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HIGH COURT OF CHHATTISGARH, BILASPUR**Miscellaneous Appeal No. 45 of 2016****Judgment Reserved on: 11/11/2016****Judgment Delivered on : 25/01/2017**

Anil Kumar Dubey S/o Shri D.D.Dubey, aged about 54 years, working as Superintendent Engineer, Shivnath Mandal, Durg, PS Mohan Nagar, District Durg, Chhattisgarh.

---- Appellant**Versus**

Pradeep Kumar Shukla S/o Late Shri Bhawani Shankar Shukla, aged about 50 years, R/o village and Post Kurna, Tahsil and PS Navagarh, District Bemetara, Chhattisgarh.

---- Respondent

For Appellant	: Shri Kishore Bhaduri, Advocate with Shri Apoorva Tripathi, Advocate
For State	: Shri J.K.Gilda, Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Prashant Kumar Mishra, J
Hon'ble Shri Sanjay K. Agrawal. J.

C A V Judgment**Per Deepak Gupta, Chief Justice**

1. On account of cleavage of opinion between two Division Benches of this Court regarding maintainability of an appeal under Section 19 of the Contempt of Courts Act, 1971 (hereinafter called 'the Act, 1971'), the following question has been referred for adjudication by this Full Bench:

"Whether an appeal under Section 19 of the Act is maintainable against an order passed by the Single Judge framing charges against the contemnor under contempt jurisdiction?"

2. A Division Bench of this Court vide its order dated 22.01.2015 in M.A. No. 04 of 2015 held that an appeal lies against an order framing a charge in contempt proceedings under Section 19 of the Act, 1971. However, in another judgment

delivered by another Division Bench of this Court on 06.04.2016 in M.A. No. 15 of 2016 and other analogous cases, it has been held that an appeal under Section 19 of the Act, 1971 would lie only from an order or decision imposing a punishment for contempt and unless there is an order or decision imposing punishment, an appeal under Section 19(1) of the Act, 1971 would not be maintainable.

3. At the outset, we may mention that the judgment passed on 06.04.2016 does not take note of the earlier judgment of the Division Bench of this Court, passed on 22.01.2015. It appears that the attention of the latter Division Bench was not drawn to the earlier judgment. Therefore, the second judgment would be '*per incuriam*'. However since the matter is of importance, we propose to decide the same.

4. To appreciate the scope and ambit of Section 19 of the Contempt of Courts Act, 1971, it would be apposite to refer the same:

"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."

5. Section 19 give a right to a party to appeal against "any order or decision of High Court in the exercise of its jurisdiction to punish for contempt." Section 19(1) of the Act, 1971 clearly shows that the legislature in its wisdom conferred the right of appeal not only against a decision but also against an order. When two words are used in a statute, they both have to be given separate meaning. They may be read *ejusdem generis* but normally they cannot be treated to have the same meaning.

6. Section 19 of the Act, 1971 has been the subject matter of discussion in a large number of cases. Even before us, learned counsel for the parties have cited a number of judgments. We may therefore refer to the same.

7. The leading authority on the point is *Baradakant Mishra v. Mr. Justice Gautikrushna Misra, CJ of the Orrissa High Court* {AIR 1974 SC 2255}. In the said case, the High Court refused to take action on the motion made by the Appellant for initiating contempt proceedings. Aggrieved by the said order of the High Court refusing to initiate proceedings, the appellant filed a criminal appeal before the Apex Court under Section 19 of the Act, 1971. A preliminary objection was raised that this appeal was not maintainable in terms of Section 19 of the Act, 1971. The Apex Court held as follows:

"5. Now, while considering this question, we must bear in mind the true nature of the contempt jurisdiction exercised by the High Court and the law in regard to right of appeal which obtained immediately prior to the enactment of the Contempt of Courts Act, 1971. It has always been regarded as well settled law that so far as criminal contempt is concerned, it is a matter entirely between the Court and the alleged contemner. No one has a statutory or

common law right to say that he is entitled as a matter of course to an order for committal because the alleged contemner is guilty of contempt. All that he can do is to move the Court and draw its attention to the contempt alleged to have been committed and it will then be for the Court, if it so thinks fit, to take action to vindicate its authority and commit the alleged contemner for contempt. It is for the Court in the exercise of its discretion to decide whether or not to initiate a proceeding for contempt. Even if the Court is *prima facie* satisfied that a contempt has been committed, the Court may yet choose to ignore it and decline to take action. There is no right in any one to compel the Court to initiate a proceeding for contempt even where a *prima facie* case appears to have been made out. The same position obtains even after a proceeding for contempt is initiated by the Court on a motion made to it for the purpose. The Court may in the exercise of its discretion accept an unconditional apology from the alleged contemner and drop the proceeding for contempt. Or, even after the alleged contemner is found guilty, the Court may, having regard to the circumstances, decline to punish him. So far as the contempt jurisdiction is concerned, the only actors in the drama are the Court and the alleged contemner...."

The Apex Court further held that prior to enactment of Contempt of Courts Act, 1971, no appeal lay against any order passed in contempt jurisdiction and due to this reason, the Contempt of Courts Act was enacted after the Sanyal Committee submitted its report.

8. Dealing with the scope and ambit of Section 19 of the Act, 1971, the Apex Court held as follows:

"7....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 proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of section 19, sub-section (1) and no appeal would lie against it as of

right under that provision...."

9. In *Barada Kanta Mishra v. Orissa High Court* {AIR 1976 SC 1206} an interlocutory order was challenged by Barda Kanta Mishra before the Apex Court.

In this case, the Apex Court held as follows:

"1. Having heard the appellant in person and Mr. F.S. Nariman for the respondent, we are of opinion that this appeal is not maintainable. Only those orders or decisions in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt, are appealable under Section 19 of the Contempt of Courts Act, 1971. The order in question is not such an order or decision. It is an interlocutory order pertaining purely to the procedure of the Court. All that the order in question says is that all the points arising in the case, including the one of maintainability of the proceedings, would be heard together and; it rejected Mr. B. Mishra's prayer for hearing the case piecemeal, that is, first and regard to the question of maintainability."

