

A.F.R.

Court No. - 29

Case :- SPECIAL APPEAL No. - 234 of 2023

Appellant :- Vinod Kumar Gupta And Another

Respondent :- Sri Veer Bahadur Yadav,S.D.M. And Another

Counsel for Appellant :- Shashi Kant

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Vikas Budhwar,J.

(By Vikas Budhwar,J.)

1. This intra-court appeal is against the judgment and order dated 17.03.2023 passed by the learned Single Judge exercising contempt jurisdiction in Contempt Application (Civil) No.1894 of 2023, by which the learned Single Judge upon finding that the opposite party has not committed contempt, has declined to initiate proceedings for contempt.

2. The case of the writ petitioner before the Contempt Court was that on 07.09.2022 in Public Interest Litigation (PIL) No. 1686 of 2022 (Vinod Kumar Gupta and others vs. State of U.P. and 3 others), liberty was accorded to the appellant-petitioner to approach the appropriate forum under Section 67 of the U.P. Revenue Code, 2006 for removal of encroachments on the public land, however, despite the fact that the appellant-writ petitioner represented his cause before the competent authority on 21.09.2022, 01.10.2022 and 15.02.2023, no action was taken at the level of the opposite parties, which occasioned the appellant-writ petitioner to institute contempt petition alleging disobedience of the orders of the Writ-Court.

3. Submission is that a clear cut case of contempt is made out against the opposite parties, but the learned Single Judge has erred in law in declining to exercise its jurisdiction vested under Section 12 of the Contempt of Courts Act, 1971.

4. The appellant-writ petitioner has relied upon the judgment in the case of ***Durga Nagpal Vs. Committee of Management, Patronage Institute of Management Studies***, reported in **2013 (7) ADJ 223**, so as to contend that the present intra-court appeal against the order of learned Single Judge declining to initiate contempt proceedings, is maintainable.

5. Before delving into the issue regarding the maintainability of the present proceedings at the behest of the appellant, this Court finds

appropriate to give a brief outline of the statutory enactments governing law of contempt.

6. Historically, Pre-Independence, **the Contempt of Courts Act, 1926 (Act No. XII of 1926)**, was notified on 8.3.1926 by the Governor General of the Council. The Contempt of Courts Act, 1926 is extracted in extenso:

"The Contempt of Courts Act, 1926

ACT NO. XII OF 1926

[8th March, 1926]

An Act to define and limit the powers of certain Courts in punishing contempts of Courts.

WHEREAS doubts have arisen as to the powers of a High Court of Judicature to punish contempts of subordinate Courts: And whereas it is expedient to resolve these doubts and to define and limit the powers exercisable by High Courts and Chief Courts in punishing contempts of Courts. It is hereby enacted as follows:

- 1. (1) This Act may be called the Contempt of Courts Act, 1926.*
 - (2) It shall extend to the whole of British India.*
 - (3) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.*
- 2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by Letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of courts sub-ordinate to them as they have and exercise in respect of contempts of themselves.*
 - (2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub-section (1).*
 - (3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.*
- 3. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:*

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court."

7. Thereafter the Governor General on 10.3.1937 amended the Contempt of Courts Act, 1926 by virtue of Act No. XII of 1937 being **the Contempt of Courts (Amendment) Act, 1937**. For the convenience of this Court, the same is quoted hereinbelow:

"The Contempt of Courts (Amendment) Act, 1937*

ACT NO. XII OF 1937

An Act to amend the Contempt of Courts Act, 1926, for a certain purpose. WHEREAS it is expedient to amend the Contempt of Courts Act, 1926, for the purpose hereinafter appearing; it is hereby enacted as follows:

1. Short title. This Act may be called the Contempt of Courts Amendment Act, 1937.

2. Amendment of preamble to Act XII of 1926. In the preamble to the Contempt of Courts Act, 1926 (hereinafter referred to as the said Act), the word "subordinate" shall be omitted.

3. Amendment of section 3, Act XII of 1926. To section 3 of the said Act the following proviso shall be added, namely:

"Provided further that notwithstanding anything elsewhere contained in any law no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it."

8. Post Independence, another Act by the name and the nomenclature of the Contempt of Courts Act, 1952 (Act No. XXXII), 1952 was notified which received the assent of President on 14.3.1952. The same reads as under: -

"The Contempt of Courts Act, 1952*

ACT NO. XXXII OF 1952

An Act to define and limit the powers of certain Courts in punishing Contempts of Courts:

1. Short title and extent. (i) This Act may be called the Contempt of Courts Act, 1952.

(ii) It extends to the whole of India except the State of Jammu and Kashmir. 2. Definition. In this Act, "High Court" means the High Court for a State and includes the Court of the Judicial Commissioner in a Union Territory.

3. Power of High Court to punish contempts of subordinate courts. (i) Subject to the provisions of sub-section (ii) every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercise in respect of contempts of itself.

