

(1988) 12 CAL CK 0013
In the Calcutta High Court

Case No : Appeal from the Original Order Tender No. 2045 of 1988

Sanjay Dalmia

APPELLANT

Vs

Additional Collector of C. Ex. and Customs

RESPONDENT

Date of Decision : 22-12-1988

Acts Referred:

Central Excise Rules, 1944 — Rule 19, 206(3)
Central Excises and Salt Act, 1944 — Section 14
Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 129, 13, 13(2), 131, 136
Contempt of Courts (Amendment) Act, 1976 — Section 3
Contempt of Courts Act, 1971 — Section 14, 15, 15(1), 15(2), 19
Criminal Law (Amendment) Act, 1952 — Section 6, 6(1), 7, 7(1)
Criminal Procedure Code, 1973 (CrPC) — Section 1(2), 406, 407, 480, 481
Evidence Act, 1872 — Section 1, 12, 17, 19, 19(1)
General Clauses Act, 1897 — Section 25
Penal Code, 1860 (IPC) — Section 161, 162, 163, 164, 165
Prevention of Corruption Act, 1947 — Section 19, 5
Supreme Court (Contempt of Court) Rules, 1975 — Rule 12, 1A, 2, 3, 4

Citation : (1989) 22 ECC 16 : (1991) 55 ELT 518

Hon'ble Judges : Manashnath Roy, Acting C.J.; Dilip Kumar Basu, J

Bench : Division Bench

Advocate : Bhola Nath Sen, Bhaskar Sen and Arun Kanti Bera, for the Appellant; Subrata Roy Chowdhury, N.C. Roy Chowdhury, J.N. Ghosh and P.K. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Manashnath Roy, Actg. C.J.

1. Section 23 of the Contempt of Courts Act, 1971 (hereinafter referred to as the said Act), empowers the Supreme Court or, as the case may be, any High Court, to make Rules, not inconsistent with the provisions of the said Act, for any matter relating to its procedure and in terms thereof, our High Court in exercise of such powers and also in exercise of its powers under Article 215 of the Constitution of India, framed Rules regulating to procedure, in Contempt of Court

matters itself or of a Court subordinate to it and those Rules (hereinafter referred to as the said Rules), came into force on and from 1st September, 1975, on incorporation under Notification No. 10171-G dated 2nd Aug. 1975 and the same was published in the issues of the Calcutta Gazette dated 18th September, 1975.

2. In this appeal which was presented on 23rd June, 1988, against orders dated 1st June, 1987 and 21st June, 1988 as made by a learned Single Judge of this Court in an application filed by the Additional Collector of Central Excise and Customs, Shillong in C.O. No. 9996 (W) of 1987 (G.T.C. Industries Ltd. and Anr. v. The Principal Collector, Central Excise & Customs, Eastern Region and Collector of Central Excise & Customs, Shillong and Ors.) and the application for appropriate orders filed therein. We have got to consider the submissions as made on behalf of the parties appearing, to the import and effect of the said Rules and that is the reason why we have incorporated the earlier process in which the said Rules were framed and formulated.

3. M/s. G.T.C. Industries Ltd. and Golden Investment (Sikkim) Pvt. Ltd. (hereinafter referred to as the said Companies), of which the appellants herein, have claimed to be the officers and stationed in various parts of India, on or about 18th Nov. 1987, the said Companies filed and moved an *ex parte* writ application, which was numbered as CO. No. 9996 (W) of 1987, challenging therein amongst others, the validity of the summons issued u/s 14 of the Central Excises & Salt Act, 1944 (hereinafter referred to as the said 1944 Act), by the Additional Collector of Central Excise, Shillong. In fact, the necessary summons u/s 14 of the said 1944 Act, was issued to various officers of the said Companies. On the said application the learned Trial Judge was pleased to direct the petitioners before him to serve copies of the concerned application within a stipulated time and further directed the said proceeding to appear before him on 23rd Nov., 1987, with a further directions that in the meantime, status quo as of that date should be maintained by the parties.

4. Thereafter, on 30th November 1987, the learned Trial Judge after hearing the parties appearing before him, gave directions for filing affidavits with further liberty to Respondents before him to proceed with the matter for interrogation, if any, to be made during the office hours, on service of necessary notice. By the said order the learned Trial Judge further directed the Respondents before him to dispose of the matter for releasing of the concerned seized goods in accordance with Rule 206(3) of the Central Excise Rules, 1944 (hereinafter referred to as the said 1944 Rules) by 4th December 1987 and also to communicate the order as passed, to the writ petitioners, within a reasonable time. Apart from that the said learned Trial Judge also directed that in case, any security is demanded for releasing the concerned goods, the writ petitioners should deposit the same in cash.

5. Then on 10th December 1987, the writ petitioners before the learned Trial Judge filed and moved an application for contempt against Shri Bhujangaswamy,

Collector of Central Excise, Shillong and Principal Collector, Central Excise & Customs, Customs House, Calcutta, Shri R. Bhattacharjya, Additional Collector of Central Excise & Customs, Shillong and Shri Inder Singh, Assistant Collector of Customs & Central Excise, Silchar, alleging violation of the said order dated 30th November 1987 and amongst others prayed for withdrawing, revoking, recalling or cancelling the summons as issued to the officers of the said Companies and thereupon, the said learned Trial Judge was pleased to direct the said contempt proceeding to be listed on 16th December 1987 with corresponding directions to the petitioners before him to serve the Respondents concerned within a specified time. It was also directed by the learned Trial Judge that in the meantime, the Respondents before him should not give any effect to the summons in question or any other summons that may be issued with regard to the said Companies. It should be noted that the summonses in question, were issued to Sarbashree P.P. Khaitan, P.K. Chatterjee and T.K. Krishnamurthy. It would appear that on 16th December 1987, the learned Advocate appearing for the Respondents before him, the learned Trial Judge stated that in case the said Companies or their officers were required to be present before the Respondent authorities, they shall issue notices to that effect fixing a date, which shall not be earlier than 10 days from the date of issue of such notice and in that view of the matters, the learned Trial Judge passed no order on the concerned application for contempt and thus, disposed of the same.

6. It would appear that on 17th December 1987, summons were issued in terms of the order dated 10th December 1987, to Sarbashree Sanjay Dalmia and P.P. Bhan-dari for their appearance before the Additional Collector, Shillong on 18th and 19th January 1988 and similar summonses were issued to Shri M.C. Jain for his appearance before the said Additional Collector on 12th and 13th January 1988. On such, an order of injunction dated 23rd December, 1987, was obtained from the Additional Deputy Commissioner (Judicial), Aizawal, Mizoram in T.S. No. 9 of 1987, which was filed for and on behalf of or by M/s. North Eastern Tobacco and thereby, the defendant opposite parties before him were restrained till the final hearing of the proceedings and an order on the concerned temporary injunction petition dated 16th December 1987 was made, from interfering with the working of the plaintiff petitioners' cigarette factory situated in the State of Mizoram and marketing of the goods produced in that State in any manner prejudicial to proper and final adjudication of the proceedings. The said order was however, made subject to modifications after appearance and hearing of the defendant opposite parties who were again asked to show cause within a stipulated time, as to why the temporary injunction as asked for, should not be granted till the disposal of the suit. It would, further appear that in the plaint of the said Title Suit it has been categorically stated that G.T.C. Industries Ltd. of Bombay and Hyderabad have got nothing to do with the factory at Vairangate belonging to the plaintiff i.e. the said North Eastern Tobacco and G.T.C. Industries Ltd. was not even a party in the concerned Suit.

7. It would appear from the order-sheet of CO. No. 9996 (W) of 1987, that on

14th January, 1988, while dealing with an application dated 13th January, 1988, the said learned Trial Judge made it clear that an order as passed by him on 30th Nov., 1987, 10th Dec, 1987 and 16th December, 1987, were without prejudice to the rights and contentions of the parties in any other proceedings including the suit as mentioned hereinbefore and as such observes the application dated 30th January, 1988, was disposed of.

8. It would appear that pursuant to order in terms of the order dated 16th Dec, 1987 as made by the learned Trial Judge, summonses were issued to Sarbashree C.B. Sharma, A.K. Sukhani and T.K. Krishnamurthy for their appearances before the Addl. Collector, Shillong on 1st and 2nd March, 1988 and similar summonses were issued to Sarbashree P.K. Chatterjee and A.K. Ganguly on 5th February 1988, requiring them to appear on 3rd and 4th March, 1988, before the said Additional Collector and it would also appear that thereafter, a writ petition being W.P. No. 519 of 1988 which was moved on behalf of M/s. G.T.C. Industries Ltd., and Sri Sanjay Dalmia before the Hon'ble Delhi High Court, was dismissed on 1988. By the said proceeding, the petitioners in that case also challenged the summonses dated 15th and 18th April as issued from the office of the Directorate of Anti-Evasion (Central Excise) New Delhi and it was positively stated by Shri Sanjay Dalmia before that Court that he would positively appear before the concerned Central Excise authorities on 21st April 1988. It has been alleged that instead of appearing before the said authorities in terms of such undertaking as mentioned above, a Medical Certificate was produced from one "Jain Medical Centre" (Nursing Home) praying for five days time and consequently a fresh summons was issued directing the said Shri Dalmia to appear on 26th April 1988, before the concerned authorities at New Delhi.

9. It would also appear that again a writ petition being No. 625 of 1988 was moved before the Hon'ble High Court at Gauhati on behalf of the said G.T.C. Industries Ltd. and Golden Investment (Sikkim) Pvt. Ltd., against the summons dated 15th April 1988, which incidentally was the subject-matter of challenge before the Hon'ble Delhi High Court and on 23rd April 1988, an interim order was obtained against the concerned summonses dated 15th and 18th April 1988. It would also appear that on 2nd May 1988, the fact as mentioned hereinbefore, was brought to the knowledge and notice of the Hon'ble High Court at Delhi through an application u/s 151 of the CPC and the learned Judge of that Court was pleased to issue a notice on the said Shri Dalmia to show cause why contempt proceedings should not be initiated against him and he was further directed to appear in person on 6th May, 1988. It would also appear that pursuant to such direction, the said Shri Dalmia appeared before the Delhi High Court.

10. On 3rd May 1988, CO No. 9996 (W) of 1987, appeared in the list of the learned Trial Judge of this Court. From a reference to the order-sheet it would appear that the parties were duly represented and on the prayer of the learned Advocate appearing for the writ petitioners, the learned Trial Judge was pleased

to pass an order directing them and other officers who were summoned, to appear before the Additional Collector concerned at Shillong on 24th May, 1988, apart from holding that if any officers so directed to appear, have any administrative difficulty in appearing on the date as mentioned, they shall appear on 25th or 26th May, 1988 and if they fail to appear, the Respondents before him were given liberty to take steps in accordance with law. It would also appear that the prayer as made on behalf of the writ petitioners for extension of time to file their affidavit-in-reply, was granted. It would also appear that the writ petitioners had filed an application for recalling the earlier order dated 3rd May 1988 as made by the learned Trial Judge and on 20th May, 1988, he was pleased to direct that the petitioners before him will be at liberty to file an application for withdrawal of their writ petition.

