

**AFR**

**Court No. - 43**

**Delivered on: -14.2.2020**

Contempt Appeal No.-**6 of 2019**

**Appellant :-** Dr. Ashwini Kumar Singh  
**Respondent :-** Dr. Sandeep Kumar and others  
**Counsel for Appellant :-** Navin Sinha, Vimlendu Tripathhi  
**Counsel for Respondents :-** Ashok Khare, Siddharth Khare, Manish Goyal, K.K. Rao, Kshitij Shailendra, V.K. Upadhyaya, Krishna Raj Jadaun

**With**

Contempt Appeal No.-**1 of 2020**

**Appellant :-** Vinay Kumar Pandey & Anr  
**Respondent :-** C/M Sri Gandhi Inter College And Another  
**Counsel for Appellant :-** Sudhanshu Srivastava, Na  
**Counsel for Respondent :-** Suyash Pandey, Nand Lal Pandey

**With**

Contempt Appeal No.-**2 of 2020**

**Appellant :-** Madan Pal Singh  
**Respondent :-** Vinorma Prasad  
**Counsel for Appellant :-** Sudhanshu Srivastava  
**Counsel for Respondent :-** Sunil Kumar Srivastava

**With**

Contempt Appeal No.- **3 of 2020**

**Appellant :-** G.S. Yadav  
**Respondent :-** Sandeep Kumar And Another  
**Counsel for Appellant :-** Vimlendu Tripathi  
**Counsel for Respondent :-** Siddharth Khare, K.K.Rao, Krishna Raj Singh Jadaun, Kshitij Shailendra

**With**

Contempt Appeal No. - **4 of 2020**

<b>Appellants :-</b>	Rakesh Bhatnagar & Others
<b>Respondent :-</b>	Sandeep Kumar And Others
<b>Counsel for Appellant :-</b>	Vimlendu Tripathi, Sri Navin Sinha (Senior Advocate)
<b>Counsel for Respondent :-</b>	Krishna Raj Singh Jadaun, K.K.Rao, Kshitij Shailendra, Manish Goyal (Senior Adv.), Siddharth Khare

**Hon'ble Pankaj Naqvi, J.**

**Hon'ble Samit Gopal, J.**

*(Delivered by Pankaj Naqvi, J)*

Heard Sri Navin Sinha, the learned Senior Counsel assisted by Sri Vimlendu Tripathi for the appellants, Sri Ashok Khare, the learned Senior Counsel assisted by Sri Siddharth Khare, Sri Manish Goyal, the learned Senior Counsel assisted by Sri K.K. Rao, Sri Kshitij Shailendra and Sri V.K. Upadhyaya, the learned Senior Counsel assisted by Sri Krishna Raj Jadaun for the respective respondents in Contempt Appeal Nos. 6/2019, 3/2020 and 4/2020 and Sri Ajit Kumar Singh, the learned Senior Counsel assisted by Sri Sudhanshu Srivastava for the appellants and Sri Nand Lal Pandey / Sri Sunil Kumar Srivastava for the respective respondents in Contempt Appeal Nos. 1 & 2, both of 2020, both on maintainability as also on merits.

Since common issues are involved in all the five connected appeals, same are being disposed of by a common order. Contempt Appeal No.6/2019 is taken up as leading appeal.

1. Contempt Appeal No.6/2019 is preferred under

Section 19 of Contempt of Courts Act, 1971 (for short “the Act”) against the order dated 04.12.2019 passed by the learned Single Judge, framing charges against the appellant and respondent nos. 3 to 8, calling upon them to file their response, if any, on or before the next date.

2. Sri Siddharth Khare, the learned counsel for respondent nos.1 and 2 (petitioners in contempt) on the strength of the Apex Court judgment in **Midnapore People's Co-operative Bank vs Chunnilal Nanda, (2006) 5 SCC 399** submits that the contempt appeal is not maintainable.