(ii) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (Act XLV of 1860).

4. Limit of punishment for contempt of court. Save as otherwise expressly provided by any law for the time being in force, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court:

Provided further that notwithstanding anything elsewhere contained in any law for the time being in force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a court subordinate to it.

**Received the assent of the President on 14th March 1952*

5. Power of High Court to try offences committed or offenders found outside jurisdiction. A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of the contempt is within or outside such limits.

6. Repeal and Savings. (i) The Contempt of Courts Act, 1926 (XII of 1926), and the enactment specified in the Schedule are hereby repealed.

(ii) Section 6 of the General Clauses Act, 1897 (X of 1897), shall apply to the repeal of any of the laws specified in the Schedule as it applies to the repeal of the Contempt of Courts Act, 1926 (XII of 1926).

The Schedule

[Repealed]."

9. As there was certain areas, which were not covered under Contempt of Courts Act, 1952, thus a Sanyal Committee was constituted which in turn submitted its report on 28.2.1963 proposing certain amendments and additions in the Contempt of Courts Act. The Sanyal Committee under Chapter XI for the very first time recommended introduction of a provision of "right of appeal". For the convenience, Chapter XI and XII in extenso are quoted hereinunder:

"Chapter XI

Right of Appeal

1. The feature of the law of contempt which has given rise to considerable criticism relates to the non-appealability as of right of a sentence passed for criminal contempt. It is urged that much of the criticism against the large powers of the court to punish contemnors will disappear if a right of appeal is provided. In an earlier Chapter, we have pointed out how Judges, like other human beings, are not infallible and inasmuch as any sentence of imprisonment for contempt involves a fundamental question of a personal liberty, it is only proper that there should be provision for appeal as a matter of course. As the Shawcross Committee observed: "..... in every system of law of any civilized State there is always a right of appeal against sentence of imprisonment." There is no justification whatsoever for making any exception to this universally recognized principle in the case of sentences for contempt.

2.1 The present state of the law relating to appeal in cases of criminal contempt appears to be more the result of accidents of legal history than a matter of policy. That this is so, is clearly evident from the fact that in these cases of contempt for which specific provision is made in the Indian Penal Code and the Code of Criminal Procedure, a right of appeal is provided for under Section 486 of the Code of Criminal Procedure. In the case of contempt falling within the purview of inherent powers of the High Courts no specific provision has been made in the Letters Patent of the High Courts and the only explanation for this seems to be that no such provision was made in England in regard to the English superior courts. Further, under the provisions of the Letters patent, no appeal is ordinarily permissible where the order of the court is made in the exercise of the criminal jurisdiction. It has also been held that section 411-A of Code of Criminal Procedure does not afford any remedy by way of appeal in contempt cases. 2 The result has been that before the Constitution came into force, an appeal in contempt cases from the decision of a High Court could lie only on special cases to the Judicial Committee. 3 The Constitution did not alter this position very

much for the effect of Articles 134 and 136 of the Constitution is merely to substitute the Supreme Court for the Privy Council. In short, there is only a discretionary right of appeal available at present in cases of criminal contempt.

2.2 The discretionary right of appeal in contempt cases so far as it goes has served a very useful purpose both in the direction of setting aside erroneous decisions as also in the direction of bringing about some degree of uniformity and certainty in regard to the principles of law relating to contempt. The Shawcross Committee has referred to eight reported cases in which convictions for criminal contempt were considered by the Judicial Committee of the Privy Council on merits, those being the only cases of the type which they could discover. They have pointed out that it is noteworthy that in every case except one (in which the fine was reduced), the appeal was allowed and the conviction quashed. The story of the cases which have come up on appeal before our Supreme Court is not very much different. In a considerable majority of the cases the Supreme Court has found it necessary either to modify or reverse the decision of the High Court. Mention may be made in this connection of the following:

(1) *Rizwan-ul-Hasan v State of Uttar Pradesh, 1953 SCR 581*

(Judgment of High Court set aside).

(2) *Brahma Prakash v State of Uttar Pradesh, 1953 SCR 1169*
(Judgment of High Court set aside).

(3) *Shareef v Hon'ble Judges of the High Court of Nagpur, (1955) 1 SCR 757*

(opportunity given to the High Court to accept the apology by contemners and on failure by the High Court, sentence of fine passed by the High Court set aside).

(4) *State of Madhya Pradesh v Revashankar, 1959 SCR 1367*

(High Court's interpretation of Section 3(2) of the Contempt of Courts Act, 1952, held erroneous).

(5) *S.S. Roy v State of Orissa, AIR 1960 S.C. 190*

(Judgment of High Court set aside).

(6) *B.K. Kar v Chief Justice and his companion Justices of the Orissa High Court. A.I.R. 1961 S.C. 1367*

(Judgment of High Court set aside).

