
(2016) 03 MAN CK 0001
In the Manipur High Court
Case No : Contempt Appeal (C) No. 1 of 2015

O. Nabakishore Singh and Others

APPELLANT

Vs

Shangreihan Muivah

RESPONDENT

Date of Decision : 17-03-2016

Acts Referred:

Constitution of India, 1950 — Article 136, Article 215
Contempt of Courts Act, 1971 — Section 19, Section 19(1), Section 20

Citation : (2016) 03 MAN CK 0001

Hon'ble Judges : N. Kotiswar Singh and Kh. Nobin Singh, JJ.

Bench : Division Bench

Advocate : N. Ibotombi, Addl. A.G. and A. Rommel, Advocate, for the Appellant;
B.P. Sahu, Senior Advocate, Jyotibala and Kunjeswari, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—1. Heard Mr. N. Ibotombi, learned Addl. A.G., Manipur, assisted by Mr. A. Rommel, Advocate, appearing for the appellants. Also heard Mr. B.P. Sahu, learned Senior counsel assisted by Ms. Joytibala, Advocate and Ms. Kunjeswari, Advocate, appearing for the respondent.

2. The present appeal has been filed against the order passed by the Hon'ble Chief Justice sitting singly on 27.05.2015 in Contempt Case(C) No. 100 of 2014, which reads as follows:

"ORDER

It is contended by Mr. N. Ibotombi, learned Sr. counsel that all the contractors whose due bills to be paid for executing certain works are being paid in instalments and no exception can be made in this case. The Court while disposing of the writ petition out of which this Contempt petition arises, passed order for payment of entire admitted dues. No order had been passed to pay in instalments. Explanation given by Mr. N. Ibotombi, learned Sr. counsel is not

acceptable.

I, therefore, direct the Contemnors to show cause as to why they shall not be convicted under the provisions of the Contempt of Court Act for not complying order of the Court.

Explanation be filed within 3 (three) weeks. Put up thereafter.

Sd/- Chief Justice."

3. Several grounds have been raised in this appeal. It has been contended, inter alia, that the Appellant No. 1 is not yet impleaded as one of the respondents in the Contempt Petition and hence, the order directing to show cause as to why the contemnors, which includes the Appellant No. 1, shall not be convicted under the provisions of the Contempt of Court Act, for not complying with the order of the Court, is not sustainable in the eye of law.

Secondly, it has been contended by the appellants that without giving any opportunity of being heard for initiating contempt proceeding against the appellants, the learned Single Judge had come to the conclusion that the appellants are liable to be convicted under the provisions of law laid down in the Contempt of Courts Act.

4. This appeal, however, has been resisted by the respondent/writ petitioner on the ground that this appeal filed under Section 19(1) of the Contempt of Courts Act, 1971 is not maintainable inasmuch as this is not an order passed for punishing the contemnors but merely a showcause notice as to why they should not be convicted, thus, being merely an interlocutory order.

5. Before we proceed with this appeal we have to deal first with this preliminary issue raised as to the maintainability of this appeal filed under Section 19(1) of the Contempt of Courts Act, 1971.

As we proceed to deal with this issue it may be appropriate to reproduce Section 19(1) of the Contempt of Courts Act, 1971 which reads as follows:

"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) 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."

(emphasis added)

6. Section 19(1) of the Act provides that 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.

Therefore, if any order is passed by the High Court in exercise of the contempt jurisdiction imposing any punishment, such an order obviously would be appealable. However, it is not clearly mentioned as to whether any other order, though not imposing punishment, could also be appealable under Section 19(1).

As regards any order imposing punishment to a contemnor, there is unanimity in judicial opinion of the Hon''ble Supreme Court that such an order is appealable. However, there seems to be varying opinions as regards appealability of an order passed by the High Court in a contempt proceeding which does not impose any punishment. It is because of this reason that while the appellants contend appeal is maintainable, the respondent contends to the contrary. The appellants in support of their contention, have relied on the decision of the Hon''ble Supreme Court in *R.N. Dey and Others v. Bhagyabati Pramanik & Others*, , (2000) 4 SCC 400.

