

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(Cr.) No. 220 of 2018

WITH

W.P.(Cr.) No. 55 of 2019

W.P.(Cr.) No. 162 of 2022

W.P. (Cr.) No. 120 of 2023

AND

W.P.(Cr.) No.649 of 2025

In W.P.(Cr.) No.220 of 2018

Nishi Kumari wife of Shri Ashwani Kumar, resident of Sharma House, Matwari Colony, PO Hazaribagh, PS Korra (Sadar), District Hazaribagh.

... **Petitioner**

-versus-

1. The State of Jharkhand through the Superintendent of Police, Central Bureau of Investigation, Ranchi, PO GPO, PS Kotwali, District Ranchi.
2. The Executive Magistrate, Hazaribagh Collectorate, Hazaribagh.
3. The Sub-Divisional Officer, Sadar, Hazaribagh.

... **Respondents**

In W.P.(Cr.) No. 55 of 2019

Sanjay Kumar Singh S/o Late Dr. R.P. Singh, R/o C.D. Colony, PO & PS Jhumari Tilaiya, District Koderma. At present C/o Surendra Prasad Singh, Suresh Colony, PO PS Sadar, District Hazaribagh.

... **Petitioner**

-versus-

1. State of Jharkhand.
2. Shishir Kumar Sinha S/o Late Shambhu Sharan Sinha, R/o Devendra Chowk, Korra, PO PS Korra, District Hazaribagh.

... **Respondents**

In W.P.(Cr.) No. 162 of 2022

1. Neelesh Sinha son of Surendra Prasad, resident of Direndrapuri, Sadanand Road, PO PS Sadar, District Hazaribagh.
2. Sunil Kumar Srivastava son of Late Chandrama Lal, resident of Ram Nagar Road, Near Shiv Mandir, PS Katkamsandi, PO Kadma, District Hazaribagh.
3. Shashi Shankar Prasad, son of Laxman Prasad, PO PS Sadar, District Hazaribagh.

... **Petitioners**

-versus-

1. State of Jharkhand.
2. Bijay Kumar son of Piyari Mahto, resident of Sapna Bhawan, Kumhartoli Road, Milan Chowk, PO PS Sadar, District Hazaribagh.

... **Respondents**

In W.P.(Cr.) No.120 of 2023

Arbind Kumar Thakur @ Arvind Kumar Thakur S/o Mahendra Thakur, R/o Shivpuri Colony, Jodhadih More, PO PS Chas, District Bokaro, Jharkhand.

... **Petitioner**

-versus-

1. The State of Jharkhand.
2. The Deputy Commissioner, Bokaro, Office at District Collectorate, Camp

- II, PO PS Bokaro Steel City, District Bokaro, Jharkhand.
3. The Sub Divisional Officer, Chas, officiating from the SDO Office, Chas, PO and PS Chas, District Bokaro, Jharkhand 827013.

...

...

Respondents

In W.P.(Cr.) No. 649 of 2023

Sanjay Kumar Mohanty son of Bholanath Mohanty, resident of Majhi-Tola, Adityapur, PO PS Adityapur, District Saraikela Kharsawan.

...

...

Petitioner

-versus-

1. State of Jharkhand through Superintendent of Police, Saraikela Kharsawan, PO PS Saraikela, District Saraikela Kharsawan (Jharkhand).
2. Officer In-Charge, R.I.T. Police Station, PO PS R.I.T., District Saraikela Kharsawan.

...

...

Respondents

CORAM : SRI ANANDA SEN, J.

For the Petitioners :

Mr. Indrajit Sinha, Advocate
Mr. Vibhor Mayank, Advocate
Mr. Shivam Kumar, Advocate
Mr. Amritansh Vats, Advocate
Mr. Arpan Manjesh Ekka, Advocate

**For the State-
Respondents:**

Mr. Ravi Kerketta, SC VI
Mr. Saurabh Sagar, AC to SC III
Mr. Rituraj, AC to SC VI

For the CBI :

Mr. Prashant Pallav, Spl. PP

ORDER

11/ 02.05.2025 The issue of maintainability of these writ petitions is under consideration.