3.1 It may be said that the discretionary right of appeal as it exists at present is adequate as in most of the cases the High Court itself may grant the appropriate certificate under Article 134 in fit cases and where

the High Court refuses, the Supreme Court may intervene by granting special leave under Art. 136. There is, no doubt, some force in this argument and it is perhaps for this reason that in one or two of the suggestions received we have been told that it is not necessary to provide for appeals as a matter of right or that the right may be allowed only if the sentence exceeds a certain limit. But considering the uncertain state of the law and the fact that an appeal should be provided as a matter of course in all criminal cases, we are of the opinion that a right of appeal should be available in all cases and we accordingly recommend that against an order of a single judge, punishing for contempt, the appeal should lie, in the High Court to a Bench of Judges and against a similar order of a Bench of Judges of a High Court, the appeal should lie as of right to the Supreme Court.

3.2 The recommendation we have made in regard to allowing appeals in contempt matters as a matter of right will bring our law in line with the developments that have taken place in English law in recent years. We do not mean to suggest that we should give effect in our land to every change which has taken place in England. But there can be no doubt that if in the system from which our law is derived a change has been felt necessary, that would be a strong argument for reviewing the position in our law also with a view to finding out whether a parallel change is necessary or not. The reasons for which English law has been changed may be best stated in the words of the Shawcross Report ¹⁰:

"First, there is the special difficulty of defining the law of contempt. We have indicated in this Report the difficulty of defining the law of contempt in its application to particular instances. Further, where definition is not so difficult (as in the case of reports of proceedings in chambers) the fact that there is no right of appeals and the divergence of judicial views has sometimes meant that it cannot be said at all with any confidence what the law is; the result in any particular case must then depend on the view which the particular court before whom it comes chooses to take. Thus we consider to be a serious defect but one which can be cured by granting a right of appeal. Secondly, an issue of fact does not usually arise in contempt cases--the question being whether what was done amounted to a contempt or not. Thirdly, the danger to the administration of justice of the conduct complained of has often to be weighed against other matters of public concern such as the liberty of free discussion. Thus the issue of contempt is not only particularly suitable for determination by an appellate court, but it is particularly

where an affront to a Judge is charged, the experience of the Privy Council appears to show that the right of appeal does rectify wrong."

It would be clear from what has been stated earlier that these reasons apply with equal force in the case of our system also and it is for these reasons that we have made the recommendation that a provision should be made for appeal as of right in the case of contempt.

*3.3 The Shawcross Committee in its Report, adverted to an alleged insuperable difficulty about appeal in the case of a contempt committed in facie the court, namely that if the case were disputed it would involve the committing judge being a witness on appeal and pointed out that such a difficulty arises but rarely and that in the only case in which it arose-Rainy's case-the Privy Council was able to overcome it. Be that as it may, so far as our country is concerned such a situation cannot possibly arise after the decision of the Supreme Court in the recent case of **B.K. Kar v Chief Justice of Orissa, AIR 1961 SC 1367**. In this case the Supreme Court considered the question whether in cases of appeals in contempt cases the Chief Justice and Judges of the High Court which decided the case originally should be made parties. Madholkar J., holding that they ought not to be made parties, observed:*

" ...Where judges of a High Court try a person for contempt and convict him they merely decide a matter and cannot be said to be interested in any way the ultimate result in the sense in which a litigant is interested. The decision of judges given in a contempt matter is like any other decision of those judges that is, in matters which come up before them by way of suit, petition, appeal or reference."

Once this position is established, it follows that the presence of the judges as witnesses is as much uncalled for in appeals in contempt cases as in appeals in other cases decided by them. We may also add that in view of the recommendation, we have made as to procedure in contempt cases, all the material required by an appellate court would be available in writing and there would then be little need for the judges being summoned to appear as witnesses.

***4. Purge of contempt.** In this connection we would also like to refer to the rule of practice observed by Court that a person in contempt cannot be heard in prosecution of his appeal until he purges himself of the contempt. 13 This rule, no doubt, I based on sound reasons but in the light of the discussions preceding it would not be difficult to conceive that it may work hardship in many cases. In our opinion, the law should contain suitable provisions for meeting such a contingency. For this purpose, we recommend that both the appellate court and the court from*

whose judgment the appeal is being preferred should have the power to stay execution of the sentence to release the alleged contemner on bail and to hear the appeal or allow it to be heard, notwithstanding the fact the appellant has not purged himself of the contempt.

Chapter XII Conclusion

1. Our main conclusions and recommendations may be summarized as follows:--

(1) Confidence in the administration or justice is essential for the preservation of our liberty and nothing should be done which may tend to undermine that confidence.

(2) At the same time, as the jurisdiction to punish for contempt trenches upon two important fundamental rights, namely the right of personal liberty and freedom of speech and expression-rights which are of the vital importance in any democratic system the law of contempt of court should be viewed mainly from the standpoint of these rights rather than on the basis of its origin or its present position in other countries.