7. Since this is the only case relied upon by the appellants, we may examine the context in which the Hon''ble Supreme Court in the aforesaid case allowed an appeal preferred under Section 19 of the Contempt of Courts Act, 1971, against an order passed by the High Court although the proceeding had remained pending in the High Court and the order was not of punishing the contemnor. It would therefore, be important to examine the facts and circumstances of case under which the Hon''ble Supreme Court rendered the aforesaid decision. The Hon''ble Supreme Court was dealing with an appeal filed against the judgment and order passed by the Hon''ble High Court of Calcutta by which the High Court while accepting unqualified apology tendered by the appellants in compliance of the orders of the Court for not paying the balance awarded money due to the respondents, proceeded to direct the appellants to deposit with the Registrar the compensation amount determined in terms of the award in respect of the land acquired by the State without prejudice to the rights and contentions of the

parties. It seems, though the award was passed in respect of the land in favour of the respondent/claimant, it came to light later on that the respondents/claimants had no right, title or interest on the land. It appears that the suit land had already vested in the State. The State contending that the respondents had obtained the award by fraud, moved an application for vacation of the High Court's order for payment which was earlier directed in terms of the award made. The High Court, however, did not pass any order on the application filed by the Collector for vacating the rule issued in the contempt proceeding holding that the Collector cannot go behind the award passed by him under the Land Acquisition Act, 1894. It seems, from a reading of the said judgment that, though a related appeal was pending before the High Court against the award passed by the Land Acquisition Judge, there was no specific order staying the said judgment and award. Accordingly, it was contended by the appellants before the Hon''ble Supreme Court that the respondents/claimants instead of filing contempt application, at the most, could have proceeded with the execution of the decree or award. On the other hand, it was contended by the respondents that since the appellants had already tendered an unqualified apology, they no longer had the right to appeal and moreover, the matters were also at an intermediate stage. Thus, from the judgment in R.N. Dey (supra) what could be gleaned, may be stated as follows:--

- "(i) An award was made in favour of the respondents/claimants,
- (ii) There was certain order passed by the Court for payment of certain amounts in favour of the claimants/respondents on the basis of the said award.
- (iii) Subsequently, it came to the light that the claimants/respondents had no right, title over the land and the land had vested in the State. Hence, no compensation was payable.
- (iv) Though a related appeal was pending before the Court in respect of the award passed in the Land Acquisition Act, there was no stay order passed.
- (v) In the related contempt proceeding, though the Court accepted unqualified apology of the officers of the State the Court directed for payment of compensation amount without prejudice to the rights and contentions of the parties in the proceeding.
- (vi) The fact that apology was offered and was accepted by the Court clearly indicated that the High Court found that contempt was committed by the officers."

8. The Hon''ble Supreme Court in the said case of R.N. Dey(supra) observed that if the claimants were entitled to recover the amount of compensation in terms of the award, they could recover the same by executing the award wherein the State could contend that the award is in nullity. In such a situation, it could not be said that there was wilful or deliberate non-compliance of the order of the Court. The Hon''ble Supreme Court observed that the claimants were in the

position of a decree-holder and the State was in the position of the judgment-debtor in terms of the award. Hence, the claimant as decree-holder ought to have taken steps for execution of the decree in accordance with the procedure rather than invoking the contempt jurisdiction of the court for non-satisfaction of the money decree. Secondly, the Hon"ble Supreme Court did not find favour with the order of the High Court which after having accepted the unconditional apology tendered by the officers, rejected the prayer for discharge of rule issued for contempt. It was in that background that the Hon"ble Supreme Court held in the said case that if certain dispute had been raised before court by the contemnor asking it to drop the proceedings on one ground or the other, the appeal against the said order is maintainable. Thus, from the aforesaid decision what appears is that the Hon"ble Supreme Court took the view that the Hon"ble Calcutta High Court proceeded with the contempt proceedings even though no such contempt proceeding ought to have been initiated. It was in that context that the Hon"ble Supreme Court held that an appeal under Section 19 is maintainable against such order. While deciding so, the Hon"ble Supreme Court had referred to an earlier decision of the Supreme Court in *Purshotam Dass Goel v. Justice B.S. Dhillon*, , (1978) 2 SCC 370 in which the Hon"ble Supreme Court had observed that:

"11. For the aforesaid purpose, reference can be made to the decision in *Purshotam Dass Goel v. Justice B.S. Dhillon* , (1978) 2 SCC 370: 1978 SCC (Cri) 195, wherein the Court observed that : (SCC p.372, para 3)

"If the alleged contemnor in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under Section 19 from such an order although the proceeding has remained pending in the High Court."

9. It may be noted that the Hon"ble Supreme Court also observed in the said case of *R.N. Dey* (supra) in paragraph No. 13 thereof that the question whether appeal under Section 19 is maintainable or not is not required to be decided finally, as the facts of the case were grossly inadequate and the contempt proceedings were not required to be initiated at all. The Hon"ble Supreme Court took the view that in any event, the unconditional apology tendered could have been accepted and further proceedings dropped and the rule ought to have been discharged. Accordingly, the Hon"ble Supreme Court set aside the order of the High Court issuing rule in contempt proceeding and directed the Court to proceed with the first appeal pending in which the plea had been taken that the property which was acquired had already vested in the Government.

10. We will now discuss the other judgments rendered by the Hon"ble Supreme Court which are apparently in conflict with the decision in *R.N. Dey* (supra).

11. In *Baradakanta Mishra v. Mr. Justice Gatikrushna Misra*, Chief Justice of the Orissa High Court, , (1975) 3 SCC 535, the Hon"ble Supreme Court held that

where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19(1) and no appeal would lie against it as of right under that provision. The Hon''ble Supreme Court further went to clarify that this, however, does not mean that there is no remedy available where the High Court holds erroneous view of the law or unreasonably or perversely refuses to take action for contempt on the motion or reference. The Hon''ble Supreme Court held that though no appeal lies under Section 19(1) as of right against such order or decision of the High Court, the Advocate General or any other person who with the consent in writing with the Advocate General can move the Supreme Court under Article 136 by a petition for Special Leave to appeal. In the said case of Baradakanta Mishra (supra), the Full Bench of the Orissa High Court had rejected the motion made by the appellant thus, refusing to initiate the proceeding for contempt against the Chief Justice and other judges which order was held to be not appealable under Section 19(1).

The Hon''ble Supreme Court, however, made it clear in the said case that it is unnecessary to consider whether an appeal under Section 19(1) is confined only to a case where the High Court after initiating the proceeding for contempt, finds the alleged contemnor guilty and punishes him for contempt or it extends also to a case where after initiating the proceeding for contempt the High Court finds that the alleged contemnor is not guilty of contempt and exonerates or even if he is found guilty of contempt declines to punish him and accordingly, the Hon''ble Supreme Court did not express any opinion on those. Therefore, even though in the aforesaid case of Baradakanta Mishra (supra) the Hon''ble Supreme Court held that the order of the Full Bench of the Orissa High Court rejecting the motion made by the appellant and refusing to initiate proceeding for contempt is not appealable under Section 19(1), the Hon''ble Supreme Court left the question in other situations mentioned above, open.

