

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1484 of 2014
Arising out of
Miscellaneous Jurisdiction Case No. 4659 of 2012**

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Upendra Kumar Ray S/o Mohan Lal Rai, R/o Village - Rahimpur Rudouli, P.O. Haripur Ailoth, P.S. Musarigharari, District – Samastipur.

.... Appellant

Versus

1. The State of Bihar, through its Chief Secretary, Sri Navin Kumar, Government of Bihar, Patna.
2. The Principal Secretary, Health Department, Government of Bihar, Patna
3. The Bihar Public Service Commission, Patna through the Chairman, Bihar Public Service Commission, Patna
4. The Director-in-Chief, Health Service, Department of Health, Government of Bihar, Patna.
5. Sri Surendra Prasad, Director-in-Chief From January 2011, Health Services, Government of Bihar, Patna.
6. Sri Sarat Chandra Jha, Former Secretary and Deputy Secretary during 2006 - 2010, Bihar Public Service Commission, Patna.

.... Respondents

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Appearance:

For the Appellant/s	:	Mr. Rajendra Singh, Sr. Advocate. Mr. Dhananjay Kumar Tiwary, Advocate. Mr. Shanti Kumar, Advocate. Mr. Baban Kumar, Advocate.
For B.P.S.C	:	Mr Ashok Kr. Singh, Sr. Advocate. Mr. Sanjay Pandey, Advocate. Mr. Prem Ranjan Raj, Advocate. Mr. Manish Kumar, Advocate.
For State	:	Mr. Sarvesh Kr. Singh, AAG-13 Mr. Ravi Kumar, AC to AAG-13 Mr. Ankit Katriar, AC to AAG-13.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 08-09-2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is
to an order dated 27.08.2014 passed by learned Single Judge in a

contempt petition filed by the appellant alleging violation of the order dated 07.02.2012 passed in CWJC No. 2169 of 2012 (Upendra Kumar Rai Vs. The State of Bihar and Ors).

3. The learned single judge has found that there is a delay in compliance of the order and for such delay cost of Rs. 10,000/- has been imposed.

4. Aggrieved against the said order, the appellant-the writ applicant is before this Court. The grievance of the appellant is that the direction of the learned single Judge has not been complied with and that in the light of the Hon'ble Supreme Court Judgment reported as Midnapore Peoples' Co-Op. Bank Ltd. Vs. Chunilal Nanda & Ors., (2006) 5 SCC 399, the appellant has right to invoke the jurisdiction of this court under Clause 10 of the Letters Patent.

5. We have heard learned counsel for the parties and find that the intra-court appeal is not maintainable in the present case at the instance of the writ applicant.

6. The Supreme Court in a judgment reported as State of Maharashtra v. Mahboob S. Allibhoy, (1996) 4 SCC 411, held that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court and that when High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be

maintainable. The Court held as follows:-

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

4. It is well known that contempt proceeding is not a dispute between two parties, the proceeding is primarily between the court and the person who is alleged to have committed the contempt of court. The person who informs the court or brings to the notice of the court that anyone has committed contempt of such court is not in the position of a prosecutor, he is simply assisting the court so that the dignity and the majesty of the court is maintained and upheld. It is for the court, which initiates the proceeding to decide whether the person against whom such proceeding has been initiated should be punished or discharged taking into consideration the facts and circumstances of the particular case.

Again in the case of *D.N. Taneja v. Bhajan Lal*, (1988) 3 SCC 26 : 1988 SC (Cri) 546, it was said: (SCC pp. 29-30, para 8)



“The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.”

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

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

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

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

Sub-section (2) of Section 19 indicates that the reliefs provided under

clauses (a) to (c) can be claimed at the instance of the person who has been proceeded against for contempt of court.”

7. Hon’ble Supreme Court in the judgment reported as Midnapore Peoples’ Co-Op. Bank’s case (supra) has summarized the conclusions with regard to appeals against orders in contempt proceedings while quoting from the judgment in Mahboob S. Allibhoy’s case (supra) as under:

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

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

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

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and therefore, not appealable under section 19 of 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 argument of the learned counsel for the appellant is based upon Conclusion 'V'. It is contended that since the High Court has decided contempt petition filed against the appellant, therefore, the appellant will have a remedy to appeal against such issue under Clause 10 of the Letters Patent.

9. The Clause 15 of Letters Patent of Calcutta High Court is identical with Clause 10 of the Patna Letters Patent. In Midnapore Peoples' Co-Op. Bank's case (supra), the Court examined as to which orders can be said to interlocutory or are the Judgments, against which intra Court appeal can be filed. The Court held as follows:-

“15. Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:

(i) Orders which finally decide a question or issue in controversy in the main case.

(ii) Orders which finally decide an issue which materially and directly affects the final decision in the main

case.

(iii) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.

(iv) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.

(v) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.

16. The term “judgment” occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (i) to (iii) above, are, therefore, “judgments” for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under categories (iv) and (v) are not “judgments” for the purpose of filing appeals provided under the Letters Patent.”

10. The conclusion ‘V’ would not be applicable in the facts of the present case as it is case where the Court discharged Rule. Though, it is a judgment but appeal would not be maintainable as the contempt is between Court and the Contemnor. The Appellant does not figure in the scheme of the Statute to assert that even discharge of Rule would confer right in the writ applicant to file intra court appeal. It is the appellant who invoked the jurisdiction of Contempt of Court, 1971. The Court has found delay in the

implementation of the order and imposed the cost against the contemnor. The costs imposed on account of delay would give cause to the contemnor to file an appeal, as there is an order against such contemnor. However, when the learned single bench finds that its order stands complied though with delay, such an order is not a subject for intra-court appeal. There is no direction which can be related to any other proceedings than the proceedings under Contempt of Court Act, 19971. The matter of initiation of proceedings under Contempt of Court Act is a matter between the Court and the Contemnor and that the court having framed an opinion that no case is made out for proceedings under Contempt of Court Act. Such an order cannot be said to be subjected to intra-court appeal.

11. In view thereof, we do not find any merit in the present Letters Patent Appeal. Accordingly, the present Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Mishra/-

AFR/NAFR	N.A.F.R
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