11. It has been stated that on 24th May 1988, there was a letter from one T.S. Sondhi, Advocate for Bar Thakur & Associates, addressed to the Additional Collector concerned stating therein amongst others that he instructed by his clients M/s. G.T.C. Industries Ltd., Bombay to appear before the Additional Collector concerned to appear in connection with M/s. North Eastern Tobacco, Vairangte Mizoram and a request was made for granting time for appearance of the officers concerned till 15th June 1988. It would appear that the Additional Collector concerned by a telegram was pleased not to grant the extension as prayed for and requested the learned Advocate concerned to advise his clients to appear on the date as scheduled by this Court, failing which he was also informed that legal action would be initiated. On such, on or about 31st May, 1988, an application for contempt was filed by the Additional Collector of Customs & Central Excise against Shri Sanjay Dalmia and nine other officers of the G.T.C. Industries Ltd., and the writ petitioners also filed an application for withdrawing their petition in CO. No. 9996 (W) of 1987, before the learned Trial Judge and it has been stated that both the said applications were directed by the said learned Trial Judge to appear in the list on 1st June 1988. This order of 31st May, 1988, is not available in the records of the proceedings or the order-sheet of the CO. No. 9996 (W) of 1987. But Mr. Sen appearing for the Appellants now wanted to establish on a reference to other records and documents that really such order was passed.

12. However, on 1st June, 1988, the concerned CO. proceedings appeared in the list before the learned Trial Judge with the two applications as mentioned hereinbefore and he after hearing the parties was pleased to pass an order to the following effect :-

Re : Application for contempt dated 30-5-1988.

The contemnors/respondents are directed to show cause why contempt proceedings should not be drawn up against them for violation of the order passed by this Court on 3rd May 1988, within four weeks from today. Let this matter appear in the list on 29th June, 1988 for orders.

The contemnors/respondents are directed to be personally present before this Court on the date fixed viz., 29th June, 1988 at 10.30 a.m. and shall not leave Court without permission of this Court.

Learned Advocate for the respondents in the main writ petition shall serve copy of the application for contempt on the learned Advocate for the petitioners in the main writ petition.

Re : Application for withdrawal of the writ petition filed on 31-5-1988.

Put up for orders day after tomorrow.

Let a plain copy of this order, countersigned by the Asstt. Registrar (Court) be given to the learned Advocates for the parties.

13. From a reference to the order-sheet it would also appear that at the time of making such order, the parties before the learned Trial Judge were duly represented. It has also been stated that thereafter, on 8th and 9th June 1988, the concerned application for withdrawal of the writ petition came up before the learned Trial Judge and he after hearing both the parties at length was kind enough to direct the matter to appear in the list on 10th June, 1988. Those two orders are also not available in the order-sheet of the concerned case but Mr. Sen, in the manner as indicated hereinbefore, wanted to establish that such orders were passed on the dates as mentioned.

14. Thereafter, on 10th June, 1988, the learned Trial Judge, after hearing the learned Advocates before him for the parties, was pleased to dismiss the writ petition with costs and then on 21st June, 1988, Appellants before us filed an application for dismissal of the contempt application which was filed by the authorities concerned and alternatively prayed for dispensation of their personal appearances. It would also appear that while making such order dated 10th June, 1988 the learned Trial Judge on consideration of the conduct of the petitioners before him and more particularly he was of the view that false statements were made on affidavits and facts were distorted, directed that the Respondents Union of India and their officers should be compensated with costs appropriately and as such, directed an exemplary costs assessed at Rs. 10,000/- to be paid by the petitioner before to the Respondents within two weeks and in default, he further directed that the Respondents before him would be at liberty to apply for sanction for prosecution against the deponent concerned. He of course, made it clear that if costs in terms of His order is paid there would not any sanction for such prosecution as indicated above.

15. The contemner opposite parties not having appeared before the learned Trial Judge, on 29th June 1988, the learned Trial Judge passed an order to the following effect :-

The alleged contemner-opp. Parties No. 1 to 6 and 10 have not appeared today pursuant to the order passed by this Court on 1st June, 1988. Mr. B.N. Sen, learned Counsel appearing on behalf of the said contemner opp-parties, informs

this Court that an appeal has been preferred by the said opp-parties contemnors in connection with their application for exemption of personal appearance which was fixed for orders today. Mr. Sen further informs that the division Bench presided over by the learned Acting Chief Justice have heard this appeal in part today and adjourned the matter till Monday next. This Court has also been informed that the Division Bench desired that the pendency of the appeal would be intimated to this Court. Accordingly no step has been taken for personal appearance of the contemner-opp. parties Nos. 1 to 6 and 10 in Court today.

Opposite parties Nos. 1, 8 & 9 have personally appeared today through their learned Advocates. Their personal appearance as prayed for, is dispensed with until further orders.

Let it be recorded that the contemner-opp-parties Nos. 6 and 10 personally appeared before this Court on 21st June 1988, when Mr. Sen wanted to move an application for exemption of personal appearance.

The appearance of the said opp-parties Nos. 6 and 10 was noted by this Court but the same was not recorded in the order sheet. Accordingly personal appearance of the said contemner-opp. parties Nos. 6 and 10 as prayed for, is dispensed (?) with until further orders.

With regard to the question of personal appearance of the alleged contemner-opp-parties Nos. 1 to 5, let this matter appear in my list for orders on Tuesday next (5-7-88).

On the prayer of Mr. Sen, time to file affidavit showing cause in terms of the order dated 1st June, 1988 is extended by a fortnight from today.

As prayed for, learned Advocates for the parties are permitted to take note of this order. The said order was made on the basis of the representations as made before the learned Trial Judge by Shri B.N. Sen appearing for the alleged contemner opposite parties. Before the said order dated 29th June, 1988, was passed, on 21st June, 1988, the Respondent contemnors concerned before the learned Trial Judge filed an application for dismissal of the contempt proceedings and alternatively, they prayed for dispensation of their personal appearances. It would appear that the said application was kept in the record and it was claimed that no order on the same was passed. It should also be noted that the 29th June, 1988, the order which we have quoted in extenso was passed by the learned Trial Judge at a point of time when the records were here before us in the Appeal Court.

16. The application which we are considering now, was dated 23rd June, 1988 and was filed by the appellants, against whom the order in respect of the concerned contempt proceedings, the particulars whereof we have indicated earlier, was issued and by the present application, they have claimed that the application for contempt filed by the Additional Collector of Central Excise & Customs, Shillong be dismissed and the interim order dated 1st June, 1988, as

passed by the learned Trial Judge, be Vacated. Alternatively, a stay of operation of the said order was prayed for and it was further prayed that personal appearances of the alleged contemner petitioners, which was fixed on 29th June 1988, before the learned Trial Judge, be dispensed with.

17. Mr. Sen placed the writ petition which was filed before the learned Trial Judge for determination in this Court and it was his specific submissions that on the basis of the averments as made therein, the contempt Rule, in which the purported contemner opposite parties have been asked to show-cause, should not have been entertained and in any event, before the issue of a Rule for contempt, such steps in the matter of asking the alleged contemner opposite parties to show cause by the learned Trial Judge, was improper and that too the alleged violation of the order dated 23rd May, 1988. He referred to the provisions of the said Rules and the Appendix-1 thereunder and claimed that there could not be any direction for any attendance of the alleged contemner without the order under Appendix-1 was duly issued and served. The said Appendix-1 includes the forms of Rule Nisi and Form No. 1 is to the following effect :-

Upon reading a petition of and his/their affidavit of verification thereof dated and the exhibits or annexures to the said upon hearing Advocate for the said

It is ordered that a rule do issue calling upon the respondent/respondents to show cause why he/they should not be committed to prison or otherwise penalised or dealt with for having (Set out the nature of contumacious conduct)

And it is further ordered that pending the disposal of this rule the respondent/respondents are restrained from (State particularly).

The rule is made returnable.

On the returnable date, it is ordered, the respondent/respondents shall appear personally before this Court a.m./p.m. and shall not leave the Court without permission and we are also incorporating Form No. 2 under the said Appendix, since reference to the same may have to be made while disposing of this application.

Form No. 2:-Come to the notice of

Whereas it has been brought to the notice of this Court by an been reported to by Affidavit filed by the Advocate-General, Registrar, Appellate/Original Side of this Court that the respondent/respondents has/have (Set out the nature of contumacious conduct).

It is ordered that a rule do issue calling upon the respondents to show cause why he/they should not be committed to prison or otherwise penalised or dealt with for the acts of conduct stated above.

The rule is made returnable on

The contemner shall be personally present in Court at - on the returnable date

and shall not leave the Court without permission. It was then submitted by Mr. Sen that even though the Rule for Contempt has been issued, but since the writ petition has been withdrawn, so the learned Trial Judge should not have, in all fairness, proceeded with the application for contempt. It was then and further categorically submitted by Mr. Sen that the copy of the concerned contempt application if at all, was served not on the party or parties against whom the contempt has been alleged or the contempt application was directed and that being the position, under Article 21 of the Constitution of India, which deals with protection of life and personal liberty of a subject, that application should not have been considered or looked into, since by the same or the orders as asked for therein, the personal liberty of the contemnors have been sought to be interfered with, the more so when, the said Article requires that no person shall be deprived of his life or personal liberty except according to procedure established by law.

17A. To establish the above submissions, Mr. Sen referred to the case of A.K. Gopalan Vs. The State of Madras, , which was a case under the Preventive Detention Act, 1950 and where it has been observed amongst others, that Article 19 gives list of individual liberties, which Articles 20-22 primarily deal with penal or other "laws and to be more precise B.K. Mukherjee, J. has observed as under :-

18. Article 19 of the Constitution of India gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law, so that they may not conflict with public welfare or general morality. On the other hand, Acts 20, 21 and 22 are primarily concerned with penal enactment or other laws under which personal safety or liberty of persons could be taken away in the interests of the society and they set down the limits within which State Control should be exercised. Article 19 uses the expression "freedom" and mentions the several items and aspects of it which are secured to individuals, together with the limitations that could be placed upon them in the general interests of the society. Articles 20, 21 and 22 on the other hand do not make use of the expression "freedom" and they lay down the restrictions that are to be placed on State Control where an individual is sought to be deprived of his life or personal liberty.

19. It should also be noted that Kenia C.J. has indicated that it seems to me improper to read Article 19 as dealing with the same subject as Article 21, Article 19 gives the rights specified therein, only to the citizen of India which Article 21 is applicable to all persons. The word citizen is expressly defined in the Constitution to indicate only a certain section of the inhabitants of India. Moreover, the protection given by Article 21 is very general. It is of "law" - Whatever that expression is interpreted to mean. The legislative restrictions on the law-making powers of the legislature are not here prescribed in detail as in the case of the rights in Article 19. Therefore, Article 19 should be read as a separate complete Article and it was the observations of Das J. that the

Constitution has recognised personal liberties as fundamental rights. It has guaranteed some of them under Article 19(1) but not restraints on them by clause (2) to (6). It has put checks on the State's legislative powers by Articles 21 and 22. It has by providing for preventive detention, recognised that individual liberty may be subordinated to the larger social interests, apart from the words "personal liberty" does not mean only liberty of the person but it means liberty or the rights attached to the person (*Jus personarum*). The expression "freedom of life" or "personal liberty" are not to be found in Article 19 and it is straining the language of Article 19 to squeeze in personal liberty into that Article. In any case the right to life cannot be read into Article 19.

