

WA.556 of 2025

-:1:-



2025:KER:26139

“C.R.”

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

MONDAY, THE 24TH DAY OF MARCH 2025 / 3RD CHAITHRA, 1947

WA NO. 556 OF 2025

[AGAINST THE ORDER DATED 24-02-2025 IN WP(C) NO.44196 OF 2024]

APPELLANTS/PETITIONERS:

- 1 TRIVANDRUM APOLLO TOWERS PVT. LTD.,
DOOR NO. XIX/315-U, CITY PLAZA, CENTRAL BAZAAR,
MANJERI, MALAPPURAM - PIN - 676121.
REPRESENTED BY MANAGING DIRECTOR -
KORAMBAPALAMKUNNATH SABITH.
- 2 HOTEL CITY PLAZA PVT. LTD.,
DOOR NO. XIX/ 315-T, CITY PLAZA, CENTRAL BAZAAR,
MANJERI, MALAPPURAM, REPRESENTED BY DIRECTOR -
KORAMBAPALAMKUNNATH SABITH, PIN - 676121.

BY ADVS. SRI. R.JAIKRISHNA
SRI. AKHIL SHAJI
SRI. ANISH P.
SRI. C.S.ARUN SHANKAR
SRI. NARAYANI HARIKRISHNAN

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
MINISTRY OF FINANCE, JEEVAN DEEP BUILDING,
PARLIAMENT STREET, NEW DELHI, PIN - 110003.
REPRESENTED BY SECRETARY.
- 2 ASSISTANT DIRECTOR,
ENFORCEMENT DIRECTORATE, KOCHI ZONAL OFFICE,
KANEES CASTLE, MULLASSERY CANAL ROAD WEST,
ERNAKULAM, PIN - 682011.



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- 3 ENFORCEMENT DIRECTORATE,
MINISTRY OF FINANCE, GOVERNMENT OF INDIA,
6TH FLOOR, LOK NAYAK BHAVAN, KHAN MARKET,
NEW DELHI, PIN - 110003, REPRESENTED BY ITS DIRECTOR.
- 4 ADJUDICATING AUTHORITY (PMLA),
OFFICE OF THE ADJUDICATING AUTHORITY, ROOM 26,
4TH FLOOR, JEEVAN DEEP BUILDING,
PARLIAMENT STREET, NEW DELHI,
REPRESENTED BY REGISTRAR, PIN - 110001.
- 5 AXIS BANK LTD., THE SALVATION ARMY INDIA SOUTH WESTERN
TERRITORY, KURAVANKONAM ROAD, KOWDIAR P.O.,
THIRUVANANTHAPURAM, PIN - 695003,
REPRESENTED BY ITS BRANCH MANAGER.
- 6 DHANALAXMI BANK LTD.,
GROUND FLOOR, KORAMBAYIL COOPERATE MALL,
CENTRAL BAZAR, CALICUT ROAD, MANJERI,
MALAPPURAM, PIN - 676121,
REPRESENTED BY ITS BRANCH MANAGER.
- 7 HDFC BANK LTD., TC 25/2344,
PREMIER TOWERS, AYURVEDA COLLEGE JUNCTION,
MG ROAD, THIRUVANANTHAPURAM, PIN - 695001.
REPRESENTED BY ITS BRANCH MANAGER.
- 8 STATE BANK OF INDIA LTD.,
COMMERCIAL BRANCH, GANESH KRIPA, JAS HOTEL ROAD,
THYCAUD, THIRUVANANTHAPURAM, PIN - 695014.
REPRESENTED BY ITS BRANCH MANAGER.

BY ADV. SRI. KRISHNA T. C.,
R6 BY ADV. SRI. C.K. KARUNAKARAN,
R7 BY ADV. SMT. AKSHARA RAJU.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 24.03.2025, THE COURT ON
THE SAME DAY DELIVERED THE FOLLOWING:



“C.R.”

JUDGMENT

Dated this the 24th day of March, 2025.

Nitin Jamdar, C. J.

This Appeal under Section 5 of the Kerala High Court Act, 1958, is filed challenging the order passed in W.P.(C) No.44196 of 2024, dated 24 February 2025, by which, the learned Single Judge rejected the prayer for interim relief sought by the Appellants in the writ petition.

2. The Appellants/Original Petitioners are engaged in the business of hotel construction. During the course of the search conducted on the premises, statements were recorded under Section 17 of the Prevention of Money-Laundering Act, 2002 (Act 15 of 2003). Recording that the hotel property appears to have been built using the proceeds of crime obtained through unsecured loans by the group of companies and that the proceeds of crime are held in the bank accounts, an order was passed by the Assistant Director, Enforcement Directorate, Ernakulam, under Section 17(1A) of Act 15 of 2003, directing the Banks – Respondent Nos. 5 to 8, to freeze the accounts to the extent of the balance mentioned therein.