(3) The contempt of Courts Act, 1952, though sound so far as it goes, touches only the fringes of the subject. While its existing provisions should be continued, there is need for widening considerably the scope of the Act.

(4) Under the Constitution, Parliament is competent to legislate on contempt of courts subject only to the limitations that it cannot (i) abrogate, nullify or transfer to some other authority, the power of the superior courts to punish for contempt, (ii) exercise its power so as to stultify the status and dignity of the superior courts, and (iii) impose any unreasonable restrictions on the fundamental right of the citizen to freedom of speech and expression.

(5) Contempt cannot be defined except by enumerating the heads under which it may be classified-heads which can never be exhaustive-and a definition merely incorporating such heads under which criminal contempt or even contempt as a whole is generally classified, would be useless as a definition and is totally unnecessary.

(6) Delimitation of the concept of contempt by the exclusion of any particular head is not possible as none of the recognized heads become obsolete. The assumption once made that contempt by scandalizing has become obsolete has been proved to be erroneous.

(7) Want of knowledge of a pending proceeding, whether civil or criminal, should afford a complete defence to a person accused of contempt.

(8) The rule of contempt in relation to imminent proceedings may be abolished so far as civil cases are concerned. As regards criminal cases, want of knowledge should be a complete defence as in the case of pending proceedings. Further, where in respect of an offence, no arrest has taken place, a presumption should be drawn in favour of the alleged contemner, that proceedings are not imminent.

(9) A case which has reached the stage of execution shall not be deemed to be a pending case for the purpose of the law of contempt.

(10) An innocent distributor of a newspaper or other publication, that is to say, a person who had no reasonable ground for believing that a publication distributed by him contained any offending matter, shall not be guilty of contempt of court.

(11) The burden of establishing any of the defences aforesaid shall be on the alleged contemner.

(12) No contempt proceeding in respect of the publication of the text or a fair and accurate summary of the whole or any part of an order made by a court sitting in chambers or in camera shall not be competent unless the court has expressly prohibited the same in exercise of any power conferred by any enactment for the time being in force.

(13) Cases of contempt in violation of secrecy should be confined within clearly defined limits and secrecy may be enjoined with regard to judicial proceedings only in exceptional cases mentioned in paragraph 51 of Chapter VIII. Contempt proceedings in relation to cases of secrecy should be initiated only when no other punishment is prescribed.

(14) Some of the existing defences open to an alleged contemner may be given express statutory recognition. These are:
(i) that a person shall not be guilty of contempt for publishing a fair and accurate report of a judicial proceeding or any stage thereof;

(ii) that a person shall not be guilty of contempt for publishing any fair comments on the merit of any case which has been heard and finally decided or on the conduct of any judge, if it be for the public good, the question of public good being in each case a question of fact;

(iii) that a person shall not be guilty of contempt in respect of any statement made by him in good faith concerning the presiding officer of any court subordinate to a High Court, say, to the Chief Justice of that High Court.

(15) As a matter of caution, it may be provided that the provisions recommended for inclusion in the Bill shall not be construed as in any way enlarging the scope of contempt as otherwise understood or as

affecting any other defence which may be open to an alleged contemner.

(16) The general rule of procedure applicable in contempt cases should be formulated clearly.

(17) In the case of contempts committed in the face of the court, the present summary powers of court have to be continued and a simple procedure consisting of oral appraisal of the charge to the contemner, the giving of an opportunity to him, to make his defence and provisions as to bail and custody, on the lines suggested in paragraph 4 of Chapter X may be adopted.

(18) Applications for transfer of proceedings for contempt committed in the face of the court may be entertained by the judge in whose presence the contempt is committed and if he feels that in the interests of proper administration of justice the application should be allowed, and that it is practicable to do so, he should cause the matter to be placed before the Chief Justice for his directions.

(19) A criminal contempt (other than a contempt committed in the face of the court) should be heard only by a Bench of not less than two judges except in cases where the court consists of one judge, e.g., Court of the Judicial Commissioner. That contempt may be taken cognizance of only on a motion or on a reference made by some other agency. That is to say, in the case of the Supreme Court, the motion may be mad by the Attorney-General or a person authorized by him, and, in case of High Court by the Advocate-General or a person authorized by him. Such motion may be either on the initiative of the Attorney-General or the Advocate General, as the case may be, or at the instance of the court concerned. Where the contempt is that of a subordinate court, action may be taken on a reference made by that court.

(20) The motion or reference should specify the act constituting the contempt and the law should embody provisions as to service of notice of the proceedings and as to the defence of the person charged on the lines indicated in paragraph 6 of Chapter X.

(21) A provision may be made that no court shall punish anyone for contempt unless the contempt is of such a nature as substantially to interfere with the due course of justice.