3. Per contra, Sri Navin Sinha, the learned Senior Counsel for the appellant controverts the preliminary objection that as **Midnapore** (supra) did not refer to previous decision of the Apex Court in **R.N Dey and others vs Bhagyabati Pramanik and others, 2000 (4) SCC 400**, which had held that the orders passed by the Contempt Court in exercise of jurisdiction to punish, an appeal under Section 19 of the Act would be maintainable. He thus submits that **Midnapore** would not be an impediment to the maintainability of this appeal. He further submitted that once the Legislature used two expressions i.e. 'order or decision' under sub-section 1 of Section 19 of the Act disjunctively while the word “decision” does not find mention in sub-section 3, the logical inference is that even though an order of punishment may not have come to be passed, yet an appeal under Section 19 of the Act would be maintainable in respect of orders prior to the order of punishment. He placed reliance on **ECL Finance Ltd. vs Harikishan Shankarji Gudipati and others, (2018) 13 SCC 142**, **Sadhna Upadhyay vs. State of U.P., 2009 (65)**

**ACC 64 (FB), T. George Joseph, Principal Secretary, Tax Registration Government of U.P., Lucknow vs. Vijay Kumar Srivastava, 2003(5) AWC 4247** in support of the contention. He finally submitted that once a review is pending against the order of the writ court of which contempt is alleged, contempt is to be deferred for which he relied on **Satyendra Singh vs. Saroj Rani and others, (2017) 11 SCC 471.**

4. The preliminary issue raised before us is in regard to the maintainability of the contempt appeal under Section 19 of the Act. It is well settled that an appeal is a creature of a statute. An appeal can be filed only in respect of orders against which a right of appeal is conferred under the statute. Section 19 of the Act in so far relevant reads as under:

**19. Appeals.—(1) An appeal shall lie as of right from any order or decision of 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 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.**

**(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 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) .....

5. The Apex Court in **Midnapore** (supra), after examining the previous decisions, summarized 5 postulates in paragraph-11 as under:-

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).

6. A perusal of the 1<sup>st</sup> postulate manifests that an appeal under Section 19 is maintainable against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt i.e. **“an order imposing punishment for contempt”** (emphasis by us).

7. Sri Sinha, the learned Senior Counsel assiduously urged that as the order framing charge is inextricably linked with the merits of the case, the present appeal would be maintainable under Section 19 as held in 2<sup>nd</sup> part of Postulate -IV. The submission although attractive, deserves to be rejected for the following reason:-

It is not uncommon that while a contempt petition is pending, the Contempt Court may pass orders relating to merits of the case before an order of punishment is passed. For example, while a civil contempt is pending the Contempt Court may pass an order directing the contemnor to pay certain compensation / damages to the contempt petitioner by referring to the merits of the dispute or directing the contemnor to be taken into custody. What 2<sup>nd</sup> part of postulate – IV provides is that it would also be open for the contemnor to challenge the direction or decision relating to the merits of the dispute if the same is incidental or inextricably connected with the order of punishment. The said observation in postulate-IV find its legislative sanction from the phraseology used in sub-section 3 of Section 19, which finds reference in **Sadhana Upadhyaya** to which we will now advert.

8. To appreciate **Sadhna Upadhyay**, it would be apposite to have a bird's eye view to the circumstances in which it arose. It was a case of *ex-facie* contempt. The learned Contempt Judge under order dated 10.12.2007, while taking cognizance under Section 15 of the Act, framed charges and directed the contemnor - Ms. Sadhna Upadhyay to be taken into custody. The order further directed that the order passed by it be sent before the Bench dealing with criminal contempt. The contemnor preferred Contempt Appeal (Criminal) No.25 of 2007 against the order dated 10.12.2007. The Division Bench, after stay of arrest restrained the contemnor from entering the Court premises, except in her contempt case. The order also recorded the statement of the contemnor that she will file an apology before the learned Single Judge. She filed an apology, but the learned Single Judge directed on 11.12.2007 that as the matter has been sent before the Bench dealing with Criminal Contempt, apology shall be adjudicated by the Division Bench which was seized of the matter. The Division Bench made a reference for larger bench to hear both the contempt appeal and the Contempt Petition. An application was filed by the Contemnor to withdraw the Contempt Appeal (Criminal) No. 25 of 2007. By order dated 02.04.2008, the Hon'ble Chief Justice referred the entire matter to the Full Bench of 5 Hon'ble Judges as requested by the Division Bench on 11.12.2007. The Full Bench, vide its reported judgment dated 22.08.2008, **2009 (65) ACC 64**, held that Contempt Appeal (Criminal) No. 25 of 2007 is maintainable under section 19 of the Act.

9. The Full Bench in **Sadhna Upadhyay** (*supra*) held in paragraphs- 73 to 76 as under:

73. The scheme of the provisions contained in Section 19 indicate the intention of the legislature to provide for an appeal against any "order or decision" The said words have been used in subsection 1 and 2 of Section 19, but there appears to be a departure in subsection 3 thereof. The word " decision" has been consciously omitted in Section 19(3) and the "intention to file an appeal" is made open against "any order" . The Court has to adopt an interpretation of the word used in a statute which serves the object and purpose for which the statute was enacted and the provisions incorporated.

