr.,*** reported in ***(2016) 16 SCC 30;***

5. The judgment relied upon by the appellant in the case of ***Visan Kumar Shiv Charan Lal*** (supra) dealt with the maintainability of the Letters Patent Appeal filed before the Division Bench against an order of the learned Single Judge in exercise of the writ jurisdiction, wherein the learned Single Judge dismissed the writ petition preferred against the award of the Labour Court. Apparently thus, the said case does not pose a situation, wherein the letters patent jurisdiction was invoked in the criminal jurisdiction of the High Court.

In the case of ***Surya Dev Rai*** (supra), the issue involved was regarding maintainability of a writ petition under Article 226 of the

Constitution of India against the order of *interim* injunction passed under Order 39 Rule 12 CPC. Apparently thus, the said judgment does not touch upon the issue of maintainability of an intra-Court writ appeal against the order of the learned Single Judge in exercise of the criminal writ jurisdiction.

In the case of ***Dhariwal Tobacco Products Limited*** (supra), the Hon'ble Supreme Court held that availability of alternative remedy of filing revision under Section 397 of the Code of Civil Procedure could not be a ground to dismiss an application under Section 482 Cr.PC. It was further held that even where revision application is barred, remedy under Articles 226/227 of the Constitution of India would be available.

In the case of ***Prabhu Chawla*** (supra), it was held that nothing in Cr.PC not even Section 397 Cr.PC can affect amplitude of inherent powers conferred upon the High Court by Section 482 Cr.PC.

Clearly thus, there is no such hypothesis in any of the judgments cited by the petitioner, which touches upon the core issue arising in this matter regarding the maintainability of the intra-Court writ appeal against an order passed by the learned Single Bench exercising criminal writ jurisdiction.

**6.** Having regard to the discussion made herein above, we are of the firm view that an intra-Court writ appeal does not lie against an order/judgment passed by the learned Single Bench in exercise of the criminal writ jurisdiction under Article 226 of the Constitution of India. As the Gauhati High Court Rules are silent on this issue, the anomaly shall forthwith be clarified with appropriate insertion in the Rules clarifying the position that no intra-Court appeal lies against an order/judgment passed by the learned Single Bench in exercise of the criminal writ jurisdiction.

**7.** As a result, the intra-Court writ appeal preferred by the appellant herein against the judgment dated 08.06.2023 passed by the learned Single Judge in WP(Crl.) No.5/2023 is hereby dismissed as being not maintainable.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**