3. Being aggrieved by the above action, the Appellants have filed the writ petition challenging the order passed by Respondent No. 2 – Assistant Director, freezing the bank accounts of the Appellants. The



Appellants have also prayed for a writ of mandamus directing Respondent Nos. 2, 3 and 4 – Enforcement Directorate and the Adjudicating Authority, to forbear from proceeding with any proceedings against the Appellants, including the adjudication proceedings under the Act 15 of 2003. Interim relief was also sought by the Appellants to lift the freeze on the bank accounts. The learned Single Judge, by the impugned order dated 24 February 2025, rejected the interim relief sought by the Appellants. Challenging this order, the present Appeal is filed.

4. We have heard Mr. Jaikrishna R., learned counsel for the Appellants, Mr. C.K. Karunakaran, learned counsel for Respondent No. 6, and Ms. Akshara Raju, learned counsel for Respondent No. 7.

5. Apart from the merits of the impugned order and the claim of the Appellants, other questions arise. The writ petition is filed as Writ Petition (Civil) - “W.P.(C)”. First, it will have to be examined as to whether the subject writ petition is a Civil Writ Petition or Criminal Writ Petition. There is a distinction between a Civil Writ Petition and a Criminal Writ Petition. This distinction is elaborated in the decision of this Court in the case of *N.Prakash v. Manoj Kumar*¹. In the said decision, this Court observed as follows:

“7. Though civil proceedings and criminal proceedings have not been statutorily defined under the Kerala

¹ 2025 (1) KLT 835



High Court Act and the Rules, these proceedings are different and distinct, and there could be some overlap. An identical position has arisen in other High Courts as well, and the view taken by these High Courts following the decision of the Hon'ble Supreme Court will guide us to make a distinction and to ascertain whether the present petition should be treated as a criminal writ petition.

14. Noticing and analysing these decisions, the Division Bench of the Bombay High Court in M/s. Nagpur Cable Operators' Association, speaking through R.M. Lodha, J. (as His Lordship then was), laid down the following position of law:

“21. In the light of the aforesaid legal position explaining the nature of proceedings under Article 226 of the Constitution, and the classification whether the said proceeding is civil or criminal, when the provisions of the Appellate Side Rules are looked into, it would be found that all applications under Article 227 of the Constitution challenging the orders and decisions of the Courts constituted under the Criminal Procedure Code are dealt with on the side of criminal business of the Appellate Side of this Court, but the said clause (i) of Part II, Criminal of Rule 2 of Chapter I is not all exhaustive. Rule 2-B of Chapter I, as observed above, states that all petitions/applications under Article 226/227 of the Constitution arising out of or relating to the order of penalty or confiscation or an order in the nature thereof or an order otherwise of penal character and passed under any Special Statute shall be heard and decided by the Division Bench hearing



writ petitions. This rule only allocates that the class of petitions/applications under Articles 226 and/or 227 of the Constitution of India mentioned in Rule 2-B shall be decided by the Division Bench hearing writ petitions, but does not classify the nature of proceedings whether the said writ petition/application shall be criminal or civil writ petition. Applying the tests laid down by the Apex Court in Narayan Row's case (supra), we are of the view that if the writ petition/application under Articles 226 and/or 227 of the Constitution arises out of or relates to a proceeding in which, if carried to its conclusion ultimately it may result in sentence of death or by way of imprisonment, fine or forfeiture of the property then such writ petition/application under Article 226 of the Constitution of India and/or under Article 227 of the Constitution, should be treated as a "criminal writ petition" and styled as such. For hearing and decision of such petition, it should be listed before the Division Bench allocated such business by Hon'ble the Chief Justice or if it pertains to the single Judge jurisdiction, before the Bench assigned such work. As regards petitions/applications under Article 226 of the Constitution seeking writs or orders in the nature of habeas corpus, Rule 1 of Chapter XXVIII of Appellate Side Rules, also provides only allocation of such writ petitions to the Division Bench taking criminal business of the Appellate Side of the High Court. Obviously, since the petitions/applications under Article 226 of the Constitution of India for issuance of writs of habeas corpus arise out of the unlawful detention, in its very nature,



such petitions too should be styled as criminal writ petitions. Criminal writ petitions would also cover those writ petitions which arise out of the orders and the matters relating to prevention or breach of peace or maintenance of peace and order or such orders aimed at preventing vagrancy contemplated to be passed. 'Criminal writ petition' shall also take in its embrace the petitions/ applications under Article 226 or 227 of the Constitution of India if it arises out of or relates to investigation, enquiry or trial of the offences either under special or general statute. When a statute commands or prohibits an act, disobedience of such statute is prima facie criminal unless criminal proceedings are excluded by such statute and the petitions/ applications under Articles 226 and 227 of the Constitution of India in connection thereto or arising therefrom would be criminal proceeding and should be styled as 'Criminal Writ Petition'. However, such cases are to be distinguished from the cases where an act may be prohibited or commanded by the statute in such a manner that the person contravening the provision is liable to pecuniary penalty and such recovery is to be made a civil debt. In such type of cases the contravention would not be a crime and, therefore, petitions/applications under Articles 226 and 227 of the Constitution of India arising therefrom would not be criminal proceeding."