(22) The provisions of the Contempt of Courts Act, 1952, as to punishment and apology may be continued but it may be made clear that in cases of civil contempt, where fine is not an adequate punishment, the punishment of simple imprisonment to be awarded should consist of detention in a civil prison for a term not exceeding the prescribed statutory period.

(23) It may also be provided that in cases where the person found guilty of contempt in respect of any undertaking given to a court is a corporation, the punishment may be enforced, with the leave of the court, by the detention in a civil prison of the directors or principal officer of the corporation.

(24) Every order of punishment for contempt shall state the facts consisting the contempt, the defence of the person charged, the substance of the evidence taken, if any, as well as the finding and the punishment awarded.

(25) Provision may be made for an appeal as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt. The appeal should lie to a Bench of Judges of the High Court where the order or decision is of a single Judge. Where the order or decision is of a Bench the appeal should lie to the Supreme Court.

(26) The rule of practice as to 'purge' of contempt may work hardship in many cases and, therefore, both the appellate court and the court from whose judgment or order an appeal is being preferred should have the power to stay execution of the sentence, to release the alleged contemner on bail and to hear the appeal or allow it to be heard, notwithstanding the fact that the appellant has not purged himself of the contempt.

(27) The Supreme Court may, in the interest of uniformity, be conferred power to make rules to supplement, where necessary, the rules of procedure recommended by us. It may also be provided that the Supreme Court may make rules in relation to High Courts only after consulting the High Courts."

10. Consequently, the Contempt of Court Bill 1963 containing the heading "**A BILL TO DEFINE AND LIMIT THE POWERS OF CERTAIN COURTS IN PUNISHING CONTEMPT OF COURTS AND TO REGULATE THEIR PROCEDURE IN RELATION THERETO**" was placed before the Appropriate Legislature. Paragraphs 19 and 20 of the said Bill are quoted hereinunder:

"19. Appeals. (1) An appeal shall lie as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that-

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail, and

(c) the appeal be heard notwithstanding that the appellant has not purged himself of the contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by in sub-section (2).

(4) An appeal under sub-section (1) shall be filed:

(a) in the case of an appeal to a Bench of the High Court, within twenty days; and

(b) in the case of an appeal to the Supreme Court, within a period of sixty days;

from the date of the order appealed against.

20. Punishment how to be carried in certain cases. *(1) Notwithstanding anything contained in Section 12, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary, shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period, not exceeding six months, as it may think fit.*

(2) Where the person found guilty of contempt of court in respect of any undertaking given to a Court is a Corporation, the punishment may be enforced with the leave of the Court, by the detention in civil prison of the Directors or principal officers of the Corporation."

11. Eventually the Contempt of Courts Act, 1971 being Act No. 70 of 1971 came to be notified on 24.12.1971. Relevant extract of Section 19 of the Contempt of Courts Act, 1971 is quoted hereinunder:

"19. Appeals. *(1) An appeal shall lie as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt*

(a) where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the (2) Pending any appeal, the appellate Court may order that

Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed - (a) in the case of an appeal to a Bench of the High Court, within thirty days; (b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

12. A perusal of Section 19 of the Contempt of Courts Act of 1971 reveals that under sub-section (1) of Section 19 of 1971 Act, an appeal shall lie as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt where the order or decision is that of a single judge, to a Bench of not less than two Judges of the Court and where the order or decision is that of a Bench to the Supreme Court.

13. Notably, for the very first time, the provision of preferring of an appeal stood engranted in the Contempt of Courts Act 1971 as prior to it, there was no provision of filing of an appeal.

14. Apart from the same, Chapter VIII Rule 5 of the Rules of the Court deals with Special Appeals and provides as under: -

"5. Special appeal :- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of the jurisdiction conferred by

Article 226 or Article 227 of the Constitution in respect of any judgment, order or award--(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge."

15. Chapter VIII Rule 5 of the Rules of the Court provides that an appeal shall lie to the Court from a judgment not being a judgment passed in exercise of appellate jurisdiction in respect of a decree or order made by the Court subject to the superintendence of the Court and not being an order made in exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award of a Tribunal, Court or Statutory Arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the 7th Schedule of the Constitution or of a Government, any officer or authority made or purported to be made in exercise or purported exercise of appellate or revisional jurisdiction under such Act of one Judge.

16. Before proceeding further, this Court is to examine the authoritative pronouncement of Hon'ble Supreme Court and this Court on the said subject.