(Emphasis supplied)

10. The next decision referred is *Purushottam Dass Goel v. Hon'ble Mr. Justice B.S.Dhillon & Others* {AIR 1978 SC 1014}. In this case, contempt proceedings were initiated against Purushottam Das Goel and he challenged the initiation of the contempt proceedings against him before the Apex Court. After referring to Section 19(1) of the Act, 1971, the Apex Court held as follows:

"3....It would appear from a plain reading of the section that an appeal shall lie to this 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. No appeal can lie as a matter of right from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under S. 17 by issuance of a notice. Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. This

Court, for the first time, cannot be asked in such an appeal to decide whether the person proceeded against has committed contempt of the High Court or not. The matter has to be decided either finally or, may be, even at an earlier stage an order is made, which does decide a contention raised by the alleged contemner asking the High Court to drop the proceeding. It is neither possible, nor advisable, to make an exhaustive list of the type of orders which may be appealable to this Court under S. 19...."

(Emphasis supplied)

11. This decision clearly indicates that it is not only final orders imposing punishment for contempt which are appellable but even if at an earlier stage, an order is passed which decides the contentions raised by the alleged contemnor asking the High Court to drop the proceedings, such order may be appellable. The Apex Court refrained from making an exhaustive list of such orders, which may be appellable.

12. In *D.N.Taneja v. Bhajan Lal* {(1988) 3 SCC 26}, the Appellant had filed a petition before the Punjab & Haryana High Court for initiation of contempt proceedings against Shri Bhajan Lal, the then Chief Minister of the State. The application for contempt was admitted and *rule nisi* was issued. Thereafter, the Respondent-Bhajan Lal appeared and opposed the same and filed an affidavit denying all the allegations made against him. The High Court thereafter dismissed the application for initiation of contempt proceedings and discharged rule nisi. An appeal was filed by D.N.Taneja before the Apex Court. A preliminary objection was raised by the Respondent that no appeal would lie under Section 19(1) of the Act, 1971. The Apex Court, while dealing with this preliminary objection held as follows:

"10....When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of the Constitution. "

Further, the Apex Court in para 12 also held as follows:

"12....The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court. "

13. The view taken in *D.N.Taneja (supra)* was reiterated by the Apex Court in *State of Maharashtra v. Mahboob S. Allibhoy & Another* {(1996) 4 SCC 411} wherein the Apex Court held as follows:

"3....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 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...."

It would however, again be pertinent to mention that the Apex Court was again dealing with an order where the High Court had dropped the contempt proceedings and the party aggrieved had filed an appeal against dropping of the contempt proceedings.

14. In *R.N.Dey & Others v. Bhagyabati Pramanik & Others* {(2000) 4 SCC 400} the Apex Court took a different view relying on the observations made in *Purushottam Dass Goel (supra)*. The Apex Court held as follows:

"10. In our view the aforesaid contention of the learned counsel for the respondents requires to be rejected on the ground that after receipt of the notice, officers concerned tendered unconditional apology and after accepting the same, the High Court rejected the

prayer for discharge of the rule issued for contempt action. When the Court either suo moto or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable."

15. Thereafter, in *Modi Telefibres Ltd. & Others v. Sujit Kumar Choudhary & Others* {(2005) 7 SCC 40} the Apex Court held that an appeal was maintainable against an order where the Appellant had been held guilty of the contempt even though no punishment was imposed upon him, but he by the impugned order was given an opportunity to purge himself of the contempt. The Apex Court held that such order of the learned Single Judge could not be treated to be an interlocutory order and the right of appeal could not be denied to the Appellant.

16. In *Midnapore People's Coop. Bank Ltd. & Others v. Chunilal Nanda & Others* {(2006) 5 SCC 399} the Apex Court, after dealing with the entire law on the subject and various decisions cited hereinabove, held as follows:

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

17. Some judgments of other High Courts have also been cited before us. In *Smt. Subhawati Devi v. R.K.Singh & Another* {2004 CriLJ 4817}, a Division Bench of the Allahabad High Court after referring to all the cases supra, held as under:

"15. We have carefully examined the expression, namely : "the execution of the punishment or order appealed against". From a careful reading of this expression, we are of the view that the expression "exercise of its jurisdiction to punish for contempt" should not be interpreted as "imposing a punishment for contempt". Accordingly, in our view, the language used is more akin to the meaning that an appeal shall lie from any order or decision, which is made by the High Court when the jurisdiction of the High Court is invoked for punishing a person for contempt. Our view may be appreciated from the introduction of the words "punishment or order" in Section 19(2)(a) of the Act. This is because Clause (a) of Sub-section (2) of Section 19 confers power on the appellate court not only to stay the execution of the punishment but also to stay an order in respect of which an appeal has been filed. The law is now well settled that the Court must presume that the Legislature does not waste word and as such every word in the statute should be endeavoured to be presumed to have necessity of user in the statute and must be given effect consistent with its meaning. Therefore, it would be difficult for us to hold that an appeal lies only against an order of punishment.

16. From the discussions made hereinabove, it is pellucid that an appeal under Section 19(1) of the Act shall lie not only against an order imposing punishment, but also from an order or direction made by the Court in the exercise of its contempt jurisdiction. At this stage, we may come back to the category No. 4 as noted herein earlier in which we have already included a situation that an appeal shall not lie against an order when some points were decided, but ultimately the application for contempt was rejected and notice for contempt was discharged. "

18. The issue which is before us is whether an appeal would lie against an order framing a charge, which was also the issue in *T. George Joseph v. Vijay Kumar Shrivastava* {2003 (5) AWC 4247}. After the charges were framed, the alleged contemnor filed an appeal and a preliminary objection was raised that no appeal lay against this judgment. The Division Bench of the Allahabad High Court after referring to the judgment in *Purushottam Dass Goel (supra)* held that an appeal lies. The relevant portion of the judgment reads thus:

"14...From the aforesaid observation of the Supreme Court it is, therefore, clear that an appeal shall lie against an order under Section 19 of the Act even where the orders were passed at some intermediate stage in a proceeding. As we have discussed already that some bone of contention was raised by the appellant before the learned contempt Judge and, therefore, it cannot be said that no

appeal lies against such order. The view expressed by the Supreme Court in the said decision has also taken the help of the decision of the Supreme Court in the case of Barada Kanta Misra which has also been discussed by us in the foregoing paragraph of this order."