12. In *Purshotam Dass Goel v. Justice B.S. Dhillon*, , (1978) 2 SCC 370, the Hon''ble Supreme Court observed that it could not be the intention of the legislature to provide for an appeal as a matter of right from each and every order made by the High Court. The order/decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. It was also observed that mere proceeding or issuing of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. The matter has to be decided either finally or, may be, even at an earlier stage an order is made, which does decide a contention raised by the alleged contemnor asking the High Court to drop the proceeding and it is neither possible, nor advisable, to make an exhaustive list of the type of orders which may be appealable to the Supreme Court under Section 19. A final order, surely, will be appealable to the Supreme Court. The Hon''ble Supreme Court significantly observed that even if the alleged contemnor in

response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under Section 19 from such an order although the proceeding has remained pending in the High Court. However, the Hon''ble Supreme Court refrained from expressing final opinion in regard to such an order but observed that such type of order was merely mentioned by way of example to show that even orders made at some intermediate stage in the proceeding may be appealable under Section 19. The Hon''ble Supreme Court, however, clarified that an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemnor and cannot be appealed against as a matter of right under Section 19. The Hon''ble Supreme Court in the said case also relied on the decision in Baradakanta Mishra (supra) repeating that it may be a different matter if the order does decide some disputes raised before it by the contemnor asking it to drop the proceeding on one ground or the other and unless and until there is some order or decision of the High Court adjudicating upon any matter raised before it by the parties, affecting their right, the mere order issuing the notice is not appealable.

13. In *D.N. Taneja v. Bhajan Lal*, , (1988) 3 SCC 26, the Hon''ble Supreme Court held that the right of appeal will be available under Section 19(1) only against any decision or order of a High Court passed in exercise of its jurisdiction to punish for contempt. It held that when the High Court acquits the contemnor the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that it should not act in a particular manner, i.e. by imposing punishment for contempt and so long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution. Referring to the decision of Baradakanta Mishra (supra) the Hon''ble Supreme Court held that it cannot be said 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, clarifying that even though no appeal is maintainable under Section 19(1) of the Act, the petitioner in such a case can move the Supreme Court under Article 136 of the Constitution.

14. In *Union of India and Others v. Mario Cabral E SA*, , (1982) 3 SCC 262, the Hon''ble Supreme Court referring to the decision in *Purshotam Dass Goel* (supra) observed that the order merely initiating proceeding without anything further, does not decide anything against the alleged contemnor and cannot be appealed against as a matter of right under Section 19 but in a given case special leave may be granted under Article 136 of the Constitution from an order initiating the proceeding and accordingly, the Hon''ble Supreme Court took up the matter and entertained the appeal in the said case.

15. The Hon''ble Supreme Court in *State of Maharashtra v. Mahboob S. Allibhoy and Another*, , (1996) 4 SCC 411 referring to the decisions of the Supreme Court

in *Baradakanta Mishra (supra)* and *D.N. Taneja (supra)* held that an appeal filed against an order of the High Court after taking into consideration the reply to show cause filed by the respondents directing that a complaint be filed against them and that no action be taken under the Contempt of Courts Act as not maintainable. It was held that unless an order of the High Court imposes a punishment in exercise of its jurisdiction to punish for contempt, no appeal would lie against it. However, it was held that in appropriate case, the remedy under Article 136 of the Constitution will be available.

16. In *J.S. Parihar v. Ganpat Duggar and Others*, , (1996) 6 SCC 291, the Hon"ble Supreme Court held that an appeal would lie under Section 19 when an order in exercise of the jurisdiction of the High Court punishing the contemnor has been passed. In the said case, the finding was that the respondents had not wilfully disobeyed the order. Therefore, it was held that there was no order punishing the respondent for violation of the orders of the High Court and hence, an appeal under Section 19 was not maintainable.

17. In *Midnapore Peoples" Coop. Bank Ltd. and Others v. Chunilal Nanda and Others*, , (2006) 5 SCC 399, the Hon"ble Supreme Court dealt with the above-mentioned cases and summarised the decisions as recorded in para 11 thereof:--

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

(emphasis added)

18. In *Parents Association of Students v. M.A. Khan and Another*, , (2009) 2 SCC 641, the Hon"ble Supreme Court observed that the controversy as regards exercise of jurisdiction of the appellate court under Section 19 of the Contempt of Courts Act is a vexed one. There is a line of decisions that an appeal would be maintainable only when an order of punishment has been passed as held in *R.N. Dey* (supra). The Hon"ble Supreme Court observed that since the question has been already referred to three-Judge Bench in *Dharam Singh v. Guljari Lal*, SLP (C) No. 18852 of 2005 on 19.09.2005, the Hon"ble Supreme Court took the view that the larger question, namely, maintainability of the appeal under Section 19 of the Contempt of Courts Act, 1971 vis-?-vis maintainability of the special appeal under the Letters Patent of the High Court need not be decided.