There is no reason to suppose that in Article 21 of the Constitution the expression "personal liberty" has been used in the restricted sense in which Blackstone used it in his commentaries. Article 19 protects some of the important attributes of personal liberty as independent rights and the expression "personal liberty" has been used in Article 21 as a compendious terms including within its meaning all the varieties of rights which go to make up the personal liberties of men. It should also be noted that Kenia C.J. has further indicated that the deprivation (total loss) of personal liberty, which is sought to be protected by the expression "personal liberty" in Article 21, is quite different from restriction (which is only a partial control) of the right to move freely (which is relatively a minor right of a citizen) as safeguarded by Article 19(1)(d). Deprivation of personal liberty has not the same meaning as restriction of free movement in the territory of India. Therefore, Article 19(5) cannot apply to a substantive law depriving a citizen of personal liberty. The contention, that the word "deprivation" includes within its scope "restriction" when interpreting Article 21, is not acceptable and it has the observations of Patanjali J. that the constitutional safeguards are directed against individuals. They are as rule directed against the State and its organs, Protection against violation of the rights by individuals must be sought in the ordinary law. Article 21 is not designed to afford protection against infringements by the executive or individuals. The insertion of a declaration of Fundamental Rights in the forefront of the Constitution coupled with an express against legislative interference with these rights (Article 13) and the provisions of a constitutional sanction for the enforcement of such non-interference by means of a judicial review (Article 32), is a clear and emphatic indication that these rights are to be paramount to ordinary State-made laws, and Das J. has further observed that Article 21 gives protection to life and personal liberty to the extent therein mentioned. It does not recognise the right to life and personal liberty as an absolute right but delimits the ambit and scope of the right itself. The absolute right is by the definition in that Article cut down by the risk of its being taken away in accordance with procedure established by law.

It is this circumscribed right which is substantively protected by Article 21 as against the executive as well as the Legislature, for the Constitution has conditioned its deprivation by the necessity for a procedure established by law

made by itself. While sub-clause[^]) to (6) of Article 19 have put a limit on the fundamental rights of a citizen, Articles 21 and 22 have put a limit on the power of the State given under Article 246 read with the legislative lists. Under the Constitution the life and personal liberty are balanced by restrictions on the rights of the citizens as laid down in Article 19 and by the checks put upon the State by Articles 21 and 22. While Fazl Ali, J. has observed that the expressions "personal liberty" and "personal freedom" have a wider meaning and also a narrower meaning. In the wider sense, they include not only immunity from arrest and detention but also freedom of speech, freedom of association, etc. In the narrower sense, they mean immunity from arrest and detention. The juristic conception of "personal liberty", when these words are used in the sense of immunity from arrest, is that it consist in freedom of movement and locomotion. It is further to be noted that Patanjali Shastri J. has indicated that whatever may be the generally accepted connotation of the expression "personal liberty", it is used in Article 21 in a sense which excludes the freedoms dealt with in Article 19. Thus personal liberty in the context of Part III of the Constitution is something distinct from the freedom to move freely throughout the territory of India and it has been observed by B.K. Mukherjee, J. that in ordinary language "personal liberty" means liberty relating to or concerning the person or body of the individual and "personal liberty" in this sense is the antithesis of physical restraint or coercion. "Personal liberty" means a personal right not to be subjected to imprisonment, arrest or other physical coercion in any manner that does not admit of legal justification. This negative right of not being subjected to any form of physical restraint or coercion constitutes the essence of personal liberty and not mere freedom to move to any part of the Indian territory. In the Indian Constitution the expression "personal liberty" has been deliberately used to restrict it to freedom from physical restraint of a person by incarceration or otherwise and the findings of the majority were that "procedure established by law" means procedure prescribed by the law of the State. These words are to be taken to refer to a procedure which has a statutory origin, for non-procedure is taken or can be said to have been established by such vague and uncertain concepts as "the immutable and universal principles of natural justice." While on the question of the meaning word "procedure", Patanjali Sastri, J. has observed that Article 21 presents an example of the fusion of procedural and substantive rights in the same provision. The right to live* though the most fundamental of all, is also one of the most difficult to define and its protection generally takes the form of a declaration that no person shall be deprived of it save by due process of law or by authority of law. "Process" or "Procedure" in this context connotes both the act and the manner of proceeding to take away a man's life or personal liberty. B.K. Mukherjee, J. has indicated that on plain reading of Article 21 of the meaning seems to be that you cannot deprive a man of his personal liberty unless you follow and act according to the law which provides for deprivation of such liberty. The expression "procedure" means the manner and form of enforcing the law and it was the observation of Das, J. that the word "procedure" in Article 21 must be taken to signify some steps or method or

manner of proceeding leading up to the deprivation of life or personal liberty.

20. While interpreting the word "establish" Kania C.J. observed that the word "establish" itself suggests an agency which fixes the limits. This agency can be either the Legislature or an agreement between the parties. While B.K. Mukherjee, J. has indicated that the said word "establish" ordinarily means "fixed or laid down" and if "law" means not any particular piece of law but the indefinite and indefinable principles of natural justice which underline positive system of law, it would not at all be appropriate to use the expression "established" for natural law or natural justice cannot establish anything like a definite procedure.

21. The word "law" as used in Article 21 or for the meaning thereof. Observed by the majority that word "law" connoting what has been described as the principles of natural justice outside the realm of positive law. "Law" in that Article is equivalent to State-made law. Mr. Sen claimed that the said Act or the said Rules are the State-made laws and since the contemner opposite parties were not parties to the concerned order, they should have been served first in terms of the observations in the case of Tarafatullah Mandal and Others Vs. S.N. Maitra and Others, , where amongst others, the Bench determinations of this Court has observed while dealing with Section 2 of the Contempt of Courts Act, 1926 or for the requirements in a proceeding for contempt, that it is always essential even in India that an individual or an officer who is not a party to the proceeding resulting in the order alleged to have been disobeyed but who is sought to be proceeded against in contempt, must be served with a copy of the order or judgment to be enforced. It is proper course to insert the names of the individuals or the officers in the Rule Nisi and to serve it on his specifying the nature of the contempt with which the individual or officer served is charged. Before a-proceeding for contempt can succeed, it is of paramount importance to establish first, the service of the order of the Court said to have been disobeyed upon the person alleged to have committed contempt thereof, secondly, the precise act of contempt, thirdly, the precise responsibility of the contemner in the act of contempt, and fourthly, the date of the alleged contempt being subsequent to the service of the order said to have been disobeyed. There are for four indispensable requisites and failure to establish any one of them must mean dismissal of the petition. Then, Mr. Sen referred to the case of Sri Sri Iswar Nitto Gopal Jew Vs. Angur Bala Mullick, , where on the facts of the case, a learned judge of this Court has observed that the foundation of an application for committal his personal service of the order alleged to have been violated unless the order shown that he was evading services.

22. In fact, Mr. Sen pointed out that there is or has been no submissions in the contempt application about such or necessary service on the alleged contemner opposite parties and as such, in terms of the Bench determination of this Court in the case of Nripendra Narayan Vs. Beda Bala Debi, , where it has been observed that the proceedings of Contempt of Court, though not criminal are of a quasi-criminal nature and therefore where there is any responsible doubt, the persons

charged with contempt are entitled to the benefit of such doubt, apart from holding that where the contempt alleged is a Civil contempt (breach of an order of the Court) the Court has to be satisfied beyond all reasonable doubt that notice of the Court's order had been received before the acts complained of were committed, as the liberty of the subject is involved; the learned Trial Judge should not have either entertained the application for contempt or issued the concerned show cause notice.

23. Section 19 of the said Act makes provisions or lays down the procedure in appeal and which lie as of right from any order or decision of High Court in exercise of its jurisdiction to punish for contempt under sub-clause as mentioned therein. On the basis of those provisions Mr. Roy Chowdhury supplemented his submissions that this appeal was not maintainable and in answer to that reference was made by Mr. Sen to the case of *Ranjit Chatterjee and Anr. v. Rambadan Chowbey*, where while issuing a rule Nisi in a contempt proceeding the Court passed an order directing the contemnors to return some seized coal, machineries and other equipments for extracting coal to the respondents. In appeal it was argued by the appellants that such order issuing a Rule Nisi with certain specific directions to do some acts was *mf v. ore* than issuance of contempt rule and it affected the right of the parties and appeal was maintainable inasmuch as it was an order passed in the exercise of jurisdiction to punish for contempt. In that case the argument on behalf of the respondents was that the order was an inter-locutory one and hence the appeal was maintainable. On those facts it has been observed that there is no provisions in Section 19 of the said Act from preferring an appeal against an interlocutory order. Section 19(1) very clearly states that an appeal was lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt and on such facts it has also been observed that it must be said that the order as passed in the case was in exercise of the jurisdiction to punish for contempt and not in the exercise of any other jurisdiction. It has also been recorded that the order certainly affected the rights and contentions of the parties and the same had really great relevance to question, if in fact, there was violation of the order of the Court by the respondents. Apart from the above determinations, reference was also made by Mr. Sen to the case of *Deben Adhicary Vs. State of West Bengal and Others*, , where apart from other while dealing with Section 3 of the Contempt of Courts Act, 1982 it *inter alia* been held that no liability will arise to the order claimed to have been flouted has not been served on the contemner but only communicated to him and the act complained of is anterior to such communications and it has also been indicated that before a proceeding for contempt can succeed, it is a paramount importance to establish the service of the order of the Court said to have been disobeyed upon the person alleged to have been committed contempt thereof, secondly the precise act of contempt, thirdly, the precise responsibility of the contemner in the act of contempt and fourthly the date of the alleged contempt being subsequent to the service of the order said to have been disobeyed, as the four indispensable

requisites and failure to establish any one of them must mean dismissal of the petition for contempt. In view of those observations it was Mr. Sen's specific contentions that the Rule for showing cause as to whether the purported contemner should or could not be punished for or appropriately dealt with on the allegations of contempt was not maintainable or should not have been issued. Mr. Sen also referred to the case of A.R. Antulay Vs. R.S. Nayak and Another, . The said determination amongst others was dealing with Section 7(1) of the Criminal Law Amendment Act, 1952 and other provisions of the Criminal Procedure Code and Evidence Act, apart from the provisions of the Civil Procedure Code.