19. The High Court of Calcutta in *Arun Kumar Gupta v. Jyoti Prasanna Das Thakur* {(1996) ILR 1 Cal 292} also distinguished *D.N.Taneja* case and held as under:

"9..... The ratio propounded by the Supreme Court in *D.N.Taneja* (supra) therefore is not attracted in the present case. The criterion laid down by the Supreme Court in the case of Barada Kanta (supra) in finding out the maintainability of the appeal becomes applicable as there was initiation of a proceeding by issuance of a Rule and the contemnor was found guilty of the alleged contumacious act and the Court found that they were required to purge themselves by carrying out the order allegedly violated. The direction for so carrying out comes within the purview of the term 'order' which stands in contra-distinction to the word 'punishment' as used in Sub-section (2)(a) of Section 19 of the Contempt of Courts Act. It is well settled canon of construction that Court must presume that the Legislature does not waste word and as such every word in the statute should be endeavored to be presumed to have necessity of user of the statute and must be given effect consistent with its meaning. In the above view of the matter, in the present case the order is such as can be said to be amenable to an appeal under Section 19(1) of the Contempt of Courts Act."

20. The Bombay High Court, in *Savitry Sippy v. Shashikant Ghorpade & Others* {2009 (4) MhLJ}, held that an appeal is not maintainable against an order or decision discharging the contemnor in a contempt proceedings. The Bombay High Court dealing with Section 19 of the Act, 1971 held as follows:

"6. The provisions of section 19 of the Act are explicit, unambiguous and provide restricted right of appeal. It states that an appeal shall lie as of right from an order or decision of the High Court in exercise of its jurisdiction to punish for contempt to the specified bench. It is a right granted under the statute and has to be controlled strictly in terms of the said provision. It is only an order or decision punishing a contemnor that this statutory right is available. The expression "any order or decision" is wide enough to include and take it within the ambit of all orders passed in that direction in exercise of its jurisdiction to punish for contempt. In other words, it may not necessarily be an order of actual punishing the contemnor but may be a direction which is prejudicial to the

contemnors and has been passed in exercise of contempt jurisdiction by the Court of contempt jurisdiction but it shall not be applicable when Court does not exercise its jurisdiction to punish for contempt and discharge the notice...."

21. The High Court of Kerala, in *Jyothilal K.R. IAS & Another v. Mathai, M.J.* (Contempt Appeal No. 3 of 2013 & connected cases) held that an order passed by the learned Single Judge, even if not appellable under Section 19 of the Act, 1971, would be appellable under Section 5(i) of the High Court Act, 1958 (Kerala Act 5 of 1958).

22. To summarize, the Apex Court clearly held that where the High Court refuses to exercise its jurisdiction to punish for contempt and does not initiate contempt proceedings, no appeal shall lie. It has also been held that where the order is interlocutory in nature, no appeal will lie. However, in the second *Barada Kanta Misra* case, it was clearly held that those orders or decisions in which some point is decided or finding is given in exercise of jurisdiction by the High Court to punish for contempt, would be appellable.

23. Similarly, in *Purushottam Dass Goel (supra)*, the Apex Court held that if the order or decision decides some bone of contention raised before the High Court affecting the rights of the parties, an appeal would lie. The Apex Court further went on to hold that when the matter has been decided finally or even at an earlier stage if an order is made which decides and rejects the contention raised by the alleged contemnor asking the High Court to drop the proceedings, appeal may lie.

24. In *R.N.Dey (supra)* also, the Apex Court held that even an order passed not discharging the rule issued in contempt proceedings would be an order or decision in exercise of its jurisdiction to punish for contempt. Similar view was taken in *Modi Telefibres Ltd. (supra)* where despite the fact that the contemnor had not been punished, appeal was entertained as the Court had held the

Appellant guilty for contempt.

25. Reliance has been placed on the observations made in *D.N.Taneja (supra)* and *Mahboob S. Allibhoy (supra)* as well as one line in *Midnapore People's Coop. Bank Ltd. (supra)*. As far as *D.N.Taneja (supra)* and *Mahboob S. Allibhoy (supra)* are concerned in both the cases, the contempt proceedings had been dropped and the observation of the Apex Court had been made in the context of those cases.

26. In *Midnapore People's Coop. Bank Ltd. (supra)*, the main issue before the Apex Court was whether the High Court should, while dealing with contempt petition, pass some order on merits of the case. It was held that an order should normally not be passed touching the merits of the case and if such order is passed, that order is not passed in exercise of the jurisdiction to punish for contempt.

27. The decisions of the various High Courts cited before us have by and large followed the law laid down in the second *Barada Kanta Misra, Purushottam Dass Goel, R.N.Dey and Modi Telefibres Ltd. cases (supra)*.

28. Article 141 of the Constitution lays down that the law laid down by the Apex Court is binding. As far as the issue which has been raised in the present case is concerned, that has not been raised specifically in any of the decisions of the Apex Court, cited before us.

29. In *Union of India & Others v. Dhanwati Devi & Others* {(1996) 6 SCC 44} the Apex Court held that the High Court should analyze the decision of the Supreme Court and decide what is the *ratio decidendi*. It is only this ratio which is binding. The relevant portion of the judgment reads as follows:

"9.It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which

a question before a court has been decided is alone binding as a precedent. The concrete decision alone is binding between the parties to it, but it, is the abstract *ratio decidendi*, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding."

30. In *Haryana Financial Corporation & Another v. Jagdamba Oil Mills & Another* {(2002) 3 SCC 496}, the Apex Court dealing with the law of precedents, held as follows:

"19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Elucid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear."

Same view was taken by the Apex Court in *Natwar Singh v. Director of Enforcement & Another* {(2010) 13 SCC 255}.

31. In *Offshore Holdings Private Limited v. Bangalore Development Authority & Others* {(2011) 3 SCC 139} the Apex Court held as follows:

"85. ...The dictum stated in every judgment should be applied with reference to the facts of the case as well as its cumulative impact."

32. A Constitution Bench of the Apex Court, in *Natural Resources Allocation, In Re, Special Reference No. 1 of 2012* {(2012) 10 SCC 1} held as follows:

"70. Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed as precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio decidendi..."

33. One of the settled rule of interpretation is that if the language and intention of the legislature is unambiguous and clear, the Court cannot give a different

interpretation. In *Deeplal Girishbhai Soni & Others v. United India Insurance Co. Ltd. Baroda* {(2004) 5 SCC 385}, the Apex Court held as follows:

"53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby. (See *Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries.*)."

34. The Apex Court, in *B.N.Mutto v. T.K.Nandi* {(1979) 1 SCC 361}, observed that "the Court has to determine the intention as expressed by the words used. If the words of statutes are themselves precise and unambiguous then no more can be necessary than to expound those words in their ordinary and natural sense". It was further observed that "the cardinal rule of construction of statute is to read statute literally, that is, by giving to the words their ordinary natural and grammatical meaning."

