

Chief Justice's Court

Case :- SPECIAL APPEAL No. - 1075 of 2024

Appellant :- Bhanu Pratap Singh

Respondent :- Vikrant Vir, IPS Superintendent of Police and 3 others

Counsel for Appellant :- Rajesh Kumar Singh

Counsel for Respondent:- Ramanand Pandey, A.C.S.C., Ankit Gaur, S.C.

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

(Per: Vikas Budhwar, J.)

1. This intra-court appeal under Chapter VIII Rule 5 of the Rules of the Court is against the order dated 06.11.2024 passed in Contempt Application (Civil) No. 6934 of 2024 (Bhanu Pratap Singh Vs. Vikrant Vir, IPS Superintendent of Police), whereby the learned Single Judge upon finding that the appellant has a remedy to file appropriate application before the concerned Magistrate under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 (in short 'BNSS') (wrongly typed as Bharatiya Nyaya Sanhita) previously under Section 156(3) of the Code of Criminal Procedure, 1973 has declined to initiate proceedings for contempt.

2. Though the contempt application had been dismissed *in limine*, however, since a legal question regarding the maintainability of the intra-court appeal had arisen so we required learned Additional Chief Standing Counsel to advance arguments in that regard.

3. Sri Ramanand Pandey, learned Additional Chief Standing Counsel assisted by Sri Ankit Gaur, learned Standing Counsel has raised a preliminary objection regarding the maintainability of the present appeal on the ground that no intra-court appeal under the Rules of the Court lies against the order of the learned Single Judge declining to initiate contempt proceedings. To bolster the said submission, reliance has been placed upon the decision of the Apex

Court in **Midnapore Poeples' Cooperative Bank Ltd. & Ors. Vs. Chunilal Nanda & Ors.**: 2006 (5) SCC 399 and a Division Bench of this Court in **Special Appeal No. 234 of 2023 (Vinod Kumar Gupta and others Vs. Sri Vir Bahadur Singh Yadav and Others)** decided on 09.05.2023.

4. Conversely, in rebuttal, Sri Rajesh Kumar Singh in support of the appeal has submitted that the intra-court appeal is maintainable against the said order in view of the decision in **Midnapore Peoples' Cooperative Bank (supra)** and a Division Bench judgment of this Court in **Subhash Chandra Vs. Srikant Goswami (2024) LawSuit (All) 1413**. Submission is that once the order of a Single Judge in exercise of the contempt jurisdiction has the impact of diluting, the original order then the same is amenable to challenge in an intra-court appeal. According to the learned counsel for the appellant, in the present case, since the opposite parties who happen to be the officials of the Police Department had showed their reluctance in lodging the first information report against the accused which is a mandatory obligation to be performed, then in view of the decision in **Lalita Kumari Vs. State of U.P. (2014) SCC 1**, wherein the law has been crystallized that the registration of FIR is mandatory if the information discloses commission of cognizable offence, the present case is a classic example of wilful disobedience of the mandate of a judicial verdict emanating to lodging of the contempt proceedings. Since the learned Single Judge instead of initiating contempt proceedings has rejected the contempt application, the said order is subject to challenge in the intra-court appeal under the Rules of the Court.

5. We have given thoughtful considerations to the arguments advanced across the bar and perused the record carefully.

6. The pivotal issue which falls for our consideration is whether an intra-court appeal under the Rules of the Court would be maintainable against the order of the learned Single Judge exercising contempt

jurisdiction declining to initiate contempt proceedings. The contempt petition had been initiated by the appellant for punishing the opposite parties for committing wilful disobedience of the judgment in the case of **Lalita Kumari (supra)** as followed by a Division Bench of this Court in **Smt. Razeena Bano and another Vs. State of U.P. & Others (2015) 2 ADJ 232** while not registering the first information report against the accused. In a nutshell, the stand of the appellant is that the first information report is mandatorily required to be registered and registration cannot be turned down as per the mandate in **Lalita Kumari (supra)** and **Smt. Razeena Bano (supra)**.