24. As would appear that in the other appeal two questions arose, namely (1) (whether the directions given by this Court on 16th of February, 1984 in R.S. Nayak Vs. A.R. Antulay, withdrawing the Special Case No. 34/82 and Special Case No. 3/83 arising out of the complaint filed by one Shri P.B. Samant pending in the Court of Special Judge. Greater Bombay, Shri R.S. Sule, and transferring the same to the High Court of Bombay with a request to the Chief Justice to assign these two cases to a sitting Judge of the High Court, in breach of Section 7(1) of the Act of 1952 which mandates that offences as in this case shall be tried by a Special Judge only thereby denying at least one right of appeal to the appellant was violative of Articles 14 and 21 of the Constitution and whether such directions were at all valid or legal and (2) if such directions were not at all valid or legal in view of the order dated 17th of April 1984 referred to hereinbefore, is this appeal sustainable or the grounds therein justiciable in these proceedings. In other words, are the said directions in a proceeding inter-parties binding even if has in law of violative of Articles 14 and 21 of the Constitution and as such are immune from correction by this court even though they cause prejudice and do injury? These are the basic questions which this Court must answer in this appeal and the contention that was canvassed before Supreme Court was that save as provided in subsection (1) of Section 9 of the Criminal Procedure Code (1898) shall so far as they are not inconsistent with the Act apply to the proceedings before the Special Judge and for purposes of the said Provisions the Court of the Special Judge shall be deemed to be a Court of Sessions trying cases without the aid of assessors and the person conducting the prosecution before a Special Judge shall be deemed to be a public prosecutor and on such facts it was submitted before the Supreme Court that it was a private complaint and the prosecutor was not the public prosecutor. This was another infirmity which this trial suffered, it was pointed out. In the background of the main issue involved in this appeal we do not propose to deal with this subsidiary point which is of not any significance.

25. It was observed by the Supreme Court that the only question which was concerned in the appeal was whether the case which is triable under the 1952 Act only by a Special Judge appointed u/s 6 of the said Act could be transferred to the High Court for trial by itself or by this Court to the High Court for trial by it. Section 406 of the Code deals with transfer of criminal cases and provides power to this Court to transfer cases and appeals whenever it is made to appear

to this Court that an order under this section is expedient for the ends of justice. The law provides that this Court may direct that any particular case or appeal be transferred from one High Court to another High Court or from a Criminal Court Subordinate to one High Court to another Criminal Court of equal or superior jurisdiction subordinate to another High Court. Equally Section 407 deals with the power of High Court to transfer cases and appeals. u/s 6 of the 1952 Act, the State Government is authorised to appoint as many Special Judges, as may be necessary for such area or areas for specified offences including offences under the Act. Section 7 of the 1952 Act deals with cases triable by Special Judges.

The question, therefore, is whether this Court u/s 406 of the Code could have transferred a case which was triable only by a Special Judge to be tried by the High Court or even if an application had been made to this Court u/s 406 of the Code to transfer the case triable by a Special Judge to another Special Judge could that be transferred to a High Court for trial by it. It was contended by Shri Rao that the jurisdiction to entertain and try cases is conferred either by the Constitution or by the laws made by Parliament. He referred us to the powers of this Court under Articles 32, 131, 137, 138, 140, 142(1) of the Constitution. He also referred to Entry 77 of List 1 of the Constitution which deals with the constitution of the Courts. He further submitted that the appellant has a right to be tried in accordance with law and no procedure which will deny the equal protection of law can be invented and any order passed by this Court which will virtue of Article 13(2) of the Constitution. He referred as to the previous order of this Court directing the transfer of cases to the High Court and submitted that it was a nullity because of the consequences of the wrong directions of this Court. The enormity of the consequences warranted this Court's order being treated as a nullity and the directions as contained denied the appellant before the Supreme Court the remedy by appeal as of right. It was pointed out that the said erroneous or mistaken direction should be corrected at the earliest opportunity. In fact, specific references were made by Mr Sen in support of his contentions on the facts of this case which would be referred to hereinafter to paragraphs 38, 40 to 43, 46, 49 to 52 and 57 of the determinations as reported in A.R. Antulay Vs. R.S. Nayak and Another, . In fact, the majority view on the basis of the above citation and reference as made by Mr. Sen, was that Section 7(1) of the Criminal Law Amendment Act, 1952 creates a condition which is sine qua non for the trial of offenders u/s 6(1) of that Act. The offences specified u/s 6(1) of the 1952 Act are those punishable under Sections 161, 162, 163, 164 and 165A of the Penal Code and Section 5 of the Prevention of Corruption Act, 1947. Therefore, the order of the Supreme Court transferring the cases filed against the Chief Minister of the State who is alleged to have committed the offences under Sections 161, 165, 384, 420, 164, 165A of Penal Code and Section 5 of Prevention of Corruption Act to the High Court was not authorised by law especially when the order was clearly per incuriam. The Supreme Court, by its directions could not confer jurisdiction on the High Court to try any case when it did not possess such jurisdiction under the scheme of the 1952 Act.

The Supreme Court was not called upon and did not decide the express limitation on the power conferred by Section 407 of the Code which includes offences by public servants mentioned in the 1952 Act to be overridden in the manner sought to be followed as the consequential direction of the Supreme Court. The directions were alleged to have been issued by the Supreme Court without observing the principle of *audi alterant partem*. Therefore, singling out of the accused in such case for a speedier trial by the High Court for an offence of which the High Court had no jurisdiction to try under the Act of 1952 was unwarranted, unprecedented and the directions given by the Supreme Court for the said purpose, were not warranted. When that fact is brought to the notice of the Supreme Court, the Supreme Court can remedy the situation. In rectifying the error, no procedural inhibitions should debar the Supreme Court because no person should suffer by reason of any mistake of the Court. Here no rule of *res judicata* would apply to prevent the Supreme Court from entertaining directions. The Supreme Court is not powerless to correct its error which has the effect of depriving a citizen of his fundamental rights and more so, the right to life and liberty. It can do so in exercise of its inherent jurisdiction in any proceeding pending before it without insisting on the formalities of a review application. Powers of review can be exercised in a petition filed under Article 138 or Article 32 or under any other provision of the Constitution if the Court is satisfied that its directions have resulted in the deprivation of the fundamental rights of a citizen or any legal right of the petitioner. The Supreme Court therefore recalled the directions contained in the order in question. The basic fundamentals of the administration of justice are simple. No man should suffer because of the mistake of the Court. No man should suffer a wrong by technical procedure or irregularities. Rules of procedures are the hand-maids of justice and not the mistress of the justice. *Quod debito justice*, the Court must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied.

26. On a reference to Rule 19 of the said Rules which postulates that the Court may issue Rule Nisi or summarily reject the petition or make such other orders thereupon as though fit.

27. The Rule Nisi shall be drawn up, as far as may be in the model form in Form No. 1 Appendix-1. Mr. Sen claimed and contended that on the meaning or on construction of the words "such order", the order as issued by the learned single judges was improper, irregular and violative of Article 21 of the Constitution of India and such submissions were also sought to be supplemented by him on a reference to the prayers in the petition. Other submissions of Mr. Sen on the point would be available or apparent from the contention as put forward by him in his reply, the particulars whereof, would be indicated hereafter.

28. Mr. Roy Chowdhury, appearing for the Respondents before us claimed that the appeal in question, to be misconceived and not maintainable and according to him, since no order/direction has been made u/s 19 of the said Act or any

right has been decided, the appeal as mentioned hereinbefore, should be deemed to be misconceived. He further pointed out that on 21st June 1988, no order has been recorded, against which the appeal in question has sought to be preferred but at all an order has been recorded on 29th June 1988 and since no appeal has been preferred against such order and there is in fact, no order of refusal passed, the exceptions as taken by him, should be deemed to be just, due and proper. It should be noted that on necessary leave being obtained, the date of the Memorandum of Appeal with the leave of the Court, was changed by adding 24th June and 1st July 1988, in addition to the dates as was already mentioned in the memo.

29. Mr. Roy Chowdhury pointed out that the whole question to be considered in this case is whether before the issue of the connected or concerned contempt Rule, the contemner can be asked to appear in a Civil Contempt proceeding. He made a reference to Rule 1A of the said Contempt Rules, where it is stated that unless it is repugnant to the subject or context, the words and expression "Act/Court" shall mean respectively the Contempt of Courts Act, 1971 and the High Court. The "Form" shall mean the Forms mentioned in the Appendix to the Rules. The said Rule as indicated earlier was promulgated in exercise of the powers conferred by Section 23 of the Contempt of Courts Act, 1971 and by Article 215 of the Constitution of India and all other powers in that behalf enabling, because of such power the High Court of Calcutta made the said Rules for regulating the proceeding for Contempt of Court itself or of the Courts Subordinate to it under the Contempt of Courts Act, 1971. Mr. Roy Chowdhury further referred to Rule 2 of the said Rules. The particulars whereof, are quoted hereunder : -

2(1) Proceedings in connection with a Civil Contempt may be initiated :

- (a) by a petition presented by a party or parties aggrieved or
- (b) by the High Court on its own motion; or
- (c) on a reference made to the High Court by the Subordinate Courts as in the case of Criminal Contempt.

(2) Proceedings in connection with a Criminal Contempt may be initiated : -

- (a) on a motion of the High Court in respect of a contempt committed upon its own view u/s 14 of the Act; or
- (b) on its own motion by the High Court u/s 15(1) of the Act; or
- (c) on a motion founded on a petition presented by the Advocate General u/s 15(1)(a) of the Act; or
- (d) on a motion founded on a petition presented by any other person with the consent in writing of the Advocate General u/s 15(1)(b) of the Act; or
- (e) on a reference made to the High Court by the Subordinate Courts u/s 15(2) of the Act, containing the following particulars : -

(a) a brief statement of the case :

(b) the particulars of the contumacious acts;

(c) Name, address and other particulars of the Respondents along with the copies of the papers relating to contumacious acts.

30. It was Mr. Roy Chowdhury's further submissions that under those Rules or the relevant provisions thereof, this Court has the power to punish after following the due and necessary formalities and that too, after giving a hearing on appearances being entered. In fact, he stated that after such appearance in compliance with the order the contemner/opposite parties have asked for exemption and for the purpose of the powers of the Court in a case of the present nature, he referred to the case of Sukdev Singh v. Teja Singh, CJ. etc. AIR 1954 SC 186, in that case it has laid down that the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Record. Section 1(2) Criminal P.C. expressly excludes special jurisdictions from its scope. Hence, the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure - All that is necessary is that the procedure is fair and that had the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself, apart from claiming that contempt is a special subject and the jurisdiction is conferred by a special set of laws peculiar to Courts of Records. The words "any other law" in Section 5 of the Criminal Procedure Code do not cover contempt of a kind punishable summarily by the High Courts and that it was the power of a High Court to institute proceedings for Contempt of Courts and punish where necessary is a special jurisdiction. Such proceedings are not governed by the Criminal Procedure Code, 1898. Hence, the Supreme Court has no power u/s 527, Criminal P.C. to transfer such proceedings from one High Court to another.