35. In *Dadi Jagannadam v. Jamulu Ramulu & Others* {(2001) 7 SCC 71}, the Apex Court while interpreting the provisions that fell for consideration, made the following observations in paragraph 13:

"13.....The settled principles of interpretation are that the Court must proceed on the assumption that the legislature did not make a mistake and that it did what it intended to do. The Court must, as far as possible, adopt a construction which will carry out the obvious intention of the legislature. Undoubtedly if there is a defect or an omission in the words used by the legislature, the Court would not go to its aid to correct or make up the deficiency. The Court could not add words to a statute or read words into it which are not there, especially when the literal reading produces an intelligible result. The Court cannot aid the legislature's defective phrasing of an Act, or add and mend, and, by construction, make up deficiencies which are there."

36. In *Shyam Sunder & Others v. Ram Kumar & Another* {(2001) 8 SCC 24} the Apex Court explained how to interpret the provisions of an enactment in the

following words:

"....when the words used in a statute is capable of only one meaning. In such a situation, the courts have been hesitant to apply the rule of benevolent construction. But if it is found that the words used in the statute give rise to more than one meaning, in such circumstances, the Courts are not precluded to apply such rule of construction. The third situation is when there is no ambiguity in a provision of a statute so construed. If the provision of a statute is plain, unambiguous and does not give rise to any doubt, in such circumstances the rule of benevolent construction has no application."

37. In *Grasim Industries Ltd. v. Collector of Customs, Bombay* {(2002) 4 SCC 297} the Constitution Bench of this Court explained the principle of literal interpretation as under:

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententia legis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to take upon itself the task of amending or alternating the statutory provisions. Wherever the language is clear the intention of the legislature is to be gathered from the language used. While doing so what has been said in the statute as also what has not been said has to be noted. The construction which requires for its support addition or substitution of words or which results in rejection of words has to be avoided. As stated by the Privy Council in *Crawford v. Spooner* [(1846) 6 Moore PC 1: 4 MIA 179] "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". In case of an ordinary word there should be no attempt to substitute or paraphrase of general application. Attention should be confined to what is necessary for deciding the particular case. This principle is too well settled and reference to few decisions of this Court would suffice. [See: *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. v. Custodian of Vested Forests, Palghat and Anr.* (AIR 1990 SC 1747), *Union of India and Anr. v. Deoki Nandan Aggarwal* (AIR 1992 SC 96), *Institute of Chartered Accountants of India v. Price Waterhouse and Anr.* (1997 (6) SCC 312) and *Harbhajan Singh v.*

Press Council of India and Ors. (JT 2002 (3) SC 21)]."

38. It is apparent that there is some cleavage in opinion on the scope and ambit of Section 19 of the Act, 1971. Even the judgments of the Apex Court take divergent views. We may however mention that in none of the judgments before the Apex Court, the point in issue was the one specifically raised before us. That is only dealt with by the judgment of Allahabad High Court in *T. George Joseph* (supra) in which it held that an order framing charge is appellable under Section 19 of the Act. We are in respectful agreement with the same.

39. A close analysis of the law laid down by the Apex Court and the High Courts as well as the provisions of Section 19 of the Act, 1971, we are clearly of the view that any order which is not an interlocutory order but by which the High Court proceeds to exercise its jurisdiction for contempt, would be appellable.

40. The language of Section 19 of the Act, 1971 is clear and unambiguous. As held by the Apex Court that when the language of an Act is unambiguous, the Court must follow the same. The issue in question is what interpretation has to be given to the phrases "any order or decision" and "in exercise of its jurisdiction to punish for contempt". As far as the words, "order" and "decision" are concerned, though they may have to be read *ejusdem generis*, we cannot presume that the language used by the legislature is superfluous. When the legislature has used the word 'order and decision', it must be presumed that the legislature was aware that these are two different words having two different meaning. It may be true, as held by the Apex Court that the word 'order' will have to be interpreted and take its colour from the word 'decision' but can we assume or presume that the order must only be a final order imposing punishment. We do not think so because then there would be no difference between "order" and "decision".

41. Another recognized principle of statutory interpretation is that an effort should be made to give a meaning to each and every word used by the

legislature. In *Aswini Kumar Ghose v. Arabinda Bose* {AIR 1952 SC 369}, Chief Justice, Patanjali Shastri, speaking for the Apex Court held "it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute".

42. Thereafter, in *Rao Shiv Bahadur Singh v. State of U.P.* {AIR 1953 SC 394}, the Apex Court held that "it is incumbent on the court to avoid a construction, if reasonably permissible on the language which would render a part of the statute devoid of any meaning or application".

43. In *J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.* {AIR 1961 SC 1170}, it was observed that the Courts always presume that the legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect.

44. In view of the above principles of statutory interpretation, normally an attempt has to be made to give all the words used in the statute a meaning in the context of the Act. In our view, the words "any order or decision" are wide enough to include and take within their ambit all orders passed in the direction and in exercise of the jurisdiction to punish for contempt.

45. Similarly, the phrase "in exercise of the jurisdiction to punish for contempt" not only includes an order actually imposing any punishment but also any order or direction which may be prejudicial to the contemnor and which, if not passed, may terminate the proceedings. As held by the Bombay High Court, these may not be actually orders punishing the contemnor for contempt but may be a direction prejudicial to the contemnor and passed in exercise of contempt jurisdiction. Supposing a contemnor files an application that the contempt petition itself has been initiated beyond the period of limitation. As held by the Apex Court, if order passed on this application is only that this issue shall be decided at the time of

final hearing, no appeal may lie. However, if the Court hears the application and decides the matter against the contemnor and holds that the contempt petition is within limitation, that will vitally affect his rights. In our view, an appeal under Section 19 of the Act, 1971 would lie against such an order as it is passed in exercise of the jurisdiction to punish for contempt. As held by the Apex Court, it would not be appropriate to make a list of such orders. Each case will have to be decided on its own facts.

46. As far as framing of charge is concerned, such an order has to be passed after hearing the parties and the Court, after hearing the parties, considers the material on record and feels that there is sufficient material to frame charge against the contemnor. While framing the charge, the Court applies its mind. It comes to the conclusion that the proceedings should not be dropped and there is sufficient material to proceed with the case. The Court can also come to the conclusion that there is not sufficient material to frame charges and the proceedings could be dropped. Therefore, an order framing charge decides that there is sufficient material to continue with the contempt proceedings. In our considered view, this would be an order passed in exercise of the jurisdiction to punish for contempt. Therefore, an appeal would lie against such order.

