

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

**LPA No. 204/2023
CM No. 6177/2023**

Reserved On: 10th of September, 2024
Pronounced On: 19th of September, 2024.

Khursheed Ahmad Chohan, Age: 45 Years
S/O Late Ghulam Mustafa Chohan
R/O Ibkoot Karnah, District Kupwara.

... Appellant(s)

Through: -

Mr B. A. Bashir, Senior Advocate with
Ms Falak Bashir, Advocate.

V/s

- 1. Union Territory of Jammu & Kashmir through**
Commissioner/ Secretary to Government,
Home Department, Civil Secretariat, Srinagar/ Jammu.
2. Deputy Inspector General of Police,
North Circle, Kupwara/ Baramulla.
3. Senior Superintendent of Police, District Kupwara.
4. Station House Officer, Police Station, Kupwara.
5. Incharge, Joint Interrogation Centre, Kupwara.

... Respondent(s)

Through: -

Mr Mohsin-ul-Showkat Qadri, Sr. AAG with
Ms Maha Majeed, Assisting Counsel; and
Mr Faheem Nisar Shah, Government Advocate.

CORAM:

**HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR JUSTICE M. A. CHOWDHARY, JUDGE**

(JUDGMENT)

[Chowdhary-J:]

1. The Appellant, through the medium of this Letters Patent Appeal, has challenged the Judgment dated 18th of September, 2023 passed by the learned Single Judge in WP (C) No. 592/2023, whereby the said Writ Petition filed by the Appellant had been allowed, but inquiry and thereafter investigation has been entrusted to the same person, against whom the Writ

Petition was filed, seeking setting aside/ modification of that part of the Judgment.

2. Shorn of minute details, the facts pleaded by the Appellant as Writ Petitioner before the Writ Court, as emerge from the pleadings on record, are that the Appellant/ Writ Petitioner, who was a Selection Grade Constable (SGCt) in the J&K Police and posted at District Police Lines, Baramulla, alleged that he was summoned by Respondent No.3-Senior Superintendent of Police, Kupwara by a signal dated 17th of February, 2023 to present himself in his office on 20th of February, 2023 in connection with an inquiry relating to a narcotic case; that after leaving District Police Lines, Baramulla on 20th of February, 2023 at around 11:45 AM, after recording his departure in the daily Diary, he reached the office of Respondent No.3, wherefrom he was taken to the Joint Interrogation Centre (JIC) Kupwara, where he was subjected to brutal torture, mutilating/ amputating his body/ private parts and, thereafter, in a half-dead state, was shifted to District Hospital, Kupwara and, subsequently, to SKIMS, Soura, Srinagar, in a serious condition accompanied by Sub-Inspector Ashiq Hussain; that at SKIMS Soura, he was admitted for treatment and was advised for an immediate surgery;

2.1. It is further stated that, while being admitted in SKIMS, Soura, the wife of the Appellant/ Writ Petitioner approached the Respondent No.4- Station House Officer (SHO), Police Station, Kupwara, for registration of an FIR with respect to his custodial torture and amputation of his body parts against the accused police personnel, however, on his failure to register the same, the wife of the Appellant/ Writ Petitioner approached the Respondent No.3 for doing the needful, who, too, did not take any action in the matter, resulting into serving of a legal notice by the wife of the Appellant/ Writ Petitioner upon the Respondent Nos. 2 to 4, through her Counsel.

2.2. The Appellant/ Writ Petitioner alleged that the Respondents, who were under a legal obligation to register a case for investigation for his custodial torture, did not take any action on the complaint filed by his wife,

as such, he moved a Petition bearing WP (C) No. 592/2023 before this Court under Article 226 of the Constitution of India, seeking direction to the Respondents to register a case for investigation of the complaint filed by his wife. The aforesaid Petition was maintained by the Appellant/ Writ Petitioner, *inter alia*, on the ground of violation of rights of the Appellant/ Writ Petitioner by the Respondents guaranteed under Article 21 of the Constitution of India, as also of the blatant breach of the directions issued by the Apex Court in case titled “**Lalita Kumari v. Government of Uttar Pradesh & Ors.**”, reported as “**(2014) 2 SCC 1**” *qua* the registration of an FIR.