31. There is no other power which the Supreme Court can exercise in this respect. Article 215 of the Constitution gives every High Court the right and the power to punish a contempt of legislature can deprive a High Court of the right which is so vested in it. Further the proceedings cannot be transferred from one Judge to another, there being no original jurisdiction which the Supreme Court can exercise. It is not a fundamental right and to Article 32 has no application. On the basis of the above, Mr. Roy Chowdhury claimed that the implied power to punish a contemner is there in the Code but such power, as indicated by him earlier, should be used and exercised on following the due formalities. It was submitted by him that on application being filed the High Court under its Rules has thus a summary power to dismiss or reject the application, apart from the power to adopt its own procedure and according to Mr. Roy Chowdhury such power to punish as indicated earlier, has been implied power to direct appearance for which in this case the learned judge has done. He further pointed out that such directions would not mean that the learned Judge has already

formed his opinion adverse to the contemnors and would have punished them. It was also pointed out by him that above was the admitted power of the High Court and the use of exercise of such power or the extent of the same is not under challenge and since there has been no formation of mind by the learned Judge while against the contemnors so there could not be any question of involvement of fundamental rights. Such submissions as claimed by Mr. Roy Chowdhury to be immemorial in the facts of this case and at the present state of affairs. While on the question of High Court's implied power as indicated in terms of the Supreme Court as mentioned hereinbefore, Mr. Roy Chowdhury also referred to the Stroud's 4th/5th Edition, Volume II which indicate that High Court has power to summon and require the person's presence as contemnor to effectuate or effectively use the special jurisdiction of the High Court under the Contempt of Courts Act.

32. While on the question of the High Courts, power to punish, Mr. Roy Chowdhury stated that in exercise of such power, the High Court may direct the presence of a person, apart from directing security for such presence and he pointed out, that without such power, the Court would not be in a position to vindicate its right. Such power according to Mr. Roy Chowdhury should be deemed to be of immemorial usage and such power should be implied in the concerned Rule, which according to him is concerned Rule being Rules 1A and 2 of the said Rules which is framed under Article 215 of the Constitution of India.

33. While on the interpretation of the word "power to punish" Mr. Roy Chowdhury referred to and relied on Stroud's Judicial Dictionary 3rd Edition and claimed that when such power is given, the same would include "to hear and determine" an offence and that being the position the condition is implied that the accused be first cited by summons, and have an opportunity of defence. Such being the position, it was Mr. Roy Chowdhury's specific submissions that thus in the instant case the contemnor/appellants could have, after the appearances as required entered, asked for exemption and it was also his specific submissions that the third limb of Rule 19 as quoted earlier, is very wide and if a Court uses or exercises such power, nobody can take any exception to the same. While on his submissions on the implied power of the Court, Mr. Roy Chowdhury referred to and relied on the decision in the case of Sukdev Singh v. Teja Singh, CJ. etc. (supra), the particulars whereof have been quoted earlier and submitted further that if a learned Trial Judge, as in this case follows the practice as indicated or involved in the third limb of the Rule 19 of the said Rules nobody can take any exception. It was further claimed by Mr. Roy Chowdhury that such implied power as to have but also include the power to secure the personal presence of the contemnors and such power according to him would also be a power incidental and necessary to effectuate the special jurisdiction of the High Court, to punish or to take appropriate steps in a case of the present nature. In fact, he stated that as such the High Court may direct the presence of the contemnors or even may pass orders to secure such persons and without such and necessary power, according to Mr. Roy Chowdhury the Court would not be in a position to vindicate

its right.

34. While on the question of immemorial usage, Mr. Roy Chowdhury referred to observations of the Supreme Court in the case of *R.L. Kapur Vs. State of Madras*, . In fact, he referred to the observations of the Supreme Court to the effect that the jurisdiction conferred on the High Court under Article 215 to punish for contempt of itself is a special one, nor arising or derived from the Contempt of Courts Act, 1952 and therefore, not within the purview of the Penal Code. Such a position is also clear from the provisions of the Contempt of Courts Act. The effect of Section 5 of that Act is only to widen the scope of the existing jurisdiction of a special kind and not conferring a new jurisdiction. So far as contempt of the High Court itself is concerned, as distinguished from that of a Court subordinate to it, the Constitution vests these rights in every High Court, and so no Act of a Legislature could take away that jurisdiction and confer it a fresh by virtue of its own authority. That being the position, Section 25, General Clauses Act cannot apply and in which case it has further been observed that the High Court, as a Court of record, being clothed with a special jurisdiction, has also all incidental and necessary powers to effectuate that jurisdiction. Consequently it can order satisfaction of fine imposed by it from out of an available fund deposited by or on behalf of or for the benefit of the accused.

Section 70 of the Indian Penal Code, 1860 deals with fine leviable within six years or during imprisonment and has also indicated that the death in appropriate cases not to discharge the properties from liability and postulates that the fine, or any part thereof which remain unpaid, may be levied at any time within 6 yrs. after the passing of the sentence, and, if, under the sentence, the offender be liable to imprisonment for a longer period than six years, even at any time previous to the expirations of that period; and the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his death. Relying on such provisions and also relying on Section 25 of the General Clauses Act which lays down that Sections 63 to 70 of the Indian Penal Code and the provisions of the Code of Criminal Procedure for the time being in force in relation to the issue and the execution of warrants for the levy of fine shall apply to all fines imposed under any Act, Regulation, Rule or by law unless the Act, Regulation, Rule or by law contains an express provision to the contrary, Mr. Roy Chowdhury claimed that power of the Court in the instant case under the said Act or the Rules framed thereunder, would also include such power of the Court as indicated hereinbefore and such power, according to him would also include, as such earlier, the power to ask for the presence of the contemnors. In support of such submissions Mr. Roy Chowdhury made a reference to the Full Bench decision of the Patna High Court in the matter of *Basanta Chandra Ghosh, Advocate, Patna & Ors.*, AIR 1960 Patna 430 and he made specific references, amongst others to the observations to the effect that it is true, no doubt, that in India there is no distinction between the superior Court of Record and the inferior Court of Record as is maintained in English Law, because in India it is only the High Court which are recognised as

Courts of Record; but the Courts subordinate to the High Court in India have been vested with the power to punish for contempt committed in presence of the Court provided for under Sections 480 to 487 of the Code of Criminal Procedure so that a distinction sought to be made between the superior and inferior Courts in English Law and the absence of such a distinction in Indian Law, and the further fact that subordinate Courts in India have not been considered as Courts of Record does not make any substantial difference, as the powers possessed by the inferior Courts of Records in England with regard to punishing for contempt committed in presence of the Court are exercised by the Indian Courts by virtue of the statutory powers conferred upon them. Therefore, there is no substantial difference between the procedure in this country and that prevailing in England and it may, however be pointed out that the power of committing to prison exercised by the Judges in England extends to an indefinite duration unlike the Indian Contempt of Courts Act which has set limits to the exercise of such power; and whatever criticism might be levelled against the unlimited, arbitrary power given to Judges in England by public men and citizens of England. But cannot be made applicable to Indian conditions of account of the provisions of the Contempt of Courts Act of 1926 and the present one of 1952. As for the United States of America, no doubt Judges have been given the power to punish for contempt summarily, only those acts which amount to an offence and have been committed in face of the Court and acts in the nature of Contempt of Court committed in absentia of the Judges have been made the subject-matter of regular indictment and are triable by jury. It was then claimed and contended by Mr. Roy Chowdhury that an order or power exercised to ask for the presence of the contemnors by a learned Judge on the returnable date before the Rule is issued, would not have been violative of Article 19 or such order can be claimed to be as reasonable restrictions under Article 19(2) of the Constitution of India, the more so when if the Court exercises such power in accordance to the procedure established by law, which in the instant case, according to Mr. Roy Chowdhury was appropriately taken or exercised by the learned Trial Judge. To establish such of his submissions as indicated earlier. Mr. Roy Chowdhury referred to an relied on the case of Sheoraj Vs. A.P. Batra and Another, , wherein it has been observed that the contempt proceedings are governed neither by the Code of Criminal Procedure nor by the CPC and the power of a High Court to institute proceedings for contempt and punish where necessary is a special jurisdiction which is inherent in all Courts of Record.

The Code of Criminal Procedure does not apply in matters of contempt triable by a High Court. It can deal with contempt summarily and adopt its own procedure, and all that is required is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself, apart from indicating that the law of evidence is a part of the law of procedure; if the contempt proceedings are not governed by any particular procedure, it follows that they are not governed by any particular law of evidence. Even if contempt proceedings are judicial proceedings within the

meaning of Section 1, Evidence Act, they are outside the scope of Section 1 and have always been treated as such. Contempt proceedings are usually decided on the basis of affidavits and it is not illegal to find a person guilty on the strength of affidavits alone. On such findings it has also been observed that it is therefore not true to say that contempt must be proved in the manner laid down in the Evidence Act; the Court undoubtedly has to be satisfied that contempt has been committed, but as competent adopt its own procedure for deriving satisfaction. It stands to reason that when the law does not prescribe manner in which contempt should be brought to the notice of the Court, and when it has not even defined what contempt is there cannot be any law as to the onus of proof, or the method of proof, in contempt proceedings, and that in cases of Criminal contempt, the facts can be proved by affidavit and also observed that since the Evidence Act expressly does not apply to affidavit proving a fact by an affidavit is not barred; if a fact is allowed to be proved by an affidavit, it can be proved by an affidavit notwithstanding the provisions of the Evidence Act and also indicating that Rule 12 of Chapter 9 of the Rules of Court, 1952, allows contempt to be proved through an affidavit. Since the practice in this country, in England and in American has always been that contempt can be proved through an affidavit, that is the procedure established by law and holding a person guilty of contempt on the basis of an affidavit only does not infringe his constitutional right under Article 21 of the Constitution.

35. In support of his submissions regarding the procedure established by law in or under Article 21 of the Constitution Mr. Roy Chowdhury referred to the case of *The State of Bombay Vs. P.*, and he made specific references to the observations to the effect that it is not correct to say that there is no procedure established by law in relation to contempt, so far as the exercise by the High Court of its inherent jurisdiction as a Court of Record to deal with contempt and therefore it is not competent to the High Court to inflict punishment by way of imprisonment so as to deprive the contemner of his personal liberty. It should also be pointed that apart from the provision of the Contempt of Court's Act there are also the provisions contained to Clause 38 of the Letters Patent. The High Court has jurisdiction within the meaning of that clause when the proceedings by way of contempt are criminal in nature and the case connected therewith is a criminal case. It cannot be disputed that the Letters Patent constitute law. The procedure and practice which were in use prior to the publication of the Letters Patent were required to be followed by that clause in such a case and hence such practice and procedure must be held to have been enacted by law. In view of these provisions the procedure which is being followed by the High Court since prior to coming into force of the Letters Patent in dealing with matters of Criminal contempt in the exercise of its inherent power as a Court of Record is a procedure enacted by law and the High Court is therefore entitled to deprive a person of his liberty in matters relating to contempt when that procedure has been followed, even if the expression procedure established by law in Article 21 of the Constitution, meant procedure enacted by law. Thereafter, reference was made by Mr. Roy

Chowdhury, also to the Full Bench decision of the Patna High Court in the case of *In Re: Basanta Chandra Ghosh, Advocate and Others*, and he made specific reference to the observations that in view of Article 19(2), the Law of Contempt as embodied in the Contempt of Courts Act, 1926, according to which the punishment is limited, is not hit by Article 19(1)(a). It has also been indicated that there, is no inconsistency of any kind between the Contempt of Courts Act and Article 13, inasmuch as Article 19(2) forms part of Part III of the Constitution itself. In that case, it has also been indicated that the express "procedure established bylaw" in Article 21 contemplates a procedure which was followed by the various High Courts prior to the passing of the Indian Constitution and includes summary procedure based on fairness and justice without the trammels of technicality and there is nothing invalid in the practice and procedure followed in matters of contempt on account of Article 21 of the Constitution.