The question is, can it be said that the right of appeal under section 19 is confined only against an order of conviction. If that were the intention, then what would have been the purpose of use of separate connotations in section 19(1) and (2) as compared to Section 19(3).

74. Section 19(3) provides for an opportunity to an aggrieved person to approach the court for protection if he "intends to file an appeal" against "any order" . This can be in the event a person has been ordered to be taken into immediate custody. Such an order can be passed upon conviction or even at the stage of cognizance as a measure of interim custody pending proceedings initiated under section 14 in a matter of ex-facie contempt. Thus there can be a stage even prior to punishment when an aggrieved person may require the protections as provided for in section 19 (2). This may take the shape of stay of an order of custody passed pending proceedings. An appeal, in such a situation would therefore be available as a matter of right under section 19 itself. To our mind the legislature appears to have taken care of such a situation and has therefore consciously used the



word " any order" while providing for a statutory right of appeal. This right of appeal would however be not available against a pure interlocutory order not affecting vital rights nor would it would be available to a person not aggrieved.

75. The assumption of jurisdiction, which if not possessed by a Court, would directly attract the principle of patent incompetence. A Court cannot proceed to hear a dispute or decide a lis about which no authority is conferred by the Statute but what if the Court assumes such a jurisdiction ? Would it not be a conscious decision to proceed to exercise the jurisdiction to punish for contempt ? Can it be said, in such a situation that the order does not amount to a conviction or award of punishment, as such, an appeal would not lie ? The appellant herself has described the initiation and cognizance of the matter as a case of **ARROGATED JURISDICTION.**

In our opinion, the jurisdiction to proceed to punish for a contempt commences with the cognizance taken. If the cognizance is incompetent or without jurisdiction, it affects the rights of the contemner and it is open to the contemner to question the order on the ground of lack of competence or patent lack of jurisdiction. The contemner cannot be compelled to wait for the entire trial to end in conviction or punishment.

The words "order or decision" are separated by a disjunctive word "or" . It suggests an alternative. Can the aforesaid words be said to be synonymous ? Are they a substitute for each other ? If that were so, why would the legislature use 2 words for the same purpose ? Can it be said to be superfluous? If the intention of the

legislature was to use the words as a substitute for each other, then the word decision, which would ordinarily connote termination of the proceedings, could have only been used. But here, the word "order" has also been used disjunctively. This could also mean orders other than the final decision which may decide a matter of moment; for example in the instant case, the assumption of jurisdiction, which is seriously questioned by the appellant on several grounds. Thus, the alternate word "order" can be construed to connote such other decisions which may not be decisions finally terminating the proceedings. Accordingly, if such an order which may amount to a decision of moment vitally affecting the contemner, can also be appealed against under section 19 of the Act in our considered opinion.

10. **Sadhna Upadhyay** was a case of *ex facie* contempt in which after cognizance, the contemnor was directed to be taken into custody. The principles of law enunciated in **Sadhna Upadhyay** can be culled as under:

- I. The right of appeal u/s 19 of the Act, cannot be restricted only against an order of punishment.
- II. Sub-section 3 of Section 19 of the Act, provides an opportunity to an aggrieved person to approach the Court for protection, if he intends to file an appeal against 'any order'. The person aggrieved need not wait for his conviction. Such a person can file an appeal under sub-section 3 of Section 19 of that Act. In such an eventuality, the High Court may also exercise the power of stay provided under sub-section 2 of Section 19 of the Act. For example, where the contemnor is directed to be taken

into custody prior to his conviction, his appeal would be maintainable.

III. The right available under sub-section 3 of Section 19 of the Act, would not be available against an interlocutory order which does not affect the vital rights of the aggrieved person.

IV. Assumption of contempt jurisdiction in the absence of competency or the same being without jurisdiction, the contemnor cannot be compelled to wait for conviction. The contemnor can challenge the lack of competence / jurisdiction in an appeal under sub-section 3 of Section 19 of the Act.

V. An order of a moment vitally affecting the rights of the contemnor can also be appealed under section 19 of the Act.

11. The Order impugned is an order framing a charge simpliciter, which cannot be said to have vitally affected the rights of the contemnor. Contempt proceedings are quasi criminal in nature. While framing a charge, it is inevitable for the court to delve into the merits of the case which does not affect any substantive rights of the contemnor as opportunity is given to the contemnor to controvert and raise its defence against the proposed charge. Thus, order framing charge simpliciter is only a reflection of a prima facie opinion of the court as to the alleged contempt. Howsoever emphatic the order framing the charge be, the fact is that at the end of the day it remains only an order framing a charge and not an order of punishment.