3. On 17th of March, 2023, when the matter came up before the Writ Court, the Respondents were directed to file a Status Report of the Complaint claimed to have been lodged by the wife of the Appellant/ Writ Petitioner on 18th of February, 2023 and the said information came to be furnished suggesting that a case was registered vide FIR No. 32/2023 regarding the incident on 25th of February, 2023, however, not on the Complaint of the wife of the Appellant/ Writ Petitioner and, as such, the Respondent Nos. 3 and 4 were directed to file Reply to the Petition by or before 28th of March, 2023.

4. Pursuant to the directions of the Writ Court, the Response/ Status Report was filed by the Respondents, stating therein that on 26th of March, 2023, a written docket was received from one Sub Inspector-Muneer Ahmad, Incharge, Police Post Tad, Karnah, Camp JIC, Kupwara, to the effect that, while being in the Camp for questioning in NDPS cases, including FIR No. 17/2023 registered for the commission of offences punishable under Sections 8/21/29 of the NDPS Act in Police Station Karnah, the Appellant/ Writ Petitioner was kept in a barrack for further questioning, where he himself cut his private part using shaving razor blade and the said act, being an attempt to suicide, necessitated registration of FIR No. 32/2023 on 26th of March, 2023 under Section 309 of the Indian Penal Code (IPC) and the investigation was commenced. It was further stated in the Response that, during the course of investigation, it got revealed that the

presence of the Appellant/ Writ Petitioner was sought by the police owing to his involvement in various cases registered at Police Station, Karnah, including FIR No. 01/2023 registered for the commission of offences punishable under Sections 7/25 of the Indian Arms Act, 8/21/29 of the NDPS Act and 13, 18, 20, 23 and 37 of the UA (P) Act and FIR No. 17/2023 registered for the commission of offences punishable under Sections 8/21/29 of the NDPS Act and that approximately 9.450 KG of heroin, 05 pistols, 10 pistol magazines, 77 pistol rounds, 04 grenades, 01 pistol cleaning rod and a pistol user guide were recovered during investigation of said FIR No. 01/2023, whereas, 2.674 KG of heroin was recovered in FIR No. 17/2023 (*supra*).

4.1. The Appellant/ Writ Petitioner reported in the Joint Interrogation Centre (JIC), Kupwara on 21st of February, 2023, however, due to further leads, he was asked to report again on 22nd of February, 2023, whereafter, he was advised to remain available on each day, owing to the requirement of his presence in the investigation and that since the Appellant/ Writ Petitioner resided at a far-off place from the Joint Interrogation Centre (JIC) in question, the Appellant/ Writ Petitioner, as such, himself preferred to stay in the Centre itself in a barrack, along with other police personnel; that on 25th/26th of February, 2023, one of the accomplices of the Appellant/ Writ Petitioner was apprehended with a consignment of heroin at Karnah and the said arrest of his accomplice triggered panic in the Appellant/ Writ Petitioner and, due to fear of being exposed, the Appellant/ Writ Petitioner tried to commit suicide at around 11:15 AM, while he was resting on his bed in the barrack in the Centre, where few more police personnel were present.

4.2. The investigation of the case is in progress with regard to the Complaint filed by the wife of the Appellant/ Writ Petitioner, which had been received in the Police Station on 15th of March, 2023 and since the investigation had been already initiated in the incident alleged in the Complaint in FIR No. 32/2023 (*supra*), as such, the said Complaint was made part of the aforesaid FIR; that, in presence of an FIR already

registered in the incident, another FIR could not be registered in view of the law laid down by the Apex Court in case titled “**T. T. Antony v. State of Kerala**, reported as “**AIR 2002 SC 2637**”.

5. Thereafter, the Writ Court, on consideration of the matter and upon perusal of the CD file of FIR No. 32/2023 (*supra*), directed the Respondent No.3 to hand over the investigation of the case to an Officer of the rank of Deputy Superintendent of Police, with a further direction to file Status Report of the investigation of the said FIR.