2. Learned counsel appearing on behalf of the respondents, Mr. Prashant Pallav had raised an objection on the maintainability of these writ petitions filed under Article 226 of the Constitution of India. He contended that a judicial order is not amenable to writ jurisdiction under Article 226 of the Constitution. It is his contention that a writ of certiorari is not maintainable. Thus, all these writ petitions filed under Article 226 of the Constitution of India, where an order passed by the learned Magistrate or any Court is challenged, are not maintainable. Learned counsel for the respondents submitted that the petitioners should file an application under Section 482 of the Code of Criminal Procedure (now it is Section 528 of the Bharatiya Nagarik Suraksha Sanhita). Learned counsel for the respondents relied on a judgment of the Special Bench of Hon'ble Patna High Court in the case of ***Surendra Singh and others versus State of Bihar*** reported in ***1990 (2) PLJR 690 : 1990 SCC OnLine***

Patna 246 in support of his contention.

3. Learned counsel appearing on behalf of the petitioners submitted that in the case of **Radhey Shyam versus Chhabi Nath** reported in **(2015) 5 SCC 423**, it has been held that order of Civil Courts are not amenable to writ jurisdiction, but in these cases the order has been passed by the Criminal Courts. It is their contention that even if an application under Article 226 of the Constitution of India is not maintainable, the petitioners, who are admittedly challenging the orders passed by the Criminal Courts cannot be remediless. As per them, they can invoke the power of superintendence of this Court by invoking jurisdiction under Article 227 of the Constitution of India. It is their case that be it Article 226 of the Constitution of India or Article 227 of the Constitution of India or Section 482 of the Code of Criminal Procedure or Section 528 of the Bharatiya Nagarik Suraksha Sanhita, the nomenclature or title of the petition is immaterial. Learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of **Pepsi Foods versus Special Judicial Magistrate** reported in **(1998) 5 SCC 749**. They also submitted that if it is held that an application under Article 226 of the Constitution of India is not maintainable and if an application under Article 227 of the Constitution of India is maintainable, then as per the High Court of Jharkhand Rules, there is no specified nomenclature for a petition, which is filed invoking the power of superintendence in terms of Article 227 of the Constitution of India in the criminal side. It is submitted that in many of the High Courts, including the High Court of Jharkhand, the nomenclature of the petition is titled as W.P.(Cr.), which is not only used for an application filed under Article 226 of the Constitution of India, but generally used for an application under Article 227 of the Constitution of India, also in the criminal side. Thus, even if an application under Article 227 of the Constitution of India is filed and is maintainable, the nomenclature of the same should be W.P.(Cr.).

4. During the course of argument, both the parties submitted that now the latest order of the Hon'ble Supreme Court in the case of **Neeta Singh versus State of Uttar Pradesh [Special Leave to Appeal (Crl.) No.13578 of 2024, judgment dated 15.10.2024]** will hold the field.

5. The issue, which, thus, falls for consideration at this preliminary stage are: -

- i. Whether against an order passed by a Criminal Court, an application under Article 226 of the Constitution of India is maintainable or not?

- ii. If the answer to the question is in negative, then what is or would be the appropriate remedy available to the litigants?