17. To start with, it would be appropriate to refer to the judgment of Hon'ble Supreme Court in the case of ***Baradakant Mishra vs. Justice Gatikrushna Misra reported in (1975) 3 SCC 535***. In paragraph 5 whereof it is held as under:

"5. Now, while considering this question, we must bear in mind the true nature of the contempt jurisdiction exercised by the High Court and the law in regard to right of appeal which obtained immediately prior to the enactment of the Contempt of Courts Act, 1971. It has always been regarded as well-settled law that as far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a statutory or

*common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to have been committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is prima facie satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a prima facie case appears to have been made out. The same position obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its discretion accept an unconditional apology from the alleged contemner and drop the proceeding for contempt, or, even after the alleged contemner is found guilty, the Court may, having regard to the circumstances, decline to punish him. So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner. An outside party comes in only by way of drawing the attention of the Court to the contempt which has been committed: he does not become a part to the proceeding for contempt which may be initiated by the Court. It was for this reason that a Division Bench of the **Bombay High Court held in Narendrabhai Sarabhai Hatheesing v. Chinubhai Manibhai Seth ILR 60 Bom 894** that an order made by the High Court refusing to commit a man for breach of an undertaking given to the Court is not a judgment within the meaning of clause 15 of the letters patent as it does not affect the merits of any question between the parties to the suit. Beaumont, C.J., pointed out: The undertaking is given to the Court; if it is broken, and that fact is brought to the Court's notice, the Court may take such action as it thinks fit. If it comes to the conclusion that the order has been deliberately broken, it will probably commit the defaulter to jail, but the Court is free to adopt such course as it thinks fit.*

Rangnekar, J., also spoke in the same strain when he said:

"Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of

course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so, then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made on such an application by which the Court in its discretion refuses to take any action against the party alleged to be in the wrong can be said to raise any question between the parties. "

It is, therefore, clear that under the law as it stood prior to the enactment of the Contempt of Courts Act, 1971 no appeal lay at the instance of a party moving the High Court for taking action for contempt, if the High Court in the exercise of its discretion refused to take action on the motion of such party. Even if the High Court took action and initiated a proceeding for contempt and in such proceeding, the alleged contemner, being found guilty, was punished for contempt, the order being one made by the High Court in the exercise of its criminal jurisdiction, was not appealable under clause 15 of the letters patent, and therefore, no appeal lay against it from a Single Judge to a Division Bench and equally, there was no appeal as of right from a Division Bench to this Court. The result was that in cases of criminal contempt, even a person punished for contempt had no right of appeal and he could impugn the order committing him for contempt only if the High Court granted the appropriate certificate under Article 134 in fit cases or on the refusal of the High Court to do so, this Court intervened by granting special leave under Article 136."

18. In the case of **D.N. Taneja vs. Bhajan Lal** reported in **1988 (3) SCC 26**, the Hon'ble Apex Court has held as under:

"8. The right of appeal will be available under sub-section (1) of section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has

been noticed earlier; an appeal will lie under section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.

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11. *It does not, however, mean that when the High Court erroneously acquits a contemnor guilty of criminal contempt, the petitioner who is interested in maintaining the dignity of the court will not be without any remedy. Even though no appeal is maintainable under section 19(1) of the Act, the petitioner in such a case can move this Court under Article 136 of the Constitution. Therefore, the contention, as advanced on behalf of the appellant, that there would be no remedy against the erroneous or perverse decision of the High Court in not exercising its jurisdiction to punish for contempt, is not correct. But, in such a case there would be no right of appeal under section 19(1), as there is no exercise of jurisdiction or power by the High Court to punish for contempt. The view which we take finds support from a decision of this Court in *Paradakanta Mishra v. Mr. Justice Gatikrushna Mishra*, [1975] 1 SCR 524.*

12. *Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt*

only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under section 19(1) can only be the contemnor who has been punished for contempt of court."

19. The Hon'ble Apex Court in the decision of ***State of Maharashtra vs. Mahboob S. Allibhoy and another*** reported in (1996) 4 SCC 411, in paragraphs 3 has held as under:

"3. The preliminary question which has to be examined as to whether in the facts and circumstances of the case an appeal is maintainable against an order dropping the proceeding for contempt. It is well settled that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or course.

On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under subsection (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. 'Any order' is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

4. It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person person who who is alleged to have committed the contempt of court. The informs the court or brings to the notice of the court that

anyone has committed the contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case.

No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub section (1) of Section 19 but also from sub-section (2) of Section 19 which provides that pending any appeal the appellate Court may order that

(a) the execution of the punishment or the order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

Sub-section (2) of Section 19 indicates that the reliefs provided under clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court.

5. But even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases he can invoke the jurisdiction of this Court under Article 136 of the Constitution and this Court on being satisfied that it was a fit case where proceeding for contempt should have been initiated, can set aside the order passed by the High Court. In suitable cases, this Court has to exercise its jurisdiction under Article 136 of the Constitution in the larger interest of the administration of Justice."

