

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR
&
THE HONOURABLE MR. JUSTICE S.MANU

Thursday, the 30th day of January 2025 / 10th Magha, 1946
WA NO. 1803 OF 2024

AGAINST JUDGMENT DATED 30/10/2024 IN WP(C) 36058/2024 OF THIS COURT
APPELLANT(S)/PETITIONER:

N.PRAKASH, AGED 60 YEARS, SON OF LATE A.NARAYANA RAO PRAJITH VIHAR,
AYINI ROAD MARADU P.O. ERNAKULAM, PIN - 682304

BY N.PRAKASH(Party-In-Person)

RESPONDENT(S)/RESPONDENTS:

1. MANOJ KUMAR, AGED 39 YEARS, SON OF MATHIPPU RAJ MELAGARAM, TENKASI
TAMILNADU, PIN - 627862
2. PAVUN, AGED 42 YEARS, SON OF SOUNDARARAJAN ESWARAM KOVIL STREET
AYYAPURAM, TENKASI TAMILNADU, PIN - 627862
3. STATION HOUSE OFFICER, MARADU POLICE STATION MARADU P.O. ERNAKULAM,
PIN - 682304
4. ASSISTANT COMMISSIONER OF POLICE, OFFICE OF THE ASSISTANT
COMMISSIONER OF POLICE OLD RAILWAY STATION ROAD KACHERIPADY
ERNAKULAM, PIN - 682018
5. COMMISSIONER OF POLICE, OFFICE OF THE COMMISSIONER OF POLICE KOCHI
CITY PARK VIEW MARINE DRIVE ERNAKULAM, PIN - 682011
6. DIRECTOR GENERAL OF POLICE, STATE POLICE HEADQUARTERS VELLAYAMBALAM
THIRUVANANTHAPURAM, PIN - 695010
7. ADDL.R7:THE INSPECTOR OF POLICE(STATION HOUSE OFFICER) PULIANGUDI
POLICE STATION, TENKASI DISTRICT, TAMIL NADU - 627855 (ADDL R7 IS
IMPLEADED AT THE REQUEST OF APPELLANT AS PER ORDER DATED 12.11.2024
IN WA.NO.1803/2024)

BY SPECIAL GOVERNMENT PLEADER SRI.P.NARAYANAN FOR R3 TO R6.

Prayer for interim relief in the Writ Appeal stating that in the circumstances stated in the appeal memorandum, the High Court be pleased to direct the third respondent to submit a report before this Honourable Court as to the steps , if any, taken in pursuance to Exhibit P6, pending disposal of the above Writ Appeal.

This Writ appeal again coming on for orders on 30/01/2025 upon perusing the appeal memorandum and this court's order dated 16/12/2024, the court on the same day passed the following:

EXHIBIT P6: TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER

**BEFORE THE 3RD RESPONDENT DATED 26.9.2024(WITHOUT EXHIBITS P1 TO P5
THERIN AS**

THEY ARE ALREADY PRODUCED AS EXHIBITS P1 TO P5 IN THIS

WRIT PETITION)



“C.R.”

Nitin Jamdar, C.J. & S. Manu, J.

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W.A.No. 1803 of 2024

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Dated this the 30th day of January 2025

ORDER

Nitin Jamdar, C.J.

The Appellant has challenged the judgment of the learned Single Judge dated 30 October 2024 in W.P.(C)No.36058 of 2024, dismissing the petition.

2. The Appellant/Petitioner filed the writ petition for a direction to Respondent Nos. 3 and 4, i.e., the Station House Officer and the Assistant Commissioner of Police, respectively, to take necessary action on the Ext.P6 complaint filed by the Petitioner. A writ was also sought to take action against Respondent No. 3 - Station House Officer for not registering the First Information Report (FIR) based on the Ext.P6 complaint. By way of Ext.P6 complaint, the Petitioner had alleged that on 28 July 2024, the Police Officer deployed by the Station House Officer, Puliyangudi Police Station, Tenkasi, who was in uniform, and two other persons in civil dress entered the house of the Petitioner. According to the Petitioner, the persons who were not in uniform were, in fact, the Complainant and his friend, and, therefore, they had committed criminal trespass.