6. Having received the information with regard to the registration of a case vide FIR No. 32/2023 for an attempt to commit suicide against the Appellant/ Writ Petitioner, he sought quashment of the FIR by filing another Petition bearing CRM (M) No. 111/2023, invoking the inherent powers of this Court in terms of Section 482 of the Code of Criminal Procedure (Cr. P. C.), wherein this Court, vide Order dated 3rd of April, 2023, directed continuation of the investigation in the FIR in question with a further direction that in the process of investigation, the Appellant/ Writ Petitioner be not subjected to any kind of harassment.

7. In compliance to the aforesaid direction passed by the Writ Court, a Compliance Report was filed on 26th of April, 2023, reiterating the facts stated in the earlier Status Reports. It was further stated that the investigation of the case FIR No. 32/2023 (*supra*) had been handed over to the Dy. SP, DAR, Kupwara, however, the Appellant/ Writ Petitioner, as accused, had not presented himself for investigation and that the investigation conducted points towards the fact that the injuries appear to have been self-inflicted by the Appellant/ Writ Petitioner. It was also pleaded by the Respondents that the investigation was still going on, exploring the case from all possible angles.

8. The Respondents opposed the relief sought in the Petition by the Appellant/ Writ Petitioner filed under Section 482 of the Code of Criminal Procedure (Cr. P. C.), on the ground that as per the investigation conducted in the FIR impugned, the Appellant/ Writ Petitioner had self-

inflicted the injuries with the intention to commit suicide, owing to surfacing of his involvement in multiple narcotic cases.

9. The Writ Court, vide the impugned Judgment dated 18th of September, 2023, had disposed of both these clubbed Petitions filed by the Appellant/ Writ Petitioner through the medium of a common Judgment.

10. The Writ Court, after discussing the law laid down in **T. T. Anthony's** case (*supra*), came to the conclusion that the second FIR has been held to be impermissible only when the same is against the same accused and for the same offence for which the FIR had already been registered. The Writ Court further recorded that perusal of the record of the case, facts and circumstances obtaining in the matter as also the Status Reports filed by the Respondents, indicate that the Appellant/ Writ Petitioner was called to the Joint Interrogation Centre (JIC), Kupwara by the Respondents on 20th of February, 2023, whereas, the FIR came to be registered on 23rd of February, 2023, i.e., after the Appellant/ Writ Petitioner was called for interrogation and that this sole fact creates a reasonable doubt in the very story projected by the Respondents, coupled with the fact that the Appellant/ Writ Petitioner, himself a police personnel and alleging custodial torture by the fellow police personnel, being a serious issue, thus, necessitates an enquiry as contemplated by the Apex Court in **Lalita Kumari's** case (*supra*).

11. The Writ Court, thus, rejected the plea raised by the Respondents that the Petition filed by the Appellant/ Writ Petitioner under Article 226 of the Constitution was not maintainable by holding that the same was maintainable and, accordingly, disposed of the Writ Petition with a direction to the Respondent No.3-Senior Superintendent of Police, Kupwara to conduct an indepth enquiry into the allegations of custodial torture by the wife of the Appellant/ Writ Petitioner in the Complaint filed by her as also by the Appellant/ Writ Petitioner in the Petition, without any further delay preferably within a period of eight weeks and, if upon such enquiry, the Respondent No.3 finds that the commission of an offence is made out, he shall direct registration of FIR forthwith against the accused

persons involved in the same and entrust the investigation of the case to a Police Officer not below the rank of the Deputy Superintendent of Police.

12. The Writ Court, however, in the clubbed Petition bearing CRM (M) No. 111/20213, filed by the Appellant/ Writ Petitioner, under Section 482 of the Code of Criminal Procedure (Cr. P. C.) declined to exercise inherent powers and, accordingly, proceeded to dismiss the said Petition, allowing the Respondents to go ahead with the investigation of the case of attempt to commit suicide against the Appellant/ Petitioner, registered vide FIR No. 32/2023 at Police Station, Kupwara.