20. Yet the Hon'ble Apex Court, in the decision in ***Midnapore Peoples' Cooperative Bank Ltd.*** (*supra*), had taken note of the earlier decisions and culled out the principles of law governing the maintainability of appeals under Section 9 of the Contempt of Courts Act. Paragraph 11 whereof is quoted hereinunder:

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarized thus :

I. An appeal under section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under section 19 of the Act, can also encompass the incidental or inextricably connected directions. V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

21. In a decision in the case of ***Sujitendra Nath Singh Roy vs. State of West Bengal and others*** reported in (2015) 12 SCC 514, the Hon'ble Apex Court while considering the earlier judgment in paragraph-5 has observed as under: -

"5. There is no caveat to the proposition of law that under Section 19 of the Contempt of Courts Act, 1971 an appeal lies before the Supreme Court only against such order of the High Court which imposes punishment for contempt and no appeal will lie against an interlocutory order or an order dropping or refusing to initiate contempt proceedings. This was clearly laid down in the case of State of Maharashtra v. Mahboob S. Allibhoy (1996) 4 SCC. This view was also followed in several cases including in the case of Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda (2006) 5 SCC 399."

22. This Court in the case of ***A.P. Verma vs. U.P. Laboratory Technicians Association and others***, in C.M. Contempt Appeal No. 102

fo 1997, reported in **Manu/UP/0553/1998**, in paragraph 3 has held as under: -

“The same view was taken in Pursottam Dass v. B. S. Dhillan, AIR 1978 SC 1014. In D. N. Taneja v. Bhajan Lal, 1998 SCC (Cri) 546, it was reiterated that the right of appeal is available under sub-section (1) of Section 19 only against any decision or order of a High Court in the exercise of its jurisdiction to punish for contempt.”

23. In the case of **Maheshwari Prasad Mishra vs. Smt. Achala Khanna** reported in **(2006) 64 ALR 627 (All)**, in paragraph 4, this Court has observed as under:

"On consideration of the matter, we are firmly of the opinion that the instant appeal under Section 19 of the Contempt of Courts Act is not at all maintainable. The Supreme Court has held in the case of State of Maharashtra v. Mahboob S. Allibhoy and Anr. that no appeal is maintainable against an order dropping proceedings for contempt or refusing to initiate a proceeding for contempt. It has also been ruled that even if no appeal is maintainable on behalf of the person at whose instance a proceeding for contempt had been initiated and later dropped or whose petition for initiating contempt proceedings has been dismissed, is not without any remedy. In appropriate cases, he can invoke the jurisdiction of Supreme Court under Article 136 of the Constitution and the Supreme Court on being satisfied that it was a fit case where proceedings for contempt should have been initiated can set aside the orders passed by the High Court."

24. Following above noted judgments, a coordinate Bench of this Court in the case of **Mrs. Manju Sree Robinson vs. Mrs. Chirkumarithva Yadav ACJ (J.D.)** reported in **(2014) 86 ACC 181**, has observed as under:

"17. No appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt is apparent not only from sub section (1) of Section 19 but also from subsection (2) of Section 19 which provides that pending any appeal the appellate Court may order that

(a) the execution of the punishment or the order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt."

25. The proposition of law so culled out in the above noted decision clearly spells out that no appeal is maintainable against dropping of

contempt proceedings against the contemnor under Section 19 of the Contempt of Courts Act, 1971, as the remedy lies under Article 136 of the Constitution of India before the Hon'ble Supreme Court.

26. So far as the issue with regard to maintainability of a Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules is concerned, an appeal is maintainable only on those contingencies wherein the Contempt jurisdiction has been exercised while touching the merit of the controversy or dispute between the parties for the purposes of implementation of the judgment or order and the same has been held to be deemed to have been issued in exercise of power conferred by Article 226 of the Constitution.

27. In the case of *Midnapore People's Cooperative Bank Ltd.* (*supra*), the Hon'ble Apex Court while answering point 'i' in paragraph-11 (IV and V) had held that any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the Contempt of Courts Act, as the only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act would be maintainable. It was further provided that if the High Court for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy, as the same can be challenged in the intra-court appeal.

28. In the case of *A.P. Verma* (*supra*), a coordinate Bench of this Court has held as under: -

"Thus there can be no doubt that in any proceeding initiated under the Contempt of Courts Act, the High Court can either punish or discharge the alleged contemner and in doing so, it can pass all such ancillary orders which are necessary for exercise of such power but it cannot directions or orders regarding the main dispute or controversy between the parties which has led to the filing of writ petition by either of the parties. However, if any order or direction is made by the Court concerning the merit of the controversy or dispute between the parties, or for implementation of any judgment or order, it will be de hors the provision of Contempt of Courts Act and they can only be deemed to have been issued in exercise of power conferred by Article 226 of the Constitution. Such direction would, therefore, be amenable to an appeal under Chapter VIII, Rule 5 of the Rules of the Court as they are not issued in exercise of any power conferred by the Act."