In *Dharam Singh* (supra), the Hon"ble Supreme Court while granting leave observed as follows:

"ORDER

Leave granted.

The question as regards the interpretation of Section 19 of the Contempt of Courts Act, 1971 arises for consideration in this appeal. Our attention has been drawn to the decision of this Court in *State of Maharashtra v. Mahboob S. Allibhoy & Anr.* [, (1996) 4 SCC 411], wherein a two-Judge Bench has taken the view that no appeal shall lie under Section 19 of the Contempt of Courts Act against the interlocutory order passed by the High Court stating that the words: "any order" must be read with the expression "decision" used in the sub-section so as to exclude any interlocutory order of the High Court from the scope of the appeal. However, in *R.N. Dey and Ors. v. Bhagyabati Pramanik & Ors.* [, (2000) 4 SCC 400], another two-Judge Bench of this Court has held that where after initiation of a proceeding for contempt, an order is passed without discharging the rule issued under the provisions of Section 19, it would be an order or decision in exercise of its jurisdiction to punish for contempt and against such order an appeal shall be maintainable. It appears that various high Courts have taken different views on interpretation of the Judgment in *Mahboob S. Allibhoy* (supra) as some of the High Courts are of the opinion that even if a direction is issued to the contemnor by way of interlocutory order the same would attract the provisions contained in Section 19; as such an order or decision of the High Court would be in exercise of its discretion to punish for contempt. We are, therefore, of the opinion that the matter being of some importance requires consideration by a larger Bench. Accordingly, we direct that the matter may be

placed before Hon"ble the Chief Justice for necessary orders.

In the meantime, there shall be a stay of the operation of the order passed by the learned Single Judge."

The aforesaid SLP filed by Dharam Singh was withdrawn by the appellant on 14.12.2009. However, the parties before us are not in a position to ascertain as to whether any decision had been rendered by the larger Bench of the Hon"ble Supreme Court in the meantime. Hence, we proceed to examine the issue on the basis of the available judicial pronouncements.

19. In *Tamilnad Mercantile Bank Shareholders Welfare Association(2) v. S.C. Sekar and Others*, , (2009) 2 SCC 784, the Hon"ble Supreme Court referring to the decision in *Midnapore Peoples" Coop. Bank Ltd.* (supra) observed that even if assuming that no appeal was maintainable, an aggrieved person cannot be left without any remedy as access to justice is a human right and in certain situations it may also be considered to be a fundamental right and in any event, the Court has the jurisdiction to entertain a special leave petition and pass appropriate order which would do complete justice to the parties.

20. In *Kedar Singh Kushwaha v. Dhaniram and Another*, , (2009) 9 SCC 396, the Hon"ble Supreme Court, was considering an appeal against an order of the High Court which found the appellant guilty of wilful disobedience of the order of the High Court and a fine of Rs. 1000 and his detention till the rising of the Court were ordered and the intra-court appeal was dismissed.

21. In *State of Jammu and Kashmir v. Vinod Kumar Verma and Another*, , (2012) 2 SCC 325, the Hon"ble Supreme Court left the legal position about the maintainability of appeal under Section 19(1) open in view of the fact that the main contempt petition itself is pending before the learned Single Judge of the High Court.

22. Thus, the overwhelming decision of the Hon"ble Supreme Court as also summarised in the *Midnapore Peoples" Coop. Bank Ltd.* (supra) is that 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, i.e. an order imposing punishment for contempt. The only remedy against any other order as mentioned, is by approaching the Hon"ble Supreme Court by filing an SLP.