3. Essentially, what the Petitioner sought by this writ petition was that the complaint be investigated and the Respondents be prosecuted and

punished accordingly. The writ petition was filed as a Writ Petition (Civil). The learned Single Judge dismissed the writ petition, declining to issue any directions for holding the enquiry and investigation into the complaint and holding that the FIR can go on as per law.

4. When the appeal came up before us, it was pointed out that, as per the Roster, appeals from orders passed in criminal writ petitions pertain to another Bench. That being the position, we looked into whether the present writ petition is a criminal or civil writ petition.

5. The Registrar (Judicial) has submitted a note as to the position regarding the civil and criminal writ petitions. The Registry has pointed out that the nomenclature W.P.(Crl.) was adopted in the High Court for petitions under Article 226 for writ of Habeas Corpus and other relief in relation to criminal proceedings vide notification dated 11 April 2013. The notification dated 11 April 2013 refers to the resolution of the Chief Justices' Conference, 1997 and the adoption of categorisation and nomenclature of cases. This includes the categorisation of writ petitions under Article 226 as civil writ petitions and as criminal writ petitions. Therefore, since 2013, the Registry has been categorising the writ petitions as Writ Petitions (Civil) and Writ Petitions (Criminal). Another notification was issued on 30 September 2021 stating that petitions under Article 226 of the Constitution of India for reliefs in relation to criminal proceedings should be filed and numbered as Writ Petition (Criminal), the abbreviation should be used as W.P.(Crl.). The Registry has pointed

out that as per the Roster, the Single Bench writ petitions go to two learned Single Judges and the writ appeals arising from order/judgment in Writ Petition (Criminal) are placed before two Division Benches and the Writ Petitions (Criminal) for Habeas Corpus are placed directly before the Division Bench. It is also pointed out that once a petition is filed as W.P. (C) or W.P.(Crl.) as per the codes given to these petitions at the initial stage as per the software, matters are placed before the learned Single Judge or the Division Bench as the case may be. No decision of this court or any specific Rule making a distinction between the criminal and civil writ petitions is placed before us.

6. Under the Kerala High Court Act, 1958, the powers of the Single Judge have been referred to under Section 3, which includes the exercise of powers under Articles 226 and 227 of the Constitution of India, except a writ of habeas corpus. There is, however, no reference to classification as criminal or civil writ petitions. The Rules have been framed under the title "Rules of the High Court of Kerala 1971" under Article 225 of the Constitution of India. These Rules under Chapter XI deal with procedural aspects of proceedings under Articles 226, 227 and 228 of the Constitution of India. Rule 159 prescribes the procedure for appeals on the order passed by the learned Single Judge. The Rules also do not make any specific distinction between civil writ petition and criminal writ petition. However, the Roster which is being followed makes a distinction between civil writ petition and criminal writ petition as regards the

placement before the learned Single Judge and thereafter before the Appellate Bench.

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

8. A review of the legal position has been taken by the Division Bench of the Bombay High Court in the case of *M/s. Nagpur Cable Operators' Association v. Commissioner of Police, Nagpur and Another*¹. The Division Bench has referred to Halsbury's Laws of England, Fourth Edition, wherein criminal and civil proceedings have been distinguished thus:

“Civil proceedings have for their object the recovery of money or other property, or the enforcement of a right or advantage on behalf of the plaintiff: criminal proceedings have for their object the punishment of a person who has committed a crime. Criminal proceedings are not to be used as a means of enforcing a civil right. Whether conduct amounts to a crime may be determined by ascertaining whether the conduct in question is followed by criminal or civil proceedings. If the proceedings will result in the punishment of a party, the conduct in question will be a crime notwithstanding that it may be a matter of small