6. The aforesaid issue has now been set at rest. In the Special Bench decision of the Hon'ble Patna High Court in the case of **Surendra Singh (supra)**, the Special bench with the majority view, after discussing the scope and power of Article 226 and Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, has held that the judicial orders passed by the Criminal Courts are amenable to the jurisdiction of the High Courts under Article 227 of the Constitution of India. Further, very recently in the case of **Neeta Singh (supra)** the Hon'ble Supreme Court, after considering several judgments, including **Suryadeo Rai versus Ramchandra Rai** reported in **(2003) 6 SCC 659**, has taken note that the order passed by the Civil Courts are not amenable to writ jurisdiction under Article 226 of the Constitution of India. Jurisdiction under Article 226 of the Constitution of India and Article 227 of the Constitution of India are distinct. Challenge to the judicial orders can only be by way of an Appeal or Revision or by filing application under Article 227 of the Constitution of India and not by way of writ jurisdiction under Article 226 and Article 32 of the Constitution of India. The Hon'ble Supreme Court in paragraph 4 of the judgment in the case of **Neeta Singh (supra)**, has observed that since the order passed by the Civil Courts cannot be legitimately claimed to have been passed by the Presiding Officer in breach of violation of fundamental rights, any right conferred by the Constitution or a statutorily conferred right, which could be corrected by issuance of a writ of certiorari, are not amenable to challenge in a writ petition under Article 226 of the Constitution of India. Further at paragraph 5, the Hon'ble Supreme Court has observed that there cannot be a different standard for judicial order passed by Criminal Courts and judicial orders passed by Civil Courts. If a judicial order passed by Civil Court cannot be challenged in a writ jurisdiction under Article 226 of the Constitution of India, the order of Criminal Court also cannot be challenged in writ jurisdiction under Article 226 of the Constitution. Thus, the issue has now been set at rest that an order passed by the Criminal Courts cannot be challenged by filing a writ application under Article 226 of the Constitution of India. Thus, any writ petitions filed under Article 226 of the Constitution of India, in which the orders passed by the Criminal Courts are under challenge, are not maintainable. Paragraph 5 of the judgment in the case of **Neeta Singh (supra)** reads as under: -

“5. Although Radhey Shyam (supra) dealt with judicial orders passed by civil courts, there cannot be a different standard for judicial orders passed by criminal courts. If a judicial order passed by a civil court cannot be challenged in a writ petition under Article 226 of the Constitution, a fortiori, a judicial order passed by a criminal court cannot also be challenged in a writ petition under Article 226.”

Thus, an application under Article 226 of the Constitution challenging the order of the Criminal Court is not maintainable.

7. Now the next question, which falls for consideration is what is the remedy available to the litigant, who wants to challenge the order of the Criminal Court before the High Court.

8. The majority view of the Special Bench of the Hon’ble Patna High Court in the case of **Surendra Singh (supra)** is that the judicial order passed by the Criminal Courts are amenable to writ jurisdiction under Article 227 of the Constitution of India. Further, in the judgment of **Neeta Singh (supra)** the Hon’ble Supreme Court has relied on the **Surya Dev Rai case (supra)** and has held that an order on the judicial side passed by the Criminal Court can be challenged under Article 227 of the Constitution of India or by way of an Appeal or Revision. The challenge to the order of the Criminal Court cannot only be limited to Appeal or Revision, but the aforesaid can be challenged either by way of invoking jurisdiction under Article 227 of the Constitution of India, or Section 482 of the Code of Criminal Procedure, which is now Section 528 of the Bharatiya Nagarik Suraksha Sanhita.

9. I hold that the option available to the litigant to challenge the order passed by a Criminal Court is by way of filing an Appeal, Revision, an application under Section 482 of the Code of Criminal Procedure / Section 528 of the Bharatiya Nagarik Suraksha Sanhita and by invoking supervisory jurisdiction under Article 227 of the Constitution of India, subject to its jurisdictional restrictions and limitations.

10. Another offshoot issue also needs to be addressed here. The issue which needs to be considered is that what would be the nature of the application if an FIR along with the order taking cognizance is sought to be challenged, i.e., a composite application challenging the FIR and the order taking cognizance.