It will be, however, interesting to note that the Hon"ble Supreme Court in *Midnapore Peoples" Coop. Bank Ltd.* (supra) dealt with the issue as mentioned in para 11 (III) that 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. But, it was further held that in such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties. The Hon"ble Supreme Court in the aforesaid case of *Midnapore* (supra) also held in para 11(IV) that though any direction 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, 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. Therefore, the position seems to be as mentioned in para 11(IV) that such decision which is incidental to or inextricably connected with the order of punishing for contempt, will also be appealable under Section 19 of the Act.

It is to be noted that the Hon''ble Supreme Court in Baradakanta Mishra (supra) had left the question as to whether an appeal would be maintainable under Section 19 where the Court initiates proceeding for contempt and after due consideration and hearing finds the alleged contemnor not guilty of contempt and exonerates him, or even if he is found guilty of contempt, declines to punish him, was left open. Similarly, in Purshotam Dass Goel (supra) the Hon''ble Supreme Court also left open the appealability of certain orders made at some intermediate stage in the proceeding under Section 19, by taking the example of an alleged contemnor who appears before the Court and asked it to drop the proceeding on the ground of being barred under Section 19 of the Act but the Court holds that proceeding is not barred and by observing that it may well be said that an appeal would lie to the Supreme Court under Section 19 from such order although the proceeding has remained pending in the High Court. Therefore, the Hon''ble Supreme Court in Baradakanta Mishra (supra) and Purshotam Dass Goel (supra) left open the question whether an appeal under Section 19 would be maintainable in certain other areas. The Hon''ble Supreme Court in Midnapore's case (supra) by referring to D.N. Taneja (supra), a decision of the three-Judge Bench of the Court, held that appeal under Section 19 would lie only against an order punishing the contemnor and not any other order passed in contempt proceeding.

23. In D.N. Taneja (supra), the Hon''ble Supreme Court was considering the issue of maintainability of appeal under Section 19(1) of the Act against an order passed by the learned Single Judge in a contempt proceeding where after the application was admitted and Rule nisi was issued upon the respondents and the respondent appeared and opposed the same by filing an affidavit denying all the allegations made against him. The learned Single Judge of the High Court in D.N. Taneja's case (supra), after considering the application, affidavits and submissions made on behalf of the parties took the view that there were circumstances to indicate that it was not a fit case in which the Court should exercise its jurisdiction. Thus, the learned Single Judge of the High Court dismissed the application and discharged the rule nisi. It was in this context of dismissing the contempt application that the issue arose about the maintainability of an appeal under Section 19(1) of the Act. The Hon''ble Supreme Court held that an appeal will be available only against a decision or order passed by a High Court in exercise of its jurisdiction to punish a contemnor.

The Hon''ble Supreme Court in D.N. Taneja (supra), held that when the High Court does not impose any punishment upon the contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. Thus, when no punishment is imposed by the High Court, it is difficult to say that High Court has exercised its jurisdiction or power as conferred under Article 215 of the Constitution. The Hon''ble Supreme Court in D.N. Taneja (supra) accordingly, held that no appeal will lie against an order which does not impose any punishment on the alleged contemnor. The aforesaid decision was, thus, in the context of dismissal of a contempt petition. In the said D.N. Taneja (supra), the Hon''ble Supreme Court was not deciding the case where instead of dismissing a contempt petition as sought by the alleged contemnors, it was proceeding further with the contempt proceedings. The Hon''ble Supreme Court in D.N. Taneja (supra) though referred to the earlier decision in Baradakanta Mishra (supra), did not address the issue raised in the Baradakanta Mishra (supra), as to whether an appeal would be maintainable under Section 19(1) where the Court initiates proceeding for contempt but after due consideration and hearing finds the alleged contemnor not guilty of contempt and or having found him guilty declined to punish him, which issue was left open in Baradakanta Mishra (supra).