7. In order to test the said submission, we are required to examine the nature of the order passed by the learned Single Judge which is impugned in the appeal. Apparently, the learned Single Judge while exercising contempt jurisdiction had declined to initiate contempt proceedings against the opposite party on the premise that there exists a remedy available to the appellant to file appropriate application before the concerned Magistrate under Section 175(3) of the BNSS. The issue regarding maintainability of the appeals either under Section 19 of the Contempt of Courts Act, 1971 (in short ‘CC Act’) or under the Rules of the Court has been considered in **Midnapore Peoples’ Cooperative Bank (supra)** wherein the following has been observed.-

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

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

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

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

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or/ makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra- court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).”

8. The said judgment came to be followed by a Division Bench of this Court in **Vinod Kumar Gupta (supra)**.

9. The principles of law culled out in the above noted decisions clearly depicts that firstly, the appeal under Section 19 of the CC Act is maintainable only against the order or a decision of the High Court passed in exercise of jurisdiction to punish for contempt i.e. an order imposing punishment for contempt, secondly, neither an order declining to initiate proceedings for contempt nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor is appealable under Section 19 of the CC Act, however, in special circumstances, they may be challenged before the Hon'ble Apex Court, thirdly, in order to determine as to whether any contempt has been committed, it would not be appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties, fourthly, any direction issued on the merits of the dispute between the

parties would not be in exercise of the jurisdiction to punish for contempt and, therefore, not appealable under Section 19 of the CC Act, and the only exception is whether such direction or decision is incidental to or inextricably connected with the order punishing for contempt in which event, the appeal under Section 19 of the CC Act can also encompass the incidental or inextricably connected directions and fifthly, any decision on an issue or any direction relating to the merits or dispute between the parties in contempt proceedings are open to be challenged in an intra-court appeal.

10. Interestingly, in the present case in hand, the learned Single Judge while exercising contempt jurisdiction had neither entered into the merits of the matter nor diluted any principle of law, however, simply the learned Single Judge declined to initiate contempt proceedings since there is a statutory remedy available to the appellants for redressal of his grievances by way of approaching the concerned Magistrate under Section 175(3) of the BNSS. So far as the reliance placed upon by the learned counsel for the appellant upon the judgment in **Subhash Chandra (supra)** is concerned, in the said case the issue which fell for consideration before the Court was that there happened to be an order of the writ court seeking to direct the competent authority to consider and give notional promotion to the appellant by considering his case from the date his juniors were promoted within a period of three months, which was assailed by the respondents therein before the Hon'ble Apex Court and the challenge was in negative, however, on the basis of the affidavit of compliance stating that the notional benefits had been granted to the appellant (beneficiary) and there was substantial compliance and the contempt application was disposed of. The Division Bench on appeal in the said case came to the conclusion that the observations made by the learned Single Judge in exercise of the contempt jurisdiction while disposing of the contempt application holding that there had been a substantial

compliance of the order of the writ court necessarily implies examining the case on the merits. The following was observed:-

*“59. The submission of learned counsel for the appellant has been that since the order passed by the Writ Court dated 10.08.2016 contained a direction to the Competent Authority to consider and give notional promotion to the petitioner by considering his case from the date his juniors were promoted within a period of three months, this was assailed by the respondents before the Apex Court and the Special Leave Petition was dismissed on 11.07.2022, thus, the reasoning given by the Department while filing the affidavit of compliance and granting notional promotion to the appellant is in teeth of the decision given by the Writ Court which was affirmed by the Apex Court and in the aforesaid backdrop holding that there is substantial compliance amounts to interfering with the directions of the writ court and also recording that there is substantial compliance of the order passed by the writ court necessarily implies examining the case on merits and moreover, once the Contempt Court had dropped the contempt proceedings by recording that there is substantial compliance, this would necessarily amount to entering into the merits, hence, in light of the decision of the Apex Court in **Midnapore (supra)**, the intra-court appeal is maintainable.”*

11. The above noted judgment is of no aid or assistance to the appellant particularly when the order of the learned Single Judge is not on merit as rather to the contrary, it has been left open for the appellant to exercise the remedy as per the statute.

12. Accordingly, we are of the firm opinion that the present intra-court appeal seeking to challenge the order of the learned Single Judge in exercise of the contempt jurisdiction declining to initiate contempt proceedings is not maintainable.

13. Resultantly, the appeal is dismissed.

Order Date :- 8.1.2025

Rajesh

(Vikas Budhwar, J.)

(Arun Bhansali, CJ.)