29. In *Sheo Charan vs. Nawal and others*, 1997(3) A.W.C. 1909, a coordinate Bench of this Court in paragraph-13 has held as under: -

"13. Learned counsel for the respondents has, however, submitted that as no appeal lies under Section 19 of the Act from the decision of single Judge, dismissing the contempt petition, the applicant will be rendered remediless, if his appeal under Rule 5 of Chapter VIII is not held maintainable. This submission is also devoid of merit. In State of Maharashtra v. Mahboob S. Allibhoy and another, (1996) 4 SCC 411, (supra), the Supreme Court has reiterated the rule that a contempt proceeding is not a dispute between the two parties and such a proceeding is a matter between the Court and the person, who is alleged to have committed contempt.

.....

The applicant is also not without remedy. He can challenge the decision of a Judge rejecting the contempt petition before the Supreme Court under Article 136 of the Constitution of India."

30. Further in the case of *Hemendra Swaroop Bhatnagar vs. Sri P.S. Gosain* reported in 2007 (1) AWC 1045, this Hon'ble Court had the occasion to consider the issue of maintainability of special appeal under Chapter VIII Rule 5 of the 1952 Rules against the judgment and order dropping the contempt proceedings wherein this Court has observed as under:

"7. Appeal under Section 19 is maintainable when the order is passed by Contempt Judge in exercise of jurisdiction to punish for contempt. In the present case the Contempt Judge has discharged the notice, hence, there is no question of filing of appeal under Section 19. ...

*8. The question regarding maintainability of the special appeal against an order rejecting a contempt application or discharging a contempt has come for consideration before this Court earlier. A Division Bench judgment of this Court reported in 1998 (3) UPLBEC 2333; **A.P. Verma, Principal Secretary, Medical Health and Family Welfare, U.P., Lucknow and Ors. v. U.P. Laboratory Technicians Association, Lucknow and Ors.** had considered the said question. That Division Bench held in the said judgment that special appeal against an order refusing to initiate contempt proceeding is not maintainable.*

9. ...

10. ...

11. The learned contempt Judge while discharging the contempt notice has not issued any direction or passed any order. The submission of the appellant's counsel that learned Judge has decided an issue on merit

also cannot be accepted. The learned contempt Judge has only taken into consideration the earlier judgments of this Court contempt of which was alleged. The learned contempt Judge after taking into consideration all facts and circumstances observed that from the facts there does not appear to be any wilful or deliberate disobedience committed either by the Collector or by the Special Land Acquisition Officer. The order of contempt Judge discharging contempt notice cannot be said to be a judgment issuing any direction or deciding any issue on merits. ""

31. Recently, a Division Bench of this Court in the case of ***Ashwani Kumar vs. Mahendra Pratap Singh*** in **Special Appeal No. 400 of 2021**, vide order dated 6.7.2022 has considered the entire law on the subject and has held in paragraph 24 as under: -

"24. Thus, there is no doubt so far as the legal principles governing the exercise of jurisdiction by Division Bench of this Court under Chapter VIII Rule 5 of the Rules of the Court in relation to an order passed by a Contempt Judge, are concerned. Midnapore Peoples' Coop. Bank Ltd. (supra) still holds the field, according to which in case learned Contempt Judge decides an issue relating to merits of the dispute between the parties, such judgment will be termed to be a judgment rendered by the learned Single Judge while exercising his jurisdiction under Article 226 of the Constitution of India and as such special appeal in such a situation would be maintainable."

32. While applying the above noted judgment in the facts of the present case, now this Court has to bestow its anxious consideration as to whether the present intra-court appeal is maintainable against the judgment and order of the learned Single Judge while declining to initiate contempt proceedings against the opposite parties.

33. As noticed above, the Hon'ble Apex Court and this Court has consistently held that an intra-court appeal is not maintainable against the order of the learned Single Judge exercising contempt jurisdiction in a contingency, when the contempt proceedings are not being initiated. The reliance placed upon the judgment in the case of ***Durga Nagpal*** (*supra*) is misconceived and misplaced as in the said case, the Hon'ble Judges while exercising appellate jurisdiction were confronted with the situation where the contempt court reviewed its own order after entertaining miscellaneous application for modification of the final judgment. The Division Bench opined that when accused are discharged and proceedings are closed, miscellaneous application for modification is not maintainable. In the said perspective, the Special Appeal was held to be maintainable. Since the present case originates from a judgment and order of the

contempt court declining to exercise contempt jurisdiction, thus, the said judgment is of no aid to the appellants.

35. Accordingly, we are of the firm opinion that the present intra-court appeal against the judgment and order of the learned Single Judge dated 17.03.2023 declining to initiate contempt proceedings is not maintainable under Chapter VIII Rule 5 of the Rules of the Court.

36. Accordingly, the intra-court appeal is **dismissed** as not maintainable.

Order Date :- 9.5.2023

N.S.Rathour