24. In this context, one may refer to the decision in Modi Telefibres Ltd. and Others v. Sujit Kumar Choudhary and Others, , (2005) 7 SCC 40 which is the only other decision which goes in the same line as with the decision in R.N. Dey (supra).

In Modi Telefibres Ltd. (supra), the Hon''ble Supreme Court was dealing with a case where the learned Single Judge of the High Court though held that the employer had committed a contempt by not paying full dues of the workmen under the award adjourned the contempt proceeding, directed the officer of the employer to remain present with bank drafts to be paid to the workmen. The appeal of the employer before the Division Bench of the High Court was dismissed on the ground that the contempt proceeding was still pending before the learned Single Judge. The Hon''ble Supreme Court held that such an order of the learned Single Judge could not have been treated to be an interlocutory order and the right of appeal could not be denied merely because the learned Single Judge had adjourned the contempt proceedings to enable the alleged contemnor to purge the contempt or else for deciding the quantum of punishment.

25. Thus, from the above decisions it is evident that there seems to be two opposing views as regards the maintainability of order at the intermediate stage which does not impose any punishment for contempt.

26. We may now examine if these two apparently conflicting decisions could be reconciled or not. We are of the view that these two apparently conflicting judicial decisions could indeed be reconciled if we adopt the following approach. As also mentioned in Purshotam Dass Goel (supra) there may be many interlocutory orders passed in a contempt proceeding including the order of

initiation of the contempt proceeding, issue of notice, etc. but it cannot be the intention of the legislature to provide for an appeal as a matter of right from each and every such orders made by the High Court. However, if the order or the decision does decide some contentious issue raised before the High Court affecting the right of the party aggrieved as regards the contempt proceeding as also discussed in *Purshotam Dass Goel (supra)*, we are of the view that such order which decides certain contentious issue may be appealable. Of course, the Hon''ble Supreme Court in *Midnapore Peoples'' Coop. Bank Ltd. (supra)* had dealt with the issue of the appealability of the order which touches the merit of the disputes amongst the parties, which had been observed to be beyond the scope of the jurisdiction to punish for contempt as mentioned in sub paras III, IV, V of para 11 in *Midnapore''s case (supra)*.

In para 11(IV) of the *Midnapore''s case (supra)*, the Hon''ble Supreme Court observed that though no appeal will lie under Section 19 of the Act against any decision made by the High Court on the merits of the dispute between the parties which will not be in the exercise of "jurisdiction to punish for contempt", 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.

We would also like to add that since an appeal under Section 19(1) would lie against an order or decision of the High Court in exercise of its jurisdiction to punish for contempt, any such order which is passed at any intermediate stage which decides any contentious issue must be also towards punishment for contempt to make appealable but no appeal would lie against such an order even if it decides any contentious issue if it does not lead to punishment. We are inclined to adopt this approach in view of the observation in para 11(IV) in *Midnapore Peoples'' Coop. Bank Ltd. (supra)*. As already mentioned in *Baradakanta Mishra (supra)* and *Purshotam Dass Goel (supra)*, the Hon''ble Supreme Court had left the question open as to whether an appeal under Section 19(1) would be maintainable in certain areas. Yet, we get some lead from para 11(IV) of *Midnapore''s case (supra)* as discussed above. Therefore, we are of the view that if there is any order passed by the learned Single Judge or the High Court which decides any contentious issue raised before the Court which affects the right of the party aggrieved and such a decision invariably and inexorably leads towards punishment, such an order would be also appealable. We are of the opinion that this view does not in any way go against the decisions of the Hon''ble Supreme Court in the series of pronouncements as discussed above and is also in conformity with the decisions in *R.N. Dey (supra)* and *Modi Telefibres Ltd. (supra)*.