47. In view of the above discussion, we answer the question referred to this Court by holding that an appeal shall lie under Section 19 of the Contempt of Courts Act, 1971 against an order framing charge in contempt proceedings.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Prashant Kumar Mishra)
JUDGE

Sanjay K. Agrawal, J.

1. I have had the privilege of going through the erudite opinion formed by My Lord, Hon'ble the Chief Justice on the stated question referred to by the Division Bench to the Full Bench for consideration but with great respect and all humility at my command, I find myself unable to concur with the view so expressed therein and proceed to record my separate opinion on the question so referred.
2. The Division Bench(1) consisting of Hon'ble Mr. T.P. Sharma (as His Lordship then was) and Hon'ble Mr. C.B. Bajpai, JJ, in the matter of Dr. S.K. Mohanty v. Krati Agrawal and others (M.A. No.4/2015) by its order dated 22-1-2015 has held that appeal under Section 19(1) of the Contempt of Courts Act, 1971 would lie before Division Bench of this Court against the order framing charge by the learned Single Judge.
3. The Division Bench(2) consisting of Hon'ble Mr. Pritinker Diwaker and Hon'ble Mr. P. Sam Koshy, JJ, in the matter of C.L. Sidar v. Smt. Gita Devi Agrawal (M.A.No.15/2016) and other connected matters by its order dated 6-4-2016 has held that appeal under Section 19 of the Contempt of Courts Act, 1971 would not lie against the order framing charge by the learned Single Judge.
4. The Division Bench(3) finding seeming conflict between the opinion expressed by the earlier Division Benches in Dr. S.K. Mohanty (supra) and C.L. Sidar (supra) referred the matter on the following stated question to the Hon'ble Chief Justice for constituting a larger Bench in accordance with the High Court of Chhattisgarh Rules, 2007: -

“Whether an appeal under Section 19 of the Act is maintainable against an order passed by the Single Judge framing charges against the contemnor under contempt jurisdiction?”
5. My Lord Hon'ble the Chief Justice in turn, referred the matter to the Full Bench and this is how the matter is before us for answering the stated question of law so referred by the Division Bench(3).

6. The jurisdiction to punish for contempt is an inalienable attribute of and inheres in, every superior court of record. This is jurisdiction of necessity. This position has very well been highlighted by Oswald in his treatise on Contempt of Court in the matter of **R v. Almon**¹.

“A court of justice without power to vindicate its own dignity, to enforce obedience to its mandate, to protect its officers, or to shield those who are entrusted to its care, would be an anomaly, which could not be permitted to exist in any civilized community.”

7. This position was not duly accepted and acknowledged by the Privy Council in a case originated from the Calcutta High Court. The Judicial Committee of the Privy Council in the matter of **Surendranath Banerjea v. The Chief Justice and Judges of the High Court of Bengal**² condensely held that High Courts in Indian presidencies as superior court of records have the same power which is exercised by superior court of records of England. The Privy Council also held that on the principles of common law, every court of record is the sole and exclusive judge of what amounts to contempt.
8. The Chief Justice Bearnès Peacock **In re Abdool**³ (again case from Calcutta) similarly observed that there can be no doubt that every court of record has the power of summarily punishing for contempt. The Calcutta High Court in recent past in **Shyamal Krishna Chakraborty v. Sukumar Das & Ors.**⁴ speaking through Justice A.K. Ganguly (as His Lordship then was) reiterated the position by holding that contempt jurisdiction is inherent in High Court and recognised as such under Article 215 of the Constitution of India.
9. In the light of these prefatory remarks about nature of contempt jurisdiction of the High Court, I shall proceed with the question posed for consideration.
10. The engrossing question emanates for answering the reference is “whether an order passed by the learned Single Judge framing charge(s) against the

1 (1765) Wilm. 243, p. 270

2 (1882-83) 10 Indian Appeal 171

3 8 W.R. Cr. 32

4 2002 CrLJ 60 (Cal)

contemnor under contempt jurisdiction” is an order or decision made in exercise of jurisdiction to punish for contempt within the meaning of sub-section (1) of Section 19 of the Contempt of Courts Act, 1971 to lie an appeal before the Bench of two Judges of the court under that provision.

11. Mr. Kishore Bhaduri, learned counsel for the petitioner, would submit that sub-section (1) of Section 19 of the Contempt of Courts Act, 1971 is of the widest amplitude and when the Act envisages that an appeal shall lie from any order or decision, it would mean that each and every order including order framing charge in course of enquiring or trying the alleged contempt is an appealable order or decision under Section 19(1) of the Contempt of Courts Act, 1971. According to him, the Parliament has not restricted the appeal to “final order” or final decision.
12. Mr. J.K. Gilda, learned Advocate General, would submit that sub-section (1) of Section 19 of the Contempt of Courts Act, 1971, contemplates an appeal from such order or decision who either records that the contemnor is guilty of contempt or finally convicts him or imposes sentence either in fine or jail as enumerated in Section 12 of the said Act.
13. In order to answer the stated question referred with regard to appealability of order framing charge, it would be advantageous to examine what was the state of law immediately before the Contempt of Courts Act, 1971, was enacted and brought in force, for which I wish to take the assistance of “Rule of Statutory Construction”.
14. It is well settled that when fresh legislation is enacted in supersession of earlier legislation on a subject, in order to discover the true import and intent of the new law it is necessary to consider what was the mischief and defect for which the earlier law did not provide, what is the remedy provided now and what is the true reason for it, all this in order to discover what construction of the new law will suppress the mischief and advance the remedy.

15. The Constitution Bench of the Supreme Court (seven Judges) in the matter of **Bengal Immunity Co. Ltd. v. State of Bihar and others**⁵ while applying the statutory law of construction proposed in **Heydon's** case⁶ succinctly held as under: -

"(22) It is a sound rule of construction of a statute firmly established in England as far back as 1584 when -- 'Heydon's case', (1584) 3 Co Rep 7a (V) was decided that--

"..... for the sure and true interpretation of all Statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:-

1st. What was the common law before the making of the Act,

2nd. What was the mischief and defect for which the common law did not provide,

3rd. What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and

4th. The true reason of the remedy; and then the office of all the judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and 'pro private commodo', and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, 'pro bono publico' ".

In -- 'In re. Mayfair Property Co.', (1898) 2 Ch 28 at p. 35 (W) Lindley M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported 'Heydon's case (V)'. In -- 'Eastman Photographic Material Co. v. Comptroller General of Patents, Designs and Trade Marks', 1898 AC 571 at p. 576 (X) Earl of Halsbury re-affirmed the rule as follows:

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being compared I cannot doubt the conclusion."