11. It has already been held above that order taking cognizance, which is order on the judicial side passed by the criminal Court is not amenable to the writ jurisdiction, i.e., jurisdiction under Article 226 of the Constitution, but,

if only an FIR is challenged, Article 226 of the Constitution can be invoked. In a situation where a composite application is filed challenging the FIR and the order taking cognizance, one has to see which challenge is predominant over the other. Once cognizance is taken by a Court, the order taking cognizance in my opinion will have a predominant effect over the FIR itself. Since the Court had already taken cognizance, perusing the FIR, chargesheet, police papers and other documents, the said order will naturally gain predominance over FIR. If cognizance qua the offence is quashed, then nothing remains. The petitioner gets the relief, which he has claimed. In this situation, it is the challenge to the cognizance order, which will govern the jurisdiction and nomenclature of the application. The order taking cognizance, thus, can be challenged along with the FIR by invoking jurisdiction under Article 227 of the Constitution or Section 482 of the Code of Criminal Procedure / Section 528 of the Bharatiya Nagarik Suraksha Sanhita.

12. In this context, it is to be noted that, in the case of **Neeta Singh (supra)**, before the High Court of Judicature at Allahabad, the First Information Report was challenged by invoking jurisdiction under Article 226 of the Constitution. As during the intervening period, chargesheet was filed and cognizance was taken, the High Court of Judicature at Allahabad dismissed the writ petition as rendered infructuous. This order was challenged before the Hon'ble Supreme Court, wherein the Hon'ble Supreme Court held that an order passed by the Criminal Court is not amenable to writ jurisdiction, but can be challenged under Article 227 of the Constitution of India / Section 482 of the Code of Criminal Procedure (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita) or by filing an Appeal or Revision. While dismissing the Special Leave Petition holding that the High Court was right in dismissing the writ petition as infructuous, it was observed that the petitioners can challenge the order taking cognizance of the offence including the FIR and the chargesheet in an appropriate proceeding in accordance with law.

13. Though what would be the appropriate proceeding has not been spelt out, but from reading of the entire judgment, it is clear that the same cannot be under Article 226 of the Constitution. This conclusion gains strength from the fact that if an application under Article 226 of the Constitution would have been the appropriate remedy, then mere an amendment adding the prayer would have served the purpose, but in that case the Hon'ble Supreme Court was of the opinion that appropriate proceeding should be filed challenging the order, which cannot be one under Article 226 of the

Constitution of India.

14. Thus, I hold that in a composite application where FIR and the order taking cognizance is challenged, an application under Article 227 of the Constitution or an application under Section 482 of the Code of Criminal Procedure (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita) would lie.

15. The petitioners also argued that even if an application is filed under Article 227 of the Constitution of India or Section 482 of the Code of Criminal Procedure (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita), nomenclature based on matter, the Court can mold the relief either under Article 227 of the Constitution of India or under Section 482 of the Code of Criminal Procedure / Section 528 of the Bharatiya Nagarik Suraksha Sanhita. As per them, nomenclature does not matter.

16. This issue has already been dealt with by the Hon'ble Supreme Court in the case of **Neeta Singh (supra)**. After referring the case of **Pepsi Foods (supra)** and also the case of **Kiran Devi versus Bihar State Sunni Wakf Board [(2021) 15 SCC 15]** the Hon'ble Supreme Court in the case of **Nita Singh (supra)** at paragraph 15 thereof, while relying upon the decision in the case of **State of Rajasthan versus Prakash Chand [(1998) 1 SCC 1]** has held that the nomenclature of a petition read with the substance thereof does matter. It has been held that much depends on what the subject matter of the petition is and who is entrusted to hear and decide. Importance of roster of the High Court has been taken note of by the Hon'ble Supreme Court, while holding that nomenclature does matter. Paragraph 15 of the judgment in the case of **Neeta Singh (supra)** reads as under: -