13. The Appellant/ Writ Petitioner, having been aggrieved of the Judgment rendered by the learned Single Judge in both the cases, filed the instant Letters Patent Appeal invoking *intra* Court Appellate Jurisdiction of this Court against the Judgment passed in the Petition filed by him under Article 226 of the Constitution of India, being WP (C) No. 592/2023, and also filed a Special Leave Appeal before the Apex Court against the Judgment passed in the Petition filed by him under Section 482 of the Code of Criminal Procedure (Cr. P. C.), being CRM (M) No. 111/2023.

14. The Appellant has assailed the impugned Judgment passed by the learned Single Judge in Writ Petition bearing WP (C) No. 592/2023 before this Court on many grounds, as enumerated in the memorandum of instant appeal, and prayed that the impugned Judgment of the Writ Court dated 18th of September, 2023 may be modified only to the extent that the matter be referred to the Central Bureau of Investigation (CBI) for investigation with appropriate directions to register FIR forthwith, without initiating of any inquiry before registration of FIR in view of the mandate of law rendered by a Constitution Bench of the Apex Court in **Lalita Kumari's** case (*supra*).

15. Mr B. A. Bashir, the learned Senior Counsel, appearing on behalf of the Appellant/ Writ Petitioner, argued that in view of the law laid down by the Apex Court on the subject, it was incumbent upon the Respondents to register a case in the matter when a cognizable offence is

disclosed on the allegations made in a complaint and that no enquiry preceding that is required to be conducted. He has argued that, though the Writ Court held that even in presence of an FIR registered by the Respondents with regard to same incident for having committed an attempt to commit suicide punishable under Section 309 IPC against the Appellant/ Writ Petitioner himself, a counter FIR is permissible to be registered on the allegations of the Appellant/ Writ Petitioner, for having been subjected to custodial torture by the police officials during his custody. He has also highlighted that from the facts and circumstances of the case, as have been discussed by the Writ Court, it is evident that the Appellant/ Writ Petitioner was, as per the Status Reports filed by the Respondents themselves, called to the Joint Interrogation Centre (JIC), Kupwara before registration of the case, for which he was allegedly required, which creates a reasonable doubt about the veracity of the FIR registered against him.

16. The learned Senior Counsel would further argue that, though the Writ Court had acceded to the contention of the Appellant/ Writ Petitioner, however, instead of directing the Respondents to straightway register an FIR, based on the Complaint lodged by the wife of the Appellant/ Writ Petitioner, the learned Writ Court had directed the Respondent No.3 to hold an enquiry, at the first instance, and, in case in the enquiry, it was found that some offence has been committed, he may proceed to direct for registration of a case by lodging an FIR in the matter. He has argued that the Appellant/ Writ Petitioner had raised allegations against the Respondent No.3 also, who had summoned him to his office and then sent him to the Joint Interrogation Centre (JIC) Kupwara, where he was tortured in custody, therefore, no justice can be expected from the end of the Respondent No.3, who himself is an accused in the matter, having regard to his bias and, therefore, the Writ Court had failed in its duty to order lodging of FIR for registration of case with further investigation on the allegations raised in the Complaint by the wife of the Appellant/ Writ Petitioner with regard to his custodial torture. It was finally prayed that the instant appeal be allowed and the impugned Judgment passed by the learned

Single Judge be modified with a direction to the concerned authority not only to register a case in the matter, but also transfer the investigation of the said case to an independent investigating agency, preferably the Central Bureau of Investigation (CBI).