36. On the basis of the above determinations, Mr. Roy Chowdhury claimed and contended further that there was no basis or justification on the submissions of Mr. Sen, on the freedom of movement of his clients, since such freedom of movement should also be subject to restriction and those restrictions, if imposed or given effect to, would not be unreasonable. According to Mr. Roy Chowdhury, the High Court has got power or can adopt its own procedure fairly and without any technicality. In fact, he contended that in this case, such fairness without any technicality was followed by the learned Trial Judge, in the matter of passing the orders as impeached. It was further pointed out by him that the appellants have not really challenged the instant portion of the order as made by the learned Trial Judge and they have really or in effect challenged the second portion of the order and in fact or in reality they have not challenged the portion of the order, by which they have been required to be present. Such being the position, on the basis of the determinations in the case of *Sukdev Singh v. Teja Singh*, CJ. (supra), it was contended that the objections as sought to be raised, were misconceived. Those submissions were really made by Mr. Roy Chowdhury, on the basis of the determinations of the Supreme Court in the case under consideration and the particulars whereof have been quoted earlier. On a reference to the case of *Commissioner of Income Tax, Haryana, Himachal Pradesh and Delhi and Others Vs. Tarsem Kumar and Another*, , Mr. Roy Chowdhury claimed that the determinations as made therein would have no effect or import in this case, since Article 21 of the Constitution is not attracted as the practice and procedure in contempt is one, which is established by law.

37. We have indicated earlier and it would also appear from the memorandum of appeal, against which orders, this appeal has been preferred. The orders under appeal are really orders dated 1st June, 1988, the appellants were only directed to show cause why contempt proceeding should not be drawn up against them for violation of the order passed on 3rd May, 1988, within a stipulated time and they were directed to appear on 29th June, 1988 with a further direction, not to leave the Court without the permission of the Court and by the said order, it was

further directed that another application dated 31st May, 1988, for withdrawal of the writ petition, be put up for orders on 3rd June, 1988. We have in fact quoted the entire order earlier, apart from indicating the other order which was passed on 10th June, 1988. It appeared to us that on 21st June, 1988 no order or any directions was passed or made by the learned Trial Judge and if at all on 29th June, 1988, an order which has been indicated earlier was passed. But no appeal has been taken against the order dated 29th June, 1988. It is true that on 21st June, 1988, an application for dismissal of the concerned Contempt proceeding was filed before the learned Trial Judge and alternatively, there was a prayer for dispensation of the appearance of the appellants. We have also quoted earlier the order dated 29th June, 1988 and therefrom it would appear that on 21st June, 1988, no order was in fact, passed by the learned Trial Judge and the terms of the order dated 29th June, 1988 without any doubt proved and establishes that by the same, the learned Trial Judge, disposed of and dealt with the application dated 21st June, 1988.

38. Above being the position, Mr. Roy Chowdhury claimed that the appeal, so far the order dated 21st June, 1988 was concerned, was not maintainable and after hearing the parties and considering their submissions, we feel that such exceptions as were taken by Mr. Roy Chowdhury, were of substance. Regarding the other order dated 1st June, 1988, Mr. Roy Chowdhury claimed that the appeals as taken against the same, was also not maintainable, as the said order, according to him, was just and only an interlocutory one and would not be appealable u/s 19 of the said Act, the terms whereof are 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) 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. In fact, Mr. Roy Chowdhury claimed and contended that in this case, there was or has been no such order or decision from which an appeal can lie or the order as made can be made appealable under the several provisions of the said Section 19. He further contended that from such interlocutory order as in this case, no appeal would lie and it was pointed out by him further that there cannot be any right available to the appellants on the basis whereof they can claim the right not to appeal in terms of the directions as given. It was further contended by him that by such directions as given, none of the rights or any vested right of the appellants has been violated, infringed or interfered with and in terms of Rule 19 of the said Rules, the terms whereof have been quoted earlier, the learned Trial Judge had and still has the power to pass such order as in this case and by the same, as pointed out earlier, none of the rights or any vested right of the appellants have been violated or infringed and as such also, the appeal was not maintainable.

39. While on his submissions that the appeal is not maintainable, reference was made by Mr. Roy Chowdhury to the case of Baradakanta Mishra Vs. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, , where it has been observed that an order of High Court rejecting motion made by a Judicial Officer and refusing to initiate a proceeding for Contempt against Chief Justice and other Judges, is not appealable u/s 19(1) of the said Act, apart from observing that the exercise of Contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or a reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceedings for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiated 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 Sub-section (1) and no appeal would lie against it as of right under that provision. Really, on the analogy of the above determination it was claimed and contended by Mr. Roy Chowdhury that since by the order as impeached, the learned Trial Judge has decided to hear and consider the defence of the appellants, before issuing a Rule or expressing any opinion, the order as made, should be deemed to be or considered as not appealable. He further contended that the High Court can elect to follow its own procedure in terms of the provisions of Rule 19 of the said Rule and when it has just issued an order, for the views as indicated herein before and that too without expressing any opinion

on merits, there should not be any interference made as the order in question, as indicated earlier, would not be an appealable one. There cannot of course be any doubt that while passing such order as in this case, the High Court should act fairly and in fact fairness should be the only test. In this case, for the manner and in the circumstances the order has been made, we do not find any unfair exercise of the concerned power.

40. Thus, the question now in this case should be, is the issue of show cause notice only, appealable? Mr. Roy Chowdhury claimed that the answer should be in the negative and to augment his submissions, he referred to then case of *Purshotam Dass Goel Vs. Hon'ble Mr. B.S. Dhillon and Others*, , where it has been observed that an order merely initiating Contempt proceeding by issuing a notice u/s 17 will not be appealable u/s 19(1) of the said Act. In fact, it has been categorically observed by the Supreme Court that u/s 19(1) an appeal shall lie to the Supreme Court as a matter of right from any order or decision of a bench of the High Court if the order has been made in the exercise of its jurisdiction to punish for contempt. Mere initiation of a proceeding for contempt by the issuance of the notice u/s 17 on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. Hence an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemner and cannot be appealed against as a matter of right u/s 19. In a given case special leave may be granted under Article 136 of the Constitution from an order initiating the proceeding. But 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. Such being the position in law, it was further contended by Mr. Roy Chowdhury that against an order issuing only a show cause notice and without adjudicating the lis in any manner and form, as in this case, no appeal would lie. In the case of *Barada Kanta Mishra Vs. Orissa High Court*, , to which reference was also made by Mr. Roy Chowdhury in support of his submissions on the maintainability of his appeal, it has been observed that an interlocutory order u/s 19 of the said Act, which pertains purely to the procedure of the Court, is not appealable. Mr. Roy Chowdhury made a further reference to the determinations in the case of *R.L. Kapoor v. State of Tamil Nadu (supra)*, the particulars whereof have been indicated earlier and submitted that in view of the nature of the order, it cannot be said that the learned Trial Judge was not justified in passing the same, since the High Court has without any doubt the right, authority and competence to make or pass such order as it deems fit, in view of the v. specific provisions of Rule 19 of the said Rules and on a reference to the order as made, there would be no doubt the order dated 1st June, 1988 was made duly and in conformity with the procedure as established by law.

41. Rule 19 of the said Rule as quoted earlier clothes the High Court with the district powers and Mr. Roy Chowdhury pointed out, Form No. 1 of Appendix I relates to Rule Nisi only and there is no other form prescribed for the other limbs of the said Rule 19. It is true that personal presence under or in Form No. 1 is

not provided, but the same, we feel and as submitted by Mr. Roy Chowdhury is an ancillary or inherent power of the Court, which again includes the power to punish. It is true that a Form cannot be the source of any power or the power as exercised in this case and as such, whatever be the Form, the same cannot curtail the power, least to speak of the inherent power of the Court. On a reference to the determinations in the case of Life Insurance Corporation of India Vs. Escorts Ltd. and Others, , Mr. Roy Chowdhury also claimed that when the learned Trial Judge had passed the concerned order and that too in the facts, circumstances and reasons as mentioned hereinbefore, it was the duty and obligation of the appellants to comply with the same, the more to when upto that stage no final decision was taken or any expression of opinion was made, contrary to or prejudicial to the interest of the appellants, more particularly when the power exercised by the learned Trial Judge was summary in nature and upto that stage, there was no evidence of any unfair exercise of power. It was contended further that in making the impugned order only fairness in action was required and there was or has been no evidence that reasonable opportunities to the contemnors to establish their case was not available, or would not be afforded. While on his submissions as indicated earlier, Mr. Roy Chowdhury finally made a reference to the case of D.N. Taneja v. Bhajan Lal (1988) S.C.C. 26, where it has been observed that an appeal will lie u/s 19(1) of the Act only when the High Court make an order or decision in exercise of its jurisdiction to punish for contempt. The High Court exercise 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 contemner, it does not exercise its jurisdiction or power to punish for contempt under Article 215 and the jurisdiction to punish for contempt does not include the jurisdiction to dispose of the case by acquitting him. When the High Court acquits the contemner, it 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. Though whenever a Court, Tribunal or Authority is vested with a jurisdiction to decide a matter, against a person, but when a Court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve acting in that particular manner and in no other, Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt.

42. In that, relying on the case of Baradakanta Mishra v. Justice Gatikurshna Mishra (supra) it has also been observed that however, when the High Court erroneously acquits a contemner 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 u/s 19(1) of the Act, the petitioner in such a case can move the Supreme Court under Article 136. But, in such a case there would be no right of appeal u/s 19(1), as there is no exercise of jurisdiction or power by the High Court to punish for contempt, apart from

holding that the 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 the property or any other consideration. 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 contemner. The aggrieved party u/s 19(1) can only be the contemner who has been punished for Contempt of Court.