(emphasis supplied)

15. According to us, the same test can be adopted while determining in which circumstances a "criminal writ petition" - W.P.(Crl.) is to be filed and in which



cases a civil writ petition – W.P.(C) is to be filed in this court as well. Obviously, the list cannot be exhaustive. Also, there can be overlap. Broadly stated, if a writ petition or application under Articles 226 and/or 227 of the Constitution of India concerns a legal proceeding that could ultimately lead to a sentence of death, imprisonment, a fine, or the forfeiture of property, it would be a "criminal writ petition" - W.P.(Crl.). Additionally, criminal writ petitions include those that arise from orders related to maintaining peace and order, preventing breaches of peace, or addressing vagrancy. Furthermore, any writ petition or application under Article 226 or 227 connected to the investigation, inquiry, or trial of offences, whether under a special or general law, would also be considered a criminal writ petition."

As pointed out by the Registry, as per the present Roster, Civil Writ Petitions and Criminal Writ Petitions are assigned to different Single Judges. Also, Appeals arising from the orders passed in Civil Writ Petitions and Criminal Writ Petitions are placed before different Benches. The learned Single Judge has the Roster of Civil Writ Petition. Thus, the enquiry as to whether the writ petition is a Civil Writ Petition or a Criminal Writ Petition is necessary to ascertain whether it falls within the present Roster.

6. To examine whether a matter pertains to the Roster / allocation is important in view of the recent decision of the Supreme Court in the case of *Garden Reach Shipbuilders and Engineers Limited v. Grse Limited*



*Workmens Union and Others*², wherein the Hon'ble Supreme Court has declared the legal effect of the order passed in a case outside the Roster and without specific order of allocation. The relevant observations are as follows:

“9. In the light of the law laid down by the High Court itself [authoritatively speaking through Hon'ble P.D. Desai, C.J. (as the Chief Justice then was)] in Sohan Lal Baid v. State of West Bengal (AIR 1990 Calcutta 168), as approved by a three-Judge Bench of this Court in State of Rajasthan v. Prakash Chand [(1998) 1 SCC 1] which has subsequently been approved by a Constitution Bench in Campaign for Judicial Accountability and Reforms v. Union of India [(2018) 1 SCC 196], as well as Rule 26 (supra), we hold that any order which a bench – comprising of two judges or a single judge – may choose to make in a case that is not placed before them/him by the Chief Justice of the High Court or in accordance with His Lordship's directions, such an order is without jurisdiction. In other words, an adjudication, beyond allocation, is void and such adjudication has to be considered a nullity. It needs no emphasis that the Chief Justice of the High Court, being the primus inter pares, has been vested with the power and authority to set the roster, as articulated in Sohan Lal Baid (supra), and such roster is final and binding on all the ‘Companion Justices’ of the said court. Plainly, therefore, the order dated March 11, 2024 and the impugned order are without jurisdiction.

10. On this limited ground, but without examining the merits of the rival claims, the impugned order is liable to be and is, accordingly, set aside. We order a remand, with the

² 2025 SCC OnLine SC 582



result that the writ petition shall stand revived on the file of the High Court. We request the Chief Justice of the High Court to assign the writ petition to an appropriate bench for its consideration and disposal, as early as possible, but preferably within six months from today, considering that the respondents have been waiting for their turn for compassionate appointment and the appellants have their own reasons for not proceeding with making such appointment resulting in a delayed determination.”

(emphasis supplied)

Thus, the dicta of the Hon'ble Supreme Court is clear that any order passed in a matter outside the Roster or not specifically assigned would be without jurisdiction and nullity.

7. The learned counsel for the parties submitted that *prima facie*, the present writ petition will have to be considered as a Criminal Writ Petition, however, this inquiry will have to be conducted by the learned Single Judge at the first instance.

8. Accordingly, we dispose of the Appeal to enable the learned Single Judge to examine whether W.P.(C) No.44196 of 2024 is a Civil Writ Petition or Criminal Writ Petition. If the learned Single Judge comes to the conclusion that the writ petition is a Criminal Writ Petition and does not pertain to the assigned Roster, then as per the law declared by the Hon'ble Supreme Court in the case of *Garden Reach Shipbuilders and Engineers Limited*, the order dated 24 February 2025 will be treated as a



nullity and the writ petition will have to be placed as per the Roster. If the learned Single Judge is of the opinion that the writ petition is a Civil Writ Petition and pertains to the Roster, and consequently the impugned order is within the jurisdiction, then we permit the Appellants to restore the Appeal for consideration of the Division Bench.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S. MANU,
JUDGE

krj/-

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P.A. TO C.J.