17. Mr Mohsin-ul-Showkat Qadri, the learned Senior Additional Advocate General, appearing for the Respondents, *per contra*, argued that the Writ Petition filed by the Appellant/ Writ Petitioner was not maintainable before the Writ Court, inasmuch as, the Appellant/ Writ Petitioner had not exhausted the provisions of the Code of Criminal Procedure (Cr. P. C.) with regard to lodging of FIR. While explaining further, the learned Senior Additional Advocate General contended that, as per the interpretation rendered with reference to the basic provisions of the Code of Criminal Procedure (Cr. P. C.), *qua* registration of a case, the constitutional Courts have interpreted that a Complaint is to be initially made to the Officer Incharge of the Concerned Police Station and, on his failure to register a case, the Complainant can file an application before the Superintendent of Police of the District having control over the Police Station concerned and, thereafter, even on his inaction, the Complainant can approach the Court of a Magistrate for seeking a direction to register the case in terms of Section 156 (3) of the Code of Criminal Procedure (Cr. P. C.), which course of action the present Appellant/ Writ Petitioner has not resorted to, before invoking the writ jurisdiction of this Court.

18. Mr Qadri, learned Senior Additional Advocate General, has also raised a preliminary objection with regard to the maintainability of the present Letters Patent Appeal on the ground that the impugned Judgment has been passed by the learned Single Judge in a Petition which was criminal in nature and, therefore, against such a Judgment, an *intra* Court appeal is not permissible in view of the Letters Patent jurisdiction of this Court.

19. In rebuttal, Mr Bashir, the learned Senior Counsel, appearing for the Appellant/ Writ Petitioner, however, argued that a Writ Petition under Article 226 of the Constitution seeking directions for registration of a

case cannot be said to be a Petition criminal in nature, as through the medium of that Petition, no interference is sought, in a case registered under the Code of Criminal Procedure (Cr. P. C.) or in any case pending before a criminal Court. He vehemently argued that this Court has jurisdiction to hear an *intra* Court appeal against the Order/ Judgment passed by a Single Judge of this Court in a Petition under Article 226 of the Constitution of India.

20. We have heard the learned Counsel appearing for the parties, perused the pleadings on record and have considered the matter.

21. The first and foremost issue that falls for our consideration in this appeal is with regard to the maintainability of the appeal.

22. The Appellant/ Writ Petitioner, while filing the instant appeal, has invoked Rule 12 of the Letters Patent Rules of this Court for seeking quashment of the impugned Judgment passed by the learned Single Judge of this Court. This aspect of the matter remains no longer *res integra* and it is, by far, a crystalized position of law that in terms of Rule 12 of the Letters Patent of this Court, an *intra* Court appeal against an Order/ Judgment passed by a Single Judge of this Court, in exercise of inherent powers under Section 482 of the Code of Criminal Procedure (Cr. P. C.), is not maintainable.

23. A Co-Ordinate Bench of this Court, vide Judgment dated 16th of August, 2021, passed in LPA No.80 of 2020 titled '**Shamshada Akhter v. Aijaz Parvaiz Shah**' and LPA No. 84/2021 titled '**Parvez Ahmad Fafoo v. Imtiyaz Ahmad Tak**', has already set the controversy at rest with regard to applicability of Rule 12 of the Letters Patent against an Order/ Judgment passed by a Single Judge of this Court, in exercise of powers under Section 482 of the Code of Criminal Procedure (Cr. P. C.), thereby holding that no appeal is provided for against an Order/ Judgment passed by a Single Judge of this Court under Section 482 of the Code of Criminal Procedure (Cr. P. C.). In this context, it shall be advantageous to go through the relevant excerpts of the said Judgment, which read as under:

“We are of the opinion and have come to the conclusion that the powers of superintendence vested in the High Court of Jammu and Kashmir have been and are akin to the inherent powers saved under Section 561-A of the Code of Criminal Procedure, 1933, which corresponds to Section 482 Cr. P. C., now applicable in the Union Territory and, consequently, there has been and is no appeal provided for against orders passed by a Single Judge of the Court in exercise of such powers under Section 482 Cr. P. C. before the Court. Resultantly, no LPA lies against the order passed by a Judge of this Court in exercise of the powers under Section 482 Cr. P. C.”.

24. This Court, in **Shamshada Akhter’s** case (*supra*), has held that the power of superintendence vested in this Court is akin to the inherent powers of this Court saved under Section 561-A of the Code of Criminal Procedure (Cr. P. C.), now repealed, corresponding to Section 482 of the Code of Criminal Procedure (Cr. P. C.), now applicable in the Union Territory of J&K, and, consequently, no appeal is provided for against an Order/ Judgment passed by a Single Judge of this Court, in exercise of criminal jurisdiction under Section 482 of the Code of Criminal Procedure (Cr. P. C.).