43. Mr. Sen, in reply submitted that nobody has challenged or can challenge the notification dated 22nd August, 1975 purporting to incorporate the said Rules, but claimed, that in view of the terms of the said Rules or the words of the same, there cannot be any right conferred on the Court to take away or abridge the Fundamental Rights of the appellants as guaranteed by Part III of the Constitution of India. He also made it clear that the appellants are not doubting or challenging the High Court's power to punish in a Contempt proceedings in an appropriate case or the facts of the same. In support of his submissions, Mr. Sen referred to the observations in the case of *Janardan Prasad Gupta Vs. O.P. Chakarvarty and Another*, to the effect, that the section fixed the limit to only three types of motion. It excludes any private citizen from setting such criminal contempt in motion, unless he makes motion with the consent in writing of the Advocate General; or at worst lays the information before the Court itself praying the Court to take action in its own motion. The object appears to exclude vindictiveness, malice or a desire to harass on the part of a private citizen and the marginal notes, however cannot be referred to for the purpose of construing a section. They can at best be taken into consideration if the words used in a section are uncertain or ambiguous, apart from holding that the Constitution vests the Supreme Court and every High Court with the powers to punish for contempt of itself. The impugned section does not abrogate or cut down this power; and indeed, fully preserves and upholds it. The section confers power on a High Court to punish for Contempt of a Subordinate Court and that would amount to conferring more power rather than taking away the power conferred by Article 215 and also indicated that it cannot be said that the section amounts to an encroachment upon the ancillary powers of the Supreme Court or High Court to prescribe its own procedure for dealing with contempt matter. The power of the Supreme Court under Article 142(2) of the Constitution to prescribe its own procedure is subject to the over all power of Parliament to make a law in regard to this procedure. The power to make rules that exists in every High Court under Article 226 cannot be exercised if the Constitution provides otherwise or if a State law does so. Under Entry 14 of List III and Entry 77 of List I in Sch. 7 the Parliament has full power to legislate with regard to "Contempt of Court". This power includes a power to legislate as to the procedure or manner in which the legislation shall be regulated or implemented. The Parliament

therefore, had full power to legislate as to how cognizance of a contempt can be taken, and as to the manner in which such an action should be heard and disposed of.

44. Mr. Sen then argued that there cannot be any doubt that in appropriate cases and circumstances, the Court have the due power to issue Contempt Rules suo motu and submitted that ordinarily, the basis for issuing such Rule be punishing a person for contempt should be guided by Section 12 of the said Act, which lays down that:

12. Punishment for Contempt of Court. - (1) Save as otherwise expressly provided in this Act or in any other law, 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.

Explanation. - An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

(2) Notwithstanding anything contained in any law for the time being in force, no Court shall impose a sentence in excess of that specified in Sub-section (1) for any contempt either in respect of itself or of a Court subordinate to it.

(3) Notwithstanding anything contained in this section, 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.

(4) Where the person found guilty of Contempt of Court in respect of any undertaking given to a Court is a company every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the Court, by the detention in Civil prison of each such person :

Provided that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in Sub-section (4), where the Contempt of Court referred to therein has been committed with the consent or connivance of, or is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced with the leave of the Court, by the detention in Civil prison of such Director, Manager, Secretary or other officer.

Explanation. - for the purpose of sub-sections (4) and (5).

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm and otherwise, and he wanted to supplement such submissions on a reference to the case of C.K. Daphtary and Ors. v. O.P. Gupta and Ors. 1971 SCR (Supp.) 76, which has indicated that under Article 129 of the Constitution, this Court has the power to punish for contempt of itself, and under Article 143(2) it can investigate any such contempt and the Constitution makes this Court the guardian of Fundamental Rights and hence it would not enforce any law which imposes unreasonable restrictions on the precious right of freedom of speech, apart from holding that under the existing law of Contempt of Court any (publication) which is calculated to interfere with the due course of justice or proper administration of law by this Court would amount to Contempt of Court, dorirropis attach pm a judge, on respect of a judgment or past conduct has in our country the inevitable effect of undermining the confidence of the public in the Judiciary; and if confidence in Judiciary goes administration of Justice definitely suffers and, therefore, assuming Article 19(2) appeals to the existing law of contempt the restrictions on freedom of speech are reasonable and are in public interest. On a reference to the case of Olga Tellis and Others Vs. Bombay Municipal Corporation and Others, or the determinations as made therein, Mr. Sen contended that the "Procedure established by law" under or in terms of Article 21 must be reasonable just and fair and the authority exercising such or any statutory power, as in this case, must act reasonably, otherwise the procedure as prescribed, would be deemed to be unreasonable. Such determination, at this stage, cannot be appropriately applied in this case, as stated earlier, upto this stage, there is or has been no evidence of any unfair practice or procedure evolved by the learned Trial Judge, for which the action as taken by Him, without finally deciding the lie, and when he has just issued a Rule to show cause and that too; for the reasons as indicated earlier;

45. Mr. Sen, lastly relied on the case of P.N. Dua Vs. P. Shiv Shanker and Others, . In that case Shri P. Shiv Shankar, who at the relevant time was the Hon"ble Minister for Law, Justice and Company Affairs delivered a speech before a meeting of the Bar Council of, Hyderabad on 28th November, 1987, Shri P.N. Duda, who is an advocate practising in the Supreme Court, has drawn attention to that speech. According to him, by that speech respondent No. 1, Shri P. Shiv Shankar has made statements against the Supreme Court which are derogatory to the dignity of the Court, attributing this Court with partiality towards economically affluent sections of the people and has used language which is extremely intemperate, undignified, and unbecoming of a person of his statute and position. It was stated that Shri P. Shiv Shankar, formerly held the office of a Judge of the High Court before he resigned and took to politics. The relevant portion of the speech will appear from the report. The applicant Shri P.N. Duda

brought the newspaper version of the said speech to the notice. He further stated that the said speech contains slander which was cast on the Court, both in respect of the Judges and its working. It was alleged that Shri P. Shiv Shankar has done this to malign the Court. Shri Duda further stated that he read the speech in the News Times and he had approached the learned Attorney-General of India and the learned Solicitor General of India to give their consent for initiating contempt proceedings.

In those circumstances, the petitioner claimed that he also made the Editor and Publisher of the newspaper - News Times as one of the respondents. The learned Attorney-General and the learned Solicitor General have declined to deal with this prayer of the petitioner for the reasons stated in the letter which was an annexure to the petition. In those circumstances an application for initiation of contempt entitled "Information u/s 15(1)(a) and (b) of the act read with Explanation (1) and Rule 2(a), (b) and (c) of Contempt of Supreme Court Rules, 1975" in the matter of said Shri P.N. Duda was made, wherein Shri P. Shiv Shankar, the learned Attorney-General, the learned Solicitor General and the Editor, of News Times were made parties. The application having been moved before the Court on 19th February, 1988 they directed issue of notice returnable on 15th March, 1988 to the respondents, namely, Shri P. Shiv Shankar, Shri K. Parasaran, Shri Milon Banerji and Shri Ramji Rao, Editor, News Times confined only to the question to consider whether action, if any, need be taken on the said petition of the petitioner. We requested the First Additional Solicitor General Shri P. Datta to appear as Amicus Curiae to assist the Court - On 11th February, 1988 Shri Duda mentioned the matter and the Court clarified that the respondents need not appear in the first instance in person. In the meantime, pursuant to the notice, Shri P. Shiv Shankar has filed an affidavit on 8th March, 1988, in which he has stated that he had delivered a speech on the Silver Jubilee Celebration of the Bar Council of Andhra Pradesh at Hyderabad, where the audience consisted of Judges and Lawyers. On that occasion he had made a speech on the subject of accountability of the Legislature, the Executive and the Judiciary. He further stated that during the speech, he made comments on the accountability of the organs and theoretical implications thereof.

The Minister has further reiterated with utmost emphasis at his command that he intended no disrespect to any of the institutions or its functionaries much less this Hon"ble Court. He further stated that he has high regard for the Hon"ble Court. He further stated that the contempt petition is not maintainable in law without the consent of the Attorney-General or the Solicitor General and it was liable to be dismissed. In the meantime an application has been filed by Shri R.N. Trivedi, who is an Advocate of 25 years" standing at the Bar, in which he has claimed the right to be impleaded as a party. He has stated in the petition that the learned Attorney-General and the Solicitor General should not have been made parties to the contempt petition and the alleged non-exercise of jurisdiction by the Attorney-General and the Solicitor General did not constitute contempt within the meaning of Section 2(c) of the Act. The remedy, if any, in

respect of the alleged non-exercise of jurisdiction and power would lie some where else. It would appear that their Lordships of the Supreme Court, before deciding the question, whether the application was maintainable without the consent of the Attorney-General or the Solicitor General, as contained on behalf of the Respondent and the question whether they should be made parties to the contempt application and whether their action or inaction was justifiable in any proceedings and if so, in what proceedings sought to decide first the basic question, whether the speech made by Shri P. Shiv Shankar and as published, amounted to Contempt of the Supreme Court or in other words, whether the speech has the effect of bringing the said Court in disrepute and has on ultimate analysis of the facts and law observed, that a conjoint perusal of the Act and rules makes it clear that, so far as this Court is concerned, action for contempt may be taken by the Court on its own motion or on the motion of the Attorney-General (or Solicitor General) or of any other person with his consent in writing. There is no difficulty where the Court or the Attorney-General choose to move in the matter. But when this is not done and a private person desires that such action should be taken, one of three courses is open to him. He may place the information in his possession before the Court and request the Court to take action; [vide C.K. Daphtary v. O.P. Gupta 1971 Suppl. SCR 76 and Sarkar v. Misra 1981 2 SCR 4331]; he may place the information before the Attorney-General and request him to take action; or he may place the information before the Attorney-General and request him to permit him to move the Court. In the present case, the petitioner alleges that he has failed in the latter two courses this will be considered a little later - and has moved this "petition" praying that this Court should take suo motu action. The "petition" at this stage, constitutes nothing more than a mode of laying the relevant information before the Court for such action as the Court may deem fit and no proceeding can commence until and unless the Court considers the information before it and decides to initiate proceedings. Rules 3 and 4 of the Supreme Court (Contempt of Court) Rules also envisage a position only where the Attorney-General or any other person, with his written consent, move the Court. Rule 5 is clear that only a petition moved under Rule 3(b) and (c) is to be posted before the Court for preliminary hearing. The form of a criminal miscellaneous petition styling the informant as the petitioner and certain other persons as respondents is inappropriate for merely lodging the relevant information before title of such a proceeding should be "in re...(the alleged contemner)" (see : Kar v. Chief Justice 1962 1 S.C.R. 320 though that decision related to an appeal from and order of conviction for Contempt by the High Court). This Lordships of the Supreme Court, while dismissing the petition, have also found that the observations of the Delhi High Court to the effect that "the office is to take note that in future if any information is lodged even in the form; of a petition inviting this Court to take action u/s 15 of the Contempt of Courts Act or Article 215 of the Constitution, where the informant is not one of the persons named in Section 15 of the said Act, it should not be styled as a petition and should not be placed before the judicial side. Such a petition should be placed before the Chief Justice for orders in Chambers and

the Chief Justice may decide either by himself or in consultation with the other judges of the Court whether to take any cognizance of the information. The office to direct to strike off the information as "Criminal Original No. 51 of 1973" and to file it as made in the case of Anil Kumar Gupta Vs. K. Suba Rao and Another, , to be appropriate and proper and in fact such directions have set out the proper procedure in a case of the concerned nature and may be adopted, at least in future, as a practice/direction or as rule, by them and other High Courts. We feel that in the facts and circumstances of the case before us, the said determination, cannot be made at this stage, applicable.

46. In the facts and circumstances of this case, there is or has been no doubt that no order dated 21st June, 1988 was ever made or passed by the learned Trial Judge and as such there cannot also be any doubt that the appeal as presented against such order would not be maintainable. We are further of the view that while making the order dated 1st June, 1988, the learned Trial Judge has not decided any lis finally, moreover, he has given duly, the appellants a further opportunity to show cause whether a Rule for contempt should or should not be issued.