1 AIR 1996 BOMBAY 180

consequence. Where an act is commanded or prohibited by statute, disobedience is prima facie criminal unless criminal proceedings manifestly appear to be excluded by the statute. An act may be prohibited or commanded by a statute in such a manner that the person contravening the provision is liable to a pecuniary penalty which is recoverable as a civil debt; in such an instance contravention is not a crime.” (emphasis supplied)

9. In the case of *State of U.P. and Others v. Mukhtar Singh and Others*², the Division Bench of Allahabad High Court held that whether the proceedings are civil or not depends on the nature of the subject matter of the proceedings and its object and not on the mode adopted or the form provided for enforcement of a right.

10. The Division Bench of the Bombay High Court in the case of *J.P. Sharma v. The Phalton Sugar Works Ltd.*³ in the context of proceedings under Article 226 of the Constitution of India, observed thus:

“7. The next argument of Mr. Joshi is that all proceedings under Art. 226 are either civil or criminal. When a person asks for a writ of Habeas Corpus, that is a criminal proceeding. But when a person asks for any writ other than the Habeas Corpus, the proceedings are necessarily civil proceedings. The proceedings started under Art. 226 are not proceedings under any Act, but are proceedings to quash the orders made under certain Acts, or for orders restraining the officers' to take action-under certain Acts. They are, therefore, civil proceedings and not proceedings under the Act. It is not possible to accept the argument. Mr. Joshi admits that the proceedings for the issue of a writ of Habeas Corpus is a criminal proceeding. He admits that it is criminal proceeding because it is a relief asked against the arrest

2 AIR 1957 ALLAHABAD 505

3 AIR 1964 BOMBAY 116

or detention of a person in contravention of the provisions of the Criminal law. If that be so, we see no reason why we should hold that even though the relief asked is a relief against an order made under taxation laws or enforcement of the taxation laws against a person, the proceedings should not be revenue in nature. On the other hand, it would be logical to hold that the nature of the relief which is asked for in each case under Art. 226 should be determinative of the nature of that proceeding. If the relief asked is against the exercise of powers under criminal law, the proceedings, would be criminal proceedings. If the relief asked is for enforcement or in exercise of a civil right, or to prevent infringement of a civil right, the proceedings will be civil in nature. Similarly, if the relief is sought in relation to the enforcement of the taxation law, the proceeding would be revenue in nature. It is difficult to accept the contention of Mr. Joshi that proceedings under Art. 226 are either civil or criminal in nature. On the other hand, we agree, with respect, with the view taken by the Patna High Court that the writ application may be a civil proceeding, or a criminal proceeding or other proceeding according to the nature of the application and the questions raised and decided in the proceeding. In the instant case, as already stated, the assessee sought to get quashed the notices issued under Sec. 34 of the Income-tax Act, and also prayed for an order restraining the Income-tax Officer from taking any action in enforcement of the notices. In other words, in the proceedings, a protection was sought against action being taken under the process issued under the Income-tax Act. The proceedings under the Income-tax Act, as already stated, are revenue in nature. The writ proceedings with which we were dealing, therefore, were revenue in nature.” (emphasis supplied)

11. In the case of *S. A. L. Narayan Row and Another v. Ishwarlal Bhagwandas and Another*⁴, an issue arose as to the power of the High Court to issue a certificate under Article 133(1)(c) of the Constitution of

4 AIR 1965 SC 1818

India in respect of civil proceedings, and the question was whether the proceedings on a petition under Article 226 in the matter of recovery of income tax are civil proceedings. In the context of this provision, the Hon'ble Supreme Court held thus:

“14. A large number of cases have arisen before the High Courts in India in which conflicting views about the meaning of the expression "civil proceeding" were expressed. In some cases it was held that the expression "civil proceeding" excludes a proceeding instituted the High Court for the issue of a writ whatever may be the nature of the right infringed and the relief claimed; in other cases it has been held that a proceeding resulting from an application for a writ under Art. 226 of the Constitution may in certain cases be deemed to be a "civil proceeding", if the claim made, the right infringed and the relief sought warrant that inference: in still another set of cases it has been held that even if a proceeding commenced by a petition for a writ be generally categorised as a civil proceeding where the jurisdiction which the High Courts exercises relates to revenue, the proceeding is not civil. A perusal of the reasons given in the cases prompt the following observations. There are two preliminary conditions to the exercise of the power to grant certificate: (a) there must be a judgment, decree or final order, and that judgment, decree or final order must be made in a civil proceeding. An advisory opinion in a tax reference may not be appealed from with certificate under Art. 133, because the opinion is not a judgment, decree or final order, and (b) a proceeding does not cease to be civil, when relief is claimed for, enforcement of civil rights merely because, the proceeding is not tried as a civil suit. In a large majority of the cases in which the jurisdiction of the High Court to certify a case under Art. 133 (1) was negatived it appears to have been assumed that the expression "other proceeding" used in Article 132 of the Constitution is or includes a proceeding of the nature of a

revenue proceeding, and therefore the expression "civil proceeding" in Art. 133(1) does not include a revenue proceeding. This assumption for reasons already set out is erroneous."

12. Before the Patna High Court, an identical issue arose in the case of *Ram Kishun Upadhyaya and etc. v. State of Bihar and Others*⁵ as to whether the petitions were maintainable as criminal writ jurisdiction cases or not, the challenge was to show cause notice issued under the Arms Act, 1959 as to why the licence for holding a rifle granted to the Petitioner should not be cancelled and suspended. The petitions were filed under Articles 226 and 227 of the Constitution of India. Article 226 of the Constitution of India does not make any classification as to the nature of the proceedings. In Patna High Court, a Rule was framed under the High Court Rules whereby separate classification as civil writ jurisdiction cases and criminal writ jurisdiction cases was made, and they have to be registered accordingly. There was no specific demarcation as to in what cases civil writ jurisdiction cases are to be filed and in what cases criminal writ jurisdiction cases are to be filed. The Patna High Court referred to the aforesaid decision of the Hon'ble Supreme Court in the case of *Narayan Row* and observed that though civil and criminal proceedings are not defined, there is a clear-cut division between the proceedings.

13. The Division Bench of the Patna High Court in the case of *Ram Kishun Upadhyaya* observed that a criminal proceeding is ordinarily one in which, if carried to its conclusion, it may result in the imposition of

5 AIR 1995 PATNA 140

sentences, such as death, imprisonment, fine or forfeiture of property. A criminal proceeding also includes orders to maintain law and order and to prevent vagrancy. On the other hand, a civil proceeding is one in which a person approaches the court against the alleged infringement of civil rights against any person or the State and, if claims are proved, gets a declaration of his rights claimed and reliefs. The Division Bench further observed that if the confiscation of a property has been made by way of punishment in a criminal proceeding, then the criminal writ jurisdiction case will lie. Similarly, as far as a habeas corpus petition against the State is concerned, the nature of the proceeding will be criminal.

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.

16. The Petitioner had sought action on the complaint he has filed. This action, if ordered, could result in investigation, criminal prosecution and ultimately, a punishment for criminal trespass. Thus, applying the above legal position, since the Petition arises from the proceedings, which has taken to its conclusion may result in imprisonment, fine or forfeiture, this writ petition had to be treated as a criminal writ petition and styled as such. Though it was styled as a civil writ petition, mere nomenclature would not change the substance.

17. This appeal, therefore, will have to be placed before the Bench dealing with appeals from orders/judgments passed in criminal writ petitions as per the Roster. Registry to take steps accordingly.

Sd/-

Nitin Jamdar
Chief Justice

Sd/-

S. Manu
Judge

vpv