27. Therefore, we hold that an appeal against an order would be also maintainable under Section 19(1) of the Contempt of Courts Act, if the order passed by the High Court decides any contentious issue raised before the High

Court which is inextricably linked to the contempt petition affecting the right of the party aggrieved and which leads invariably towards punishment under the Contempt of Courts Act. However, such an order though deciding a contentious issue, yet does not lead towards punishment under the Contempt of Courts Act, such an order will not be appealable under Section 19(1) of the Act. The distinguishing attribute of such an appealable order would be that it should invariably tend towards and or lead towards punishment under the contempt of Court. Whether he is ultimately punished or not is not material, as it would be decided only in the final order. The distinctive feature of such appealable order would be not mere possibility or remote possibility of punishment but an imminent possibility of being punished. For, one can always say that issuing of the notice under Contempt of Courts Act may also lead to punishment. But, since the possibility of punishment at the stage of issuing notice is a remote one and not an imminent one, it can not be said to be an appealable order. Similarly, if the order decides any contentious issue, yet if it does not adversely affect the aggrieved party and does not lead towards punishment, no appeal is contemplated under Section 19(1) of the Act. The imminency and proximity of the order towards punishment would be the criteria to decide whether such an order passed even at an intermediate stage, would be appealable or not under Section 19(1) of the Contempt of Courts Act, 1971.

28. In the light of what we have discussed above, we will examine the appealability of the order dated 27.05.2015 which is challenged in the present appeal.

29. In substance, the order dated 27.05.2015 directs the contemnors to show cause as to why they should not be convicted under the provision of Contempt of Courts Act, for not complying the order of the Court. It is clearly evident that the aforesaid order is merely a direction to show cause as to why they should not be convicted. No order has been passed convicting the appellants under the Contempt of Courts Act, in which event, they could apprehend imminent punishment. However, since the appellants are yet to be convicted it cannot be said that they are likely to be punished or apprehend imminent punishment. Since by the aforesaid order the appellants have been given opportunity to explain by filing necessary explanation within 3 (three) weeks, it was still open before the learned Single Judge to consider such explanation and if the learned Singh Judge is satisfied with such explanation there is every possibility that the appellants would not be convicted, in which event, the question of punishment does not arise. The question of punishment under the Contempt of Courts arises only when the appellants are convicted and not before it. However, the said situation has not arisen yet as there is no order of conviction passed by the Court. The order is merely a show cause notice as to why they should not be convicted.

30. Accordingly, we are of the view that the aforesaid order dated 27.05.2015 passed by the Hon''ble Chief Justice sitting singly is not an appealable order

inasmuch as the Hon''ble Court is yet to decide any contentious issue as to whether the appellants should not be convicted or not, not to mention that any punishment is going to be imposed on them. The matter perhaps could have been otherwise if the show cause notice was to the effect as to why they should not be convicted and punished under the provision of the Contempt of Courts Act. If such an order of composite nature had been passed, perhaps there could have been a genuine apprehension in the mind of the appellants that if the Hon''ble Court did not find their explanation satisfactory they could have been convicted as well as punished. However, the aforesaid situation does not arise in the present case as the show cause notice is only for showing cause as to why they should not be convicted and there is no whisper or mention of any proposal for punishment. Only when the appellants are convicted, then the appellants may entertain a real apprehension that they may be punished as imposition of punishment is the naturally corollary of conviction under the Contempt of Courts Act. As mentioned above, there is no decision or finding by the Court as yet that the appellants had been convicted under the Contempt of Courts Act in which event they could have legitimately claim that a serious contentious issue has been raised and the decision would lead towards punishment, which is not the case herein. To put it simply, no contentious issue affecting the rights of the appellant to their disadvantage has been decided as yet. Hence, it can not be said that any decision has been made which would invariably lead to punishment or any possibility of an imminent punishment under the Contempt of Courts Act, 1971.

31. We are therefore, of the view that the aforesaid order dated 27.05.2015 passed in Contempt Case(C) No. 100 of 2014 is not an appealable order, by applying the criteria which we have adopted as discussed above. Accordingly, the present appeal fails and is dismissed.