It appears to us that this rule is equally applicable to the construction of Art. 286 of our Constitution. In order to properly interpret the provisions of that Article it is, therefore, necessary to consider how the matter stood immediately before the Constitution came into force, what the mischief was for which the old law did not provide and the remedy which has been provided by the Constitution to cure that mischief."

16. In light of the above-stated statutory rule of construction, it would be apposite to trace out the history of contempt legislation.

⁵ AIR 1955 SC 661

⁶ (1584) 3 Co Rep 7a (V)

17. The Supreme Court in the matter of **Sukhdev Singh v. Hon'ble C.J., S. Teja Singh and the Hon'ble Judges of the Pepsu High Court at Patiala**⁷ traced the history of contempt jurisdiction in India locating the earlier statutory provision in clause 4 of the Charter of 1974 which stated that the Supreme Court of Bengal would have the same jurisdiction as the court of King's Bench in England accompanied by power to punish for contempt at common law, the position was clear that a superior court of record had the inherent power to punish for contempt and thus, was the consistent position of the Privy Council as well. Justice Vivian Bose speaking for the Supreme Court succinctly observed as under: -

"(13) This recognises an existing jurisdiction in all Letters Patent High Courts to punish for contempts of themselves, and the only limitation placed on those powers is the amount of punishment which they could thereafter inflict. It is to be noted that the Act draws no distinction between one Letters Patent High Court and another though it does distinguish between Letters Patent High Courts and Chief Courts; also, as the Act is intended to remove doubts about the High Courts powers it is evident that it would have conferred those powers had there been any doubt about the High Court's power to commit for contempts of themselves. The only doubt with which the Act deals is the doubt whether a High Court could punish for a contempt of a court subordinate to it. That doubt the Act removed. It also limited the amount of punishment which a High Court could inflict.

(14) Now this recognises an existing power in all Letters Patent High Courts to punish and as the Letters Patent High Courts other than the Chartered High Courts could not have derived this power from the Common Law, it is evident that the power must have been inherent in themselves because they were Courts of Record."

18. The Supreme Court also held in **Sukhdev Singh** (supra) that the superior courts have inherent jurisdiction of punishing for contempt and also referred to the Government of India Act, 1915 which recognized that High Courts are courts of record.

19. The first contempt legislation relating to contempt of courts is the Contempt of Courts Act, 1926. This Act preserves the existing contempt jurisdiction of High Courts established by letters patent but the limitation was that for contempt of

⁷ AIR 1954 SC 186

court, only penalty could be inflicted and there was no provision of appeal against the order punishing contempt even against order imposing fine. Sub-sections (1) and (2) of Section 2 and Section 3 of the Contempt of Courts Act, 1926 provide as under: -

"2. (1) Subject to the provisions of sub-section (3), the High Courts of Judicature established by letters Patent shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of Contempt of Courts subordinate to them as they have and exercise in respect of contempts of themselves.

(2) Subject to the provisions of sub-section (3), a Chief Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempt of itself as a High Court referred to in sub-section (1).

(3) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code.

3. Save as otherwise expressly provided by any law for the time being in force, 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."

20. Thus, the Contempt of Courts Act, 1926 did not have the provision of appeal against the order punishing for contempt.

21. Thereafter, Section 220(1) of the Government of India Act, 1925 provided that every High Court shall be a court of record.

22. Thereafter, in the Constitution of India, the Parliament recognized the already existing contempt jurisdiction and the existing power of High Court as court of record has been preserved by Article 215 of the Constitution of India. Article 215 of the Constitution of India states as under: -

"215. High Courts to be courts of record.--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."

23. Thereafter, the Contempt of Courts Act, 1952 was enacted to define and limit the powers of certain Courts in punishing Contempt of Courts. It came into force

with effect from 14-3-1952. It repealed the Contempt of Courts Act, 1926.

Sections 3, 4, 5 and 6 of the Act of 1952 provide as under: -

“3. Power of High Court to punish contempts of subordinate court.--(1) Subject to the provisions of sub-section (2) every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of Contempt of Courts subordinate to it as it has and exercise in respect of contempts of itself.

(2) No High Court shall take cognizance of a contempt alleged to have been committed in respect of a Court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (Act XLV of 1860).

4. Limit of punishment for contempt of court.--Save as otherwise expressly provided by any law for the time being in force, 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:

Provided further that notwithstanding anything elsewhere contained in any law for the time being in force, no High Court shall impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.

5. Power of High Court to try offences committed of offenders found outside jurisdiction.--A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any Court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction and whether the person alleged to be guilty of the contempt, is within or outside such limits.

6. Repeal and savings.--[Repealed by Act 1926],--(1) The Contempt of Courts Act, 1926 (XII of 1926), and the enactments specified in the Schedule are hereby repealed.

(2) Section 6 of the General Clauses Act, 1897 (X of 1897), shall apply to the repeal of any of the laws specified in the Schedule as it applies to the repeal of the Contempt of Courts Act, 1926 (XIII of 1926).”

- 24.** A careful glance of the entire scheme of the Contempt of Courts Act, 1952 would show that though the High Court had the jurisdiction to punish for contempt and empowered to inflict punishment as provided in Section 4 of the Act, but the legislature did not specifically provide any provision for appeal in the Contempt of Courts Act, 1952, against the order punishing contempt. The Act of 1952 remained in force for fairly a long time with no provision of appeal against order or decision punishing for contempt and the only remedy was discretionary right

of appeal either to seek certificate from the High Court to file appeal before the Supreme Court or on being refused, certificate by High Court, to seek leave of the Supreme Court under Article 136 of the Constitution of India.

25. On 1-4-1960, Shri B.B. Das Gupta introduced in the Lok Sabha a Bill to consolidate and amend the law relating to contempt of courts. On examination of that Bill, the Government appears to have felt that the law relating to contempt of courts as then existing being uncertain, undefined and unsatisfactory and in the light of the constitutional changes which have taken place, decided to set up a special Committee to scrutinize the entire law on the subject and accordingly, setup a committee on 29-7-1961 under the Chairmanship of Shri H.N. Sanyal, the then Additional Solicitor General of India, with three Members and one Member-Secretary. The said special Committee (hereinafter called as 'the Sanyal Committee') was required: -

- (i) to examine the law relating to contempt of courts generally, and in particular, the law relating to the procedure for the punishment thereof;
- (ii) to suggest amendments therein with a view to clarifying and reforming the law wherever necessary; and
- (iii) to make recommendations for codification of the law in the light of the examination made.