47. Thus, the said Rule, as was formulated and promulgated in exercise of powers conferred u/s 23 of the said Act and Article 215 of the Constitution of India and all other powers in that behalf or as contained therein and if the terms of the said Rules or the contents and requirements thereof, are considered and construed duly, there cannot also be any hesitation in holding that the High Court has power to follow and determine its own procedure and also to punish, after following the necessary procedure and formalities fairly, a contemner and that too after complying with the principles of natural justice. In this case, we do not find any evidence of any deviation from such Rules/procedure and that too at this stage.

48. The power of the High Court in this case and under the said Rule is one of a special nature and such power is inherent under those Rules and as such also, the provisions of Article 215 as mentioned hereinbefore, gives every High Courts, the right and power to punish appropriately in a proceedings for contempt. Such right, according to us, cannot be divested or taken away by any means or process and manner. There is no doubt that there is thus the implied power of the High Court to punish a contemner, but such power of the High Court to punish a contemner, but such power must be exercised within the constraints or the frame-work as mentioned and indicated earlier. When an application for contempt is filed, the High Court will have the due and summary power either to dismiss or reject the same or to adopt its own procedure, including the power to punish or to direct appearance of the contemnors, as in this case. It should be noted that such power of the High Court as indicated above, has not been challenged in this proceedings.

49. Under or in terms of its power to punish, the High Court, in our view, can direct the presence of contemnors, apart from directing security for their

presence and we feel that without such power, the High Court would not be in a position to vindicate its rights in a proceeding under the said Act or the Rules as framed thereunder. The said power, no doubt should be deemed to be of immemorial usage and should be implied under the said Rules as framed under the provisions as indicated earlier. "The power to punish" would also include "to hear and determine" an offence and such being the position, the implied condition, in our view should be that the contemnors, who were in the position of accuseds, should first be cited by summons, and be given an opportunity of defence and agreeing with Mr. Roy Chowdhury, we feel that when contemnors have been given such opportunities to show cause, they could have, after having their appearances entered, ask for exemption and such power would necessarily be included or given to the High Court in terms of the limbs of Rule 19 of the said Rules as quoted earlier, which again, according to us, is a very wide one. We feel that when the High Court uses or exercises such power as mentioned under Rule 19 of the said Rules, nobody can take any exception to the same. While on the question of the implied power of the Court, the case of Sukdev Singh v. Teja Singh, CJ. (supra) can be profitably looked into and the determinations as made therein, can also be appropriately applied and on the basis of such determinations, it is quite clear that if a learned Trial Judge as in this case, follows the practice and procedure as indicated above or as involved in the third limb of Rule 19 of the said Rules, nobody can possibly take any exception. The power to secure personal appearance or presence of contemnors in a contempt proceedings should be deemed to be a power incidental and necessary to effectuate the special jurisdiction of the High Court i.e. to punish or to take appropriate steps in a case of the present nature. The High Court, without any doubt, in a proceeding of the present nature, may direct the presence of the contemnors or even may pass orders to secure their presence and without such and necessary power, the said Court, as stated earlier, would not be in a position to vindicate its rights. For the purpose of the implication and application of the immemorial usage as indicated earlier, the case of R.L. Kapoor v. State of Tamil Nadu (supra), can also be looked into and applied. On the basis of the said determinations, it is also clear that the jurisdiction conferred on the High Court under Article 215 as mentioned earlier, to punish for contempt itself, as a special one, not arising or derived from the said Act. Such power as mentioned above, is also included under the provisions of the said Act or the said Rules and as mentioned by us previously, the said power would include the power to ask for the presence of the contemnors and that too for the reasons as mentioned earlier. The Full Bench decisions of the Patna High Court in the case of Basanta Chandra Ghosh (supra), would also establish and support the findings as made by us earlier. The submissions on Rule 19 of the said Rules as made by Mr. Sen do not find favour with us.

50. The directions issued by a High Court on the contemnors, to appear on a given or returnable date, we feel, would not also be violative of Article 19 of the Constitution of India, as, such directions would be nothing but to be a reasonable

restrictions under Article 19(2) of the Constitution of India and furthermore when, the Court exercises such power, that would be in accordance with the procedure established by law. While on the question of the above or the procedure established by law, the observations in the case of Sheoraj v. A.P. Batra & Anr. (supra) can also be looked into and appropriately applied. While on the question of procedure established by law, as involved in or under Article 21 of the Constitution of India, the case of State of Bombay v. Mr. "P" (supra), may also be looked into and applied in this case. We feel that the determinations in the case of A.K. Gopalan v. State of Madras (supra), Tarafatulla Mondal & Ors. v. S.N. Maitra & Ors. (supra) and Shri Nitta Gopal Jew v. Angur Bala Mullick (supra) cannot be applied in the facts of this case and at this stage. The observations in those cases and those in the cases of Narendra Narayan v. Beda Bala Debi (supra) and Ranjit Chatterjee and Anr. v. Rambadan Chowbey (supra), if at all, can be considered by the learned Trial Judge at the time of the determination of the proceedings, on the necessary defence being appropriately taken. Similar will be our observations in respect of the determination in the case of Deben Adhikary .The State of West Bengal & Ors. (supra). We further find that since we are not creating any fetter for the learned Trial Judge's jurisdiction to decide the matter fairly and duly, so he will also be entitled to decide and determine all points as would be taken without any hesitation.

51. On the basis of the determinations as indicated above or those as mentioned by us on the basis of the citations as made by the learned Advocates appearing for the respective parties, we cannot but hold that while making the order as in this case, the learned Trial Judge in any way has not curtailed or restricted or imposed any restrictions on the freedom of the appellants, the more so when, such restrictions cannot be absolute, but they are subject to such reasonable restrictions as in this case and when they cannot be termed or treated as unreasonable.

52. On the basis of our findings, it would appear that the appeal in question, if at all, would be available against the order dated 1st June, 1988 and not against the other order dated 21st June, 1988. Let us now consider whether the appeal as in this case, was maintainable against the order dated 1st June, 1988 ? By the said order, the appellants were only directed to show cause, why contempt proceeding should not be drawn up against them, for violation of the earlier order dated 3rd May, 1988, within a stipulated time and they were directed to appear on 29th June, 1988, with a further stipulation, not to leave the Court without permission. We have indicated earlier the fate of the appeal so far the other order, which was just an interlocutory one and has not decided any lis between the parties finally and on merits and as such it would be very difficult for us to hold that the appeal as taken therefrom, would be maintainable. To find out the character of the order dated 1st June, 1988, which according to us is just an interlocutory one, the provisions of Section 19 of the said Act as quoted earlier, should be looked into and on the basis of them, it is also very difficult to hold that the said order dated 1st June, 1988, can be termed as appealable

under the Provisions of Section 19 of the said Act. In fact, there was or has been no such order or decision in this case on the basis of the order dated 1st June, 1988, from which an appeal can lie under the provisions as mentioned hereinbefore. Since the said order dated 1st June, 1988 has not decided or determined any lis finally or on merits, we are also of the firm view and that too, on application of the provisions of Section 19 of the said Act, that the appeal as taken out against the concerned order would not be maintainable, the more so when, by the terms as contained in the said order dated 1st June, 1988, none of the rights or any vested right of the appellants have been violated, infringed or interfered with, furthermore when, under Rule 19 of the said Rules, the learned Trial Judge at all material times had or still has the power to pass such order as in this case and more particularly when, by the same, he has not decided any of the rights or vested right of the appellants, which can be termed or meant to violate and infringe such rights of the appellants. While on the question of maintainability of the appeal from the order as mentioned earlier, the determinations in *Baradakanta Mishra v. Mr. Justice Gatikurshna Mishra etc.* (supra), can also be looked into and applied in this case and on the analogy of such determinations, it can be observed that since the learned Trial Judge, by making the order as impeached, has decided to hear and consider the defence of the appellants, before issuing a Rule and without expressing any opinion, such order cannot be deemed to be an appealable one. We also agree with the submissions as put forward before us by the parties that while exercising the necessary power as indicated hereinbefore or as involved in this case, the High Court should act fairly. As indicated earlier, we find no evidence before us that in the instant case and while making the impugned order, the High Court has not acted fairly and further more when there is no evidence before us at this stage, that after showing cause by the appellants, the High Court will not act fairly, we feel that at this stage, when there is no such evidence, any interference on the ground of not exercising the discretion fairly or the non-exercise of jurisdiction duly, would be possible.

53. On the basis of our findings we also feel and find that at this stage and more particularly when just a show cause notice has been issued, the order issuing such show cause, without further materials, would not be appealable and while making such observations, we have really considered the determinations in the case of *Purushottam Das Goyal v. Hon'ble Mr. Justice B.S. Dhillon & Ors.* (supra). There cannot also be any doubt that when just a Rule, asking for the show cause has been issued and there has been no adjudication of the lis in any manner whatsoever, the appeal as taken, would not be maintainable and such findings of ours, we feel, will get due support from the case of *Baradakanta Mishra v. Orissa High Court* (supra), and more particularly when, it has been observed there that an interlocutory order u/s 19 of the said Act, which incidentally is the case before us, and will only pertain purely to the procedure of the Court, would not be appealable. There is also no doubt that in the way and manner in which the order as impeached, has been issued, the learned Trial Judge had no occasion to

decide the matter finally. We feel that he had duly issued the order in terms of the powers as conferred on him and on the basis of the facts as available before us, it cannot be held and observed that the learned Trial Judge was not just fied in passing the same, more particularly when, there is no doubt that the High Court has the right, authority and competence to make or pass such order as it deems fit, in view of the specific provisions of Rule 19 of the said Rules and the more so when, there is ample evidence before us that the concerned order dated 1st June, 1988, was made duly and in conformity with the procedure as established by Law. The said Rule 19, in our view clothes the High Court with the distinct powers as mentioned earlier and in taking recourse to such power, we are of the view, that the learned Trial Judge has not done any wrong, for which any interference as asked for, is necessary. There cannot also be any doubt that Form 1 of Appendix I, to which copious references were made by the parties cannot curtail the power of the High Court, least to speak of its inherent power as indicated earlier and we further feel and that too on a reference to the case of Life Insurance Corporation of India v. Escorts Ltd. & Ors. (supra), that in question and that too in the facts, circumstances and reasons of the case as mentioned earlier, it was the due obligation of the contemnors appellants to comply with the same, the more so when, at this stage, the learned Trial Judge has not decided anything finally or has expressed any opinion, which can be termed as or deemed to be final and more particularly when, he has just asked the contemnors to show cause and has not even formed any tentative opinion about their guilt or otherwise. We have indicated earlier that while taking recourse to such procedure and power as involved in this case, a learned Trial Judge should act with all fairness and he should not form any opinion against the contemnors, without giving them any opportunity. In fact, as indicated earlier, we do not find any contrary evidence available in this case and as such, on the basis of the determinations in the case of DM Taneja v. Bhajan Lai (supra), we feel that no interference should be made.

54. For the views as above and on the basis of our determinations and also for our observations on the cases as cited at the Bar, we feel that there is no merit in this appeal and as such, we direct dismissal of the same.

The appeal is thus dismissed. There will be no order as to costs.