“15. In view of the decision in Prakash Chand (supra), we hold that nomenclature of a petition read with the substance thereof does matter. Much depends on what the subject matter of the petition is and who is entrusted to hear and decide it. A judge of a high court having been assigned petitions under Article 226 for hearing and decision by its Chief Justice cannot, if he (the Judge) finds that the petition filed under Article 226 should have ideally been filed under Article 227, treat the petition as one under Article 227 and proceed to hear and decide it, unless the Chief Justice has also assigned to such Judge petitions under Article 227 of the Constitution for hearing and decision. If not so assigned, the learned Judge may, in his discretion, direct the petition to be treated as one under Article 227 for being placed

before the learned Judge having assignment. This is mandatory and, therefore, one finds the caution sounded by this Court in the opening sentence of paragraph 26 of Pepsi Foods (supra) to be of extreme significance.”

17. In view of the aforesaid finding, if an application is filed under Article 227 of the Constitution, without a roster, a learned Judge cannot himself/herself invoke the jurisdiction.

18. Now, the next question that falls for consideration is if an application is filed under Article 227 of the Constitution of India before this High Court, challenging an order of the Criminal Court, what would be the nomenclature of the said petition.

19. Admittedly, from the High Court of Jharkhand Rules, I find that there is no nomenclature prescribed for a petition filed under Article 226 of the Constitution of India in the criminal side.

20. All the applications, which are filed under Article 226 of the Constitution of India in the criminal side in this High Court, the same is titled as “W.P.(Cr.)”. “W.P.” stands for Writ Petition. Writ Petitions are filed under Article 226 of the Constitution of India, as the aforesaid article is for issuance of prerogative of writs. Article 227 of the Constitution of India is not the writ jurisdiction. Bare perusal of provision of Article 227 of the Constitution of India, it is clear that it is a supervisory jurisdiction and not a writ jurisdiction. Thus, in my view, an application filed under Article 227 of the Constitution of India cannot be titled as “W.P.(Cr.)” in the criminal side.

21. The Hon’ble supreme Court in the case of ***Rita Raj versus P. Roychaudhuri & Anr. [Special Leave Petition (Criminal) Diary No.42975/2024 – order dated 09.12.2024]*** was dealing with an application filed under Article 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, which was filed before the High Court for quashing the FIR and order taking cognizance. The matter reached Hon’ble Supreme Court from the High Court of New Delhi. On 09.12.2024 in the aforesaid case, the Hon’ble Supreme Court in the 3rd paragraph of the order (though not numbered by the Hon’ble Court), has held as follows: -

“We are amazed to note that though the petition was filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C., it has been titled as ‘Writ Petition(Criminal)’, which on the face of it appears to be incorrect as a petition under Article 227 of the Constitution of India or under Section 482 Cr.P.C. should not be described or titled as a Criminal Writ Petition.”

Further, in the last paragraph in the above case ***Rita Raj (supra)***, while noticing the Registrar General of High Court of Delhi, the Hon'ble Supreme Court has observed as follows: -

“On the next date of hearing, the Registrar General of the High Court of Delhi shall satisfy us as to how such a petition filed under Article 227 of the Constitution of India read with Section 482 Cr.P.C. was described and titled as a Writ Petition(Criminal).”

22. From the aforesaid order of the Hon'ble Supreme Court, it is clear that the Hon'ble Supreme Court is of the view that an application filed under Article 227 of the Constitution of India or a petition under Section 482 of the Code of Criminal Procedure should not be described and titled as Writ Petition (Criminal). When the matter was again listed on 03.02.2025 before the Hon'ble Supreme Court, it was submitted by the Registrar General of the High Court of Delhi on affidavit that the nomenclature of the petition in the High Court was incorrect and it is a mistake. The Hon'ble Supreme Court accepted the affidavit and discharged the notice.

23. This clearly suggests that whatever may be the nomenclature, it cannot be W.P.(Cr.). Thus, an application filed under Article 227 of the Constitution of India in the criminal side cannot be titled as W.P.(Cr.). Once I hold that the application under Article 227 of the Constitution of India in the criminal side cannot be titled as W.P.(Cr.), the question, which would consequentially arise is what should be the title or nomenclature of such petitions.