26. The Sanyal Committee so constituted examined the law and problems relating to contempt of court as referred threadbare and on the basis of discussion, report of the committee with its recommendation was submitted to the Government of India on 28-2-1963.

27. The Sanyal Committee constituted by the Government of India examined the matter in great detail with regard to right of appeal as in the previous contempt legislations i.e. the Contempt of Courts Act, 1926 and the Contempt of Courts Act, 1952 there was no provision of appeal as a matter of right against the order

punishing for contempt and the only remedy available to the contemnor was to seek certificate from High Court to file appeal under Article 134 of the Constitution of India or to seek leave of the Supreme Court under Article 136 of the Constitution of India. The Committee noted that the feature of the law of contempt which has given rise to considerable criticism relates to the non-appealability as of right against a sentence passed for criminal contempt and relied upon the Shawcross Committee and held that there should be provision for appeal as a matter of right against the order imposing punishment and observed as under: -

“... it is only proper that there should be provision for appeal as a matter of course. As the Shawcross Committee observed: “..... in every system of law of any civilized State, there is always a right of appeal against any sentence of imprisonment”. There is no justification whatsoever for making any exception to this universally recognized principle in the case of sentences for contempt.”

28. The Sanyal Committee further considered the position as then existing and observed as under:-

“... The result has been that before the Constitution came into force, an appeal in contempt cases from the decision of a High Court could lie only in special cases to the Judicial Committee. The Constitution did not alter this position very much for the effect of articles 134 and 136 of the Constitution is merely to substitute the Supreme Court for the Privy Council. In short, there is only a discretionary right of appeal available at present in cases of criminal contempt.”

29. Further, in para 2.2 of the same Chapter, the Sanyal Committee held that the discretionary right of appeal in contempt cases has served a very useful purpose and observed as under in paras 3.1 and 3.2, emphasizing the need for right of appeal as a matter of course: -

“3.1. ... But considering the uncertain state of the law and the fact that an appeal should be provided as a matter of course in all criminal cases, we are of the opinion that a right of appeal should be available in all cases and we accordingly recommend that against an order of a single Judge, punishing for contempt, the appeal should lie, in the High Court, to a Bench of Judges and against a similar order of a Bench of Judges of a High Court, the appeal should lie as of right to the Supreme Court.”

3.2. The recommendation we have made in regard to allowing appeals in contempt matters as a matter of right will bring our law in line with the developments that have taken place in English law in recent years. ...”

30. The Sanyal Committee also in its report held that the original court trying contempt must have the power to stay execution of the sentence etc. and stated as under: -

“4. ... In our opinion the law should contain suitable provisions for meeting such a contingency. For this purpose we recommend that both the appellate court and the court from whose judgment the appeal is being preferred should have the power to stay execution of the sentence, to release the alleged contemner on bail and to hear the appeal or allow it to be heard notwithstanding the fact that the appellant has not purged himself of the contempt.”

31. The Sanyal Committee in Chapter XII of its report while recording Conclusion, finally recommended provision for making appeal "as of right" from any order or decision of High Court in exercise of its jurisdiction for contempt as well as to have provision for stay of execution or to grant bail etc., in the following manner:-

"Chapter XII

Conclusion.

1. Our main conclusions and recommendations may be summarized as follows:--

(1) to (23) *** *** ***

(24) Every order of punishment for contempt shall state the facts constituting the contempt, the defence of the person charged, the substance of the evidence taken, if any, as well as the finding and the punishment awarded.

(25) Provision may be made for an appeal as of right from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt. The appeal should lie to a Bench of Judges of the High Court where the order or decision is of a single Judge. Where the order or decision is of a Bench the appeal should lie to the Supreme Court.

(26) The rule of practice as to 'purge' of contempt may work hardship in many cases and therefore both the appellate court and the court from whose judgment or order an appeal is being preferred should have the power to stay execution of the sentence, to release the alleged contemner on bail and to hear the appeal or allow it to be heard, notwithstanding the fact that the appellant has not purged himself of the contempt.”

32. Thus, the Sanyal Committee for the first time recommended that there should be a substantive provision for appeal “as of right” against the order or decision of

the High Court in exercise of jurisdiction to punish for contempt against the discretionary right of appeal to the Supreme Court and appeal should lie to the Bench of two Judges of the High Court where the order or decision is of a single Judge.

- 33.** The Sanyal Committee also proposed the Contempt of Courts Bill, 1963 in which Section 19 provided for appeals and which reads as under: -

“19. (1) An appeal shall lie as of right from any order or decision of a 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.

(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 himself of the 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 in 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 twenty days, and

(b) in the case of an appeal to the Supreme Court, within a period of sixty days;

from the date of the order appealed against.”

- 34.** Upon consideration, the Sanyal Committee report was accepted by the Government of India and the Parliament enacted the Contempt of Courts Act, 1971 with effect from 24-12-1971. The Statement of Objects and Reasons of the said Act would show that the existing law relating to contempt of Courts was found uncertain, undefined and unsatisfactory. It further states that the jurisdiction to punish for contempt touches upon two important fundamental rights of the citizen, namely, the right to personal liberty and the right to freedom of expression. Accordingly, a Committee was set up and recommendations of

the Committee took note of the importance given to freedom of speech in the Constitution and of the need for safeguarding the status and dignity of Courts and interests of administration of justice. Section 19 of the Act of 1971 is in line with the recommendations made by the Sanyal Committee in its report.

35. Section 2(a) of the Contempt of Courts Act, 1971 defines "contempt of Court" and Sections 2(b) and 2(c), respectively, define "civil contempt" and "criminal contempt". Section 10 provides power of High Court to punish contempts of subordinate Courts.
36. At this stage, it would be appropriate to notice Section 12 of the Contempt of Courts Act, 1971. Sub-section (1) of Section 12 of the Act of 1971 declares that save as otherwise expressly provided in this Act or in any other law, a contemnor 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. Proviso to sub-section (1) of Section 12 stipulates that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court. Explanation attached to sub-section (1) of Section 12 further states that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*. Sub-section (2) of Section 12 limits the power of the Court that no Court shall impose a sentence in excess of what specified in sub-section (1) for any contempt either in respect of itself or of a Court subordinate to it.
37. Section 13 provides that contempt Court can punish a contemnor only if it is satisfied that contempt substantially interferes as distinguished from "technical" contempt. Section 14 prescribes procedure where contempt is in the face of the Supreme Court or a High Court.
38. At this stage, it would be apposite to notice Section 19 of the Contempt of Courts Act, 1971 by reproducing the said provision for the sake of convenience. It states 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 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.”