25. Another Co-Ordinate Bench of this Court, in LPA No. 265/2022 titled ‘**Abdul Qayoom Khan & Anr. v. State of J&K and Ors.**’, vide Judgment dated 2nd of August, 2023, ruled that even a Petition under Article 226 of the Constitution of India, which has a colour of a Petition under Section 482 of the Code of Criminal Procedure (Cr. P. C.), against an Order/ Judgment passed by a Single Bench of this Court, in exercise of criminal jurisdiction, is not maintainable.

26. In **Abdul Qayoom Khan’s** case (*supra*), in a quest to determine as to whether once a Petition filed under Section 482 of the Code of Criminal Procedure (Cr. P. C.) or under Article 226 of the Constitution of India with trappings of a Petition under Section 482 of the Code of Criminal Procedure (Cr. P. C.) has been decided by the High Court, an appeal against the said Order/ Judgment can be entertained by a Division Bench of this Court under Letters Patent, examined Section 362 of the Criminal Procedure Code (Cr. P. C.) to hold that a Division Bench, while

exercising Appellate jurisdiction under the Letters Patent, does not act as an Appellate Court *per se*. The Bench held so on the basis of the observations made by the Supreme Court in case titled “**Baddula Lakshmaih v. Sri Anjaneya Swami Temple**”, [1996 (3) SCC 52], that the Division Bench of a High Court under Letters Patent acts as a Single Judge exercising jurisdiction only as a Court of correction and it does not exercise the Appellate Jurisdiction under Letters Patent with a view to examine threadbare the correctness of the Order passed by the learned Single Judge of the High Court. The Apex Court made the following observations, which, being relevant, are extracted as under:

“..... against the orders of the trial court, first appeal lay before the High Court, both on facts as well as law. It is the internal working of the High Court which splits it into different “Benches” and yet the court remains one. A Letters Patent Appeal, as permitted under the Letters Patent, is normally an intra-court appeal whereunder the Letters Patent Bench, sitting as a Court of Correction, corrects its own orders in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an appeal against an order of a subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error. So understood, the appellate power under the Letters Patent is quite distinct, in contrast to what is ordinarily understood in procedural language.....”.

27. The Co-Ordinate Bench of this Court, while relying upon **Baddula Lakshmaih’s** case (*supra*), while deciding the case of Abdul Qayoom Khan (*supra*), at Paragraph No.17, held as under:

“17. Thus, we hold that the absence of a bar on an appeal before the Division Bench under the Letters Patent applicable to this Court, from an order passed by a single judge under the writ jurisdiction, disposing finally a criminal case, same would still be prohibited in view of the specific bar of S. 362 Cr. P. C., precluding the review of a judgment disposing a criminal case, in view of what we have held hereinabove that the Division Bench under the Letters Patent only reviews the order of the single judge as a “Court of Correction”, and a review of an order disposing a criminal case is prohibited by S. 362 Cr. P. C. Holding otherwise, it would militate against the rule of law enshrined in the maxim *Quando aliquid prohibetur ex directo, prohibetur et per obliquum* or, that what cannot be done directly, cannot be done indirectly. If the propositions of the Ld. Counsels for the appellants are accepted, it

would render the bar of S. 362 Cr. P. C. *otiose*. Such was never the intention of the legislature which in its wisdom felt that once a criminal court had finally disposed a case, the same Court must not revisit it in review.”

28. From the above discussion, what emerges is that this Court has, thus, concluded that even in absence of a bar on an Appellate jurisdiction under Rule 12 of the Letters Patent of this Court against an Order/ Judgment passed by a Single Judge of this Court, in exercise of criminal jurisdiction, an appeal would still be not maintainable in view of the express bar contained in Section 362 of the Code of Criminal Procedure (Cr. P. C.), whereby no Court, after it has signed its Judgment or final Order disposing of a case, can alter or review the same, except to correct a clerical/ arithmetical error or where the Judgment or the Order of the Single Judge is downright perverse.