24. As observed earlier, there is no nomenclature prescribed in the High Court of Jharkhand Rules for an application under Article 227 of the Constitution of India in the criminal side though in the civil side an application under Article 227 of the Constitution of India is titled as “CMP”. Be it noted that an application under Section 482 of the Code of Criminal Procedure (now Section 528 of the Bharatiya Nagarik Suraksha Sanhita) is titled as “Cr.M.P.”. In my opinion, it is the Full Court on the administrative side, which can decide the nomenclature / title of the petitions to be filed/ or already filed under Article 227 of the Constitution of India in the criminal side.

25. Since there is no new nomenclature for an application on the criminal side, filed under Article 227 of the Constitution of India, and in view of the observations of the Hon'ble Supreme Court in the case of ***Rita Raj (supra)***, which is also binding on the High Court of Jharkhand, in my view also such petitions cannot be titled as W.P.(Cr.), which is the existing nomenclature prior

to the amendment of the Rules. Thus, it can only be determined and prescribed by the Full Court in the administrative side.

26. Since the matter is of utmost importance and several petitions will be affected by this order, Registry is directed to take appropriate steps immediately for placing the issue before the Full Court on its administrative side after taking approval of the Hon'ble Chief Justice.

27. Another point for consideration would be what would be the fate of those pending writ petitions, where a judicial order is under challenge, which have been filed under Article 226 of the Constitution of India after this order. As held earlier, the applications are not maintainable, but dismissing the applications will put the litigants to loss of time and money. In some cases, interlocutory application has been filed, praying therein to amend the provision of law to convert the petition under Article 226 of the Constitution of India to that of under Article 227 of the Constitution of India. In my view, similar opportunity should be given to all the petitioners to file an appropriate application praying therein to convert their respective applications filed under Article 226 of the Constitution of India to that under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure / Section 528 of the Bharatiya Nagarik Suraksha Sanhita. This will be only for the applications where the FIR along with the judicial order is under challenge. So far as an application, where only the FIR is sought to be quashed, the application under Article 226 of the Constitution of India is maintainable.

28. In view of the discussions made above, the findings are crystalised as follows: -

- (i) Writ Petitions filed under Article 226 of the Constitution of India challenging the orders passed by the Criminal Courts are not maintainable. The option available to the litigant is by way of filing an Appeal, Revision, an application under Section 482 of the Code of Criminal Procedure / Section 528 of the Bharatiya Nagarik Suraksha Sanhita or by an application invoking jurisdiction under Article 227 of the Constitution of India;
- (ii) In a composite application where the FIR is challenged along with the order taking cognizance or any judicial order, considering the predominance of the order taking cognizance, which is a judicial order, an application under Section 528 of the Bharatiya Nagarik Suraksha

Sanhita or Article 227 of the Constitution is only maintainable with its respective inherent jurisdictional restrictions. An application under Article 226 of the Constitution is not maintainable.

- (iii) Petitions filed under Article 227 of the Constitution of India in the criminal side cannot be titled or described as W.P.(Cr.);**
- (iv) Since there is no nomenclature prescribed in the High Court of Jharkhand Rules for an application under Article 227 of the Constitution of India in the criminal side, as such, to determine or prescribe the nomenclature / title of an application/petition, filed under Article 227 of the Constitution of India in the criminal side, the matter be placed before the Full Court in the administrative side for taking an appropriate decision with the approval of the Hon'ble Chief Justice.**

29. The objection on the point of maintainability of the writ petitions filed under Article 226 of the Constitution of India is answered accordingly.

30. List all these applications after summer vacation under appropriate heading.

31. Let a copy of this order placed before the Registrar General of this Court and Stamp Report concerned for doing the needful.

(Ananda Sen, J.)

Kumar/Cp-02
AFR