12. Paragraph- 7 of **ECL Finance Limited** (supra) in so far relied by the learned Senior Counsel for the appellant is extracted hereunder:-

“Learned counsel for the respondents submits that before issuing notice, the learned Single Judge had considered the merits of the case and had already made his mind to punish the respondents and, therefore, an appeal would lie, in view of the decisions referred to above. We are afraid the contention made by learned counsel for the respondents cannot be appreciated. The observations made by the learned Single Judge in the Order dated 22 nd December, 2016, while issuing notice in the contempt petition, is only for the prima facie satisfaction as to whether the contempt petition needs to be considered on merits. Only after such a preliminary stage, notice can be issued. Now, it is open to the respondents to file their reply and after considering the defence, the learned Single Judge will have to take a call as to whether it is a case to be proceeded against for punishing the respondents. In case such a decision is taken by the High Court, it is, at that stage, that the respondents get a right to file an appeal before the Division Bench in terms of [Section 19\(1\)\(a\)](#) of the Act. Such a stage having not arisen, the impugned order passed by the Division Bench is only to be set aside. Ordered accordingly.”

13. Based on above paragraph, the contention of the learned Senior Counsel for the appellant is that once the cognizance of contempt is taken and notice issued, thereafter, when the court proceeds to exercise its jurisdiction to punish for its contempt, such an order would be appealable under Section 19 of the Act. We are afraid, we do not subscribe to the said contention for the following reason:-

The issue before the Apex Court in **ECL** was as to

whether an appeal under Section 19 of the Act was maintainable against issuance of a notice. The Apex Court answered in negative. While doing so, it made certain observations in Paragraph- 7 of the judgment. The said observations have to be understood in the context in which it were made. The Apex Court was not dealing with an issue as to whether an appeal under Section 19 is maintainable against an order framing the charge. If we accept the contention of the learned Senior Counsel for the appellant then it would make every order passed in contempt proceedings appellable which is explicitly forbidden in **Midnapore**.

14. The order impugned is an order framing a charge, which in no way, affects the substantive rights of the contemnor. The satisfaction to be recorded at the stage of framing of charge and that of conviction is entirely different, while in the former, the contempt court is expected to ascertain whether any prima facie case for contempt is made out or not while in the latter the degree of satisfaction is beyond a reasonable doubt.

15. We do not agree with the contention of the learned Senior Counsel for the appellant that as **R.N. Dey** was not considered in **Midnapore**, the latter decision cannot be an impediment for the maintainability of the instant appeal. Once we examine the facts of **R.N. Dey**, we find that it was a case where an apology tendered by contemnor, was accepted, yet the High Court rejected the prayer for discharge of the Rule issued for contempt. Paragraph-10 of the **R.N. Dey** is as under:-

**“In our view the aforesaid contention of the learned counsel for the respondents requires to**

be rejected on the ground that after receipt of the notice, concerned officers tendered unconditional apology and after accepting the same, the High Court rejected the prayer for discharge of the Rule issued for contempt action. When the Court either suo moto or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the Rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable.”

16. Thus, in above background, an appeal was held to be maintainable. The decision in **R.N. Dey**, was confined to its own facts.

17. We have gone through the judgement cited by the learned Senior Counsel for the appellant in **T. George Joseph** (supra) and **Anil Kumar Dubey vs. Pradeep Kumar Shukla** in Misc. Appeal No.45/2016 decided on 25.1.2017 (**a Full Bench of Chhatisgarh High Court**) and find that there appears to be no just reason for us to consider **T. George** as the same is prior to **Midnapore**, whereas we would go with the minority view of the Full Bench of Chhatisgarh High Court, as in our considered view, the issue has been laid to rest in **Midnapore** and **Sadhna Upadhyay. Satyendra** (supra) does not lay down binding principle that once a review is filed against an order of which contempt is alleged, contempt is to be deferred.

18. The order impugned is an order framing charge simplicitor, against which an appeal under Section 19 of the Act is not maintainable.

The Contempt appeals are **dismissed as not maintainable.**

Order Date:- 14.2.2020

Chandra

*(Samit Gopal, J) (Pankaj Naqvi, J)*