29. Adverting back to the facts of the present case in the backdrop of the aforesaid legal position obtaining on the subject, the Appellant herein had filed both the Petitions with regard to the same subject matter, i.e., his alleged custodial torture. In the Petition filed under Article 226 of the Constitution, the Appellant/ Writ Petitioner has sought direction for registration of the case based on the Complaint lodged by his wife with regard to his custodial torture/ murderous assault on him by some policemen of Joint Interrogation Centre (JIC), Kupwara, whereas, in the other Petition filed under Section 482 of the Code of Criminal Procedure (Cr. P. C.), he had sought quashment of FIR No. 32/2023 registered against him for his alleged attempt to commit suicide by causing self-inflicting injuries. Both the Petitions had been disposed of by the Writ Court vide the impugned Judgment. Faced with the said circumstances, the Appellant, at his own discretion, filed two appeals; one before this Court and another before the Apex Court, though both the matters were inter-related. Since, the Appellant/ Writ Petitioner has already approached the Apex Court by filing a Special Leave Petition (SLP), registered as Petition(s) for Special Leave to Appeal (Crl.) Nos. 13751-13852/2023, wherein, vide Order dated 12th of January, 2024, the Apex Court has been pleased to order, as an

interim measure, to stay all further proceedings in connection with FIR No. 32/2023 dated 26th of February, 2023 registered with Police Station, Kupwara.

30. The contention of the learned counsel for the Respondents that a Letters Patent Appeal is not maintainable against the impugned Order/Judgment passed by the learned Single Judge in a Petition under Article 226 of the Constitution of India, which has the trappings of a criminal case, appears to be sound, whileas, the contention of the learned Senior Counsel for the Appellant/ Writ Petitioner, in this behalf, seems to be fallacious in view of the Judgment passed by this Court in **Abdul Qayoom Khan's** case (*supra*) that such an appeal is not maintainable when a Petition has trappings of a criminal nature. The contention of the learned Counsel for the Appellant/ Writ Petitioner that the Writ Petition, arising out of which impugned Order has been assailed through the medium of the instant LPA, is not criminal in nature is baseless and unfounded, inasmuch as, the Petition had been moved by him, for setting criminal law into motion, on allegations of commission of criminal offences of custodial torture, registration of a criminal case and to punish the accused, were all within the domain of criminal law.

31. Having regard to the aforesaid observations and discussion made hereinabove, coupled with the settled legal position on the subject by this Court, we are not inclined to take a different opinion from the one that has already been taken by the Co-Ordinate Bench of this Court. It was open for the Appellant/ Writ Petitioner to file a Special Leave Petition (SLP) before the Apex Court or, at the most, in case the Appellant/ Writ Petitioner was of the opinion that the direction passed by the Writ Court with regard to, firstly, holding an enquiry in the matter and to then register a case was required to be modified to the extent of registering a case for investigation without resorting to inquiry first, such a relief could have been sought in a Review Petition.

32. Viewed, thus, we are of considered opinion that the instant appeal has been filed against the Judgment passed by the learned Single

LPA No. 204/2023
CM No. 6177/2023

Judge of this Court in a Petition moved by the Appellant/ Writ Petitioner under Article 226 of the Constitution of India with regard to seeking direction for registration of a case for investigation into his custodial torture, which has all the trappings of a criminal nature, is not maintainable. That being so, such an appeal against the impugned Judgment, in view of the law laid down by this Court, being not maintainable, is liable to be rejected. Accordingly, the present appeal is **dismissed** as not maintainable, along with the connected CM(s). Interim direction(s), if any subsisting as on date, shall stand vacated.

(M. A. CHOWDHARY)
JUDGE

(TASHI RABSTAN)
CHIEF JUSTICE (ACTING)

SRINAGAR

September 19th, 2024

"TAHIR"

- 
- i. Whether the Judgment is speaking? Yes.
ii. Whether the Judgment is reportable? Yes.