39. The opening wordings of Section 19(1) of the Contempt of Courts Act, 1971 provides that an appeal shall lie "as of right". The meaning of expression "as of right" is that the enjoyment of right should not be "secret" or by sufferance or with leave or permission. The words "as of right" denote that it is not enough that right is merely exercised, but it should be exercised consciously in assertion of right claimed.

40. The word "jurisdiction" is a verbal cast of many colours. Jurisdiction originally seems to have had the meaning which Lord Baid ascribed to it in the matter of **Anisminic Ltd. v. Foreign Compensation Commission**⁸, namely, the entitlement "to enter upon the enquiry in question". If there was an entitlement to enter upon an inquiry into the question, then any subsequent error could only be

⁸ (1969) 2 AC 147

regarded as an error within the jurisdiction. (See **Shri M.L. Sethi v. Shri R.P. Kapur**⁹, para 10.)

41. The ordinary meaning of the word 'punish' is "to cause the offender to suffer for the offence" or "to inflict penalty for the offence". Punishment can otherwise be defined as penalty for the transgression of law, and the word "punish" denotes or signifies some offence committed by the person who is punished. (See **Lakshmi Devi Sugar Mills Ltd. v. Pt. Ram Sarup and others**¹⁰.)

42. Having noticed the meaning of "as of right", "jurisdiction" and "punish" employed in sub-section (1) of Section 19 of the Contempt of Courts Act, 1971, it is quite vivid that right of appeal under Section 19(1) of the Act would be exercisable by contemnor accused without leave or permission to the fora as provided in Section 19(1)(a) of the said Act. It is further clear that the term "High Court in the exercise of its jurisdiction to punish for contempt" would mean that appeal would lie where the High Court has entered into enquiry on the question of contempt and has actually punished the contemnor for contempt by imposing any of the penalty(ies) as enumerated in Section 12 of the Act of 1971.

43. Section 19 of the Contempt of Courts Act, 1971 came for consideration before the Supreme Court in the matter of **Baradakanta Mishra v. Mr. Justice Gatikrushna Misra, C.J. of the Orissa High Court**¹¹. The three Judges bench of the Supreme Court took notice of the recommendations made by the Sanyal Committee and held that in cases of contempt, even a person punished for contempt had no right of appeal and he could impugn the order committing him for contempt only if the High Court grants the appropriate certificate under Article 134 in fit cases or on the refusal of the High Court to do so, to seek special leave under Article 136 of the Constitution of India. The Supreme Court also referred the report of the Sanyal Committee in paragraphs 2.1 and 3.1 of Chapter XI and

⁹ AIR 1972 SC 2379

¹⁰ AIR 1957 SC 82

¹¹ AIR 1974 SC 2255

clause 25 of Chapter XII, and held that the Parliament, while enacting the Contempt of Courts Act, 1971, introduced Section 19, sub-section (1) in that Act conferring an appeal as of right “from any order or decision of a High Court in the exercise of its jurisdiction to punish for contempt”.

- 44.** Appeal under Section 19 of the Contempt of Courts Act, 1971 is contemplated only against an order or decision of the High Court made in exercise of its jurisdiction to punish for contempt. The successive steps by which jurisdiction is to be exercised by the High Court or procedure where contempt is in the face of the High Court is also indicated in clause (a) to clause (d) in sub-section (1) of Section 14 of the Act of 1971 which are as under: -

“14. Procedure where contempt is in the face of the Supreme Court or a High Court.--(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall--

- (a) cause him to be informed in writing of the contempt with which he is charged;
- (b) afford him an opportunity to make his defence to the charge;
- (c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and
- (d) make such order for the punishment or discharge of such person as may be just.”

- 45.** A critical reading of clause (a) to clause (d) of sub-section (1) of Section 14 of the Contempt of Courts Act, 1971 would show that at the first stage, the contemnor has to be informed in writing of the contempt of court which he is charged thereafter, the court has to afford him an opportunity to make his defence to the charge and thereafter, after taking such evidence as may be necessary or as may be offered by such contemnor and after hearing the contemnor, the court has to determine the matter of the charge, and clause (d) is the final stage where the court exercises jurisdiction to make an order for punishment or discharge of the person accused of contempt and if the court makes an order imposing

punishment for contempt and imposes any of the penalty(ies) provided in Section 12 of the Act of 1971. Thus, this would be the stage where the High Court can be said to have exercised its jurisdiction to punish for contempt under sub-section (1) of Section 19 of the Act of 1971.

- 46.** Thus, Section 14 of the Contempt of Courts Act, 1971 is a procedural provision relating to taking cognizance and hearing of contempt alleged to have been committed in face of court. In order to properly appreciate the purport of Section 14, it would be apposite to refer para 2.2 of Chapter X of the Sanyal Committee Report which is quite instructive and which states as under: -

"2.2. The Constitution having guaranteed to the citizen the rights of freedom of speech and personal liberty, the aim of the law should be to ensure that these rights are adequately safeguarded and it is from this point of view that one should examine the present question. In our opinion, it is both necessary and desirable that the main principles of the law of procedure relating to contempts should be expressly stated in the law. This is necessary not only in the interests of uniformity and certainty but more so in the interest of administration of justice. No doubt, as stated before, the procedure and practice relating to contempt cases has to some extent already become crystallised but, as in the case of the substantive law relating to contempt, it is stated that there is reserved unto the courts an undefined degree of discretion and elasticity to be utilised by them as occasion demands it. While such discretion and elasticity may to some extent be justified in regard to the substantive law on the ground that the categories of contempt cannot be regarded as closed, there does not seem to be the same justification for not stating clearly, the broad outlines of the procedural law, and in following paragraphs, we propose to deal with the broad principles of procedure which may be given clear cut statutory form."

- 47.** After referring to the extent of use of summary powers in England, America and certain other countries, the Committee opined in para 4 of Chapter X as follows:-

"4. From what we have stated, it is clear that it is not wise to modify in any manner the summary powers of courts to deal with contempts committed in their presence. We, therefore, feel that the court should, in cases of criminal contempt committed in its presence, be able to deal with the contempt forthwith or at any time convenient to it after informing the person charged with contempt orally of the charge against him and after giving him an opportunity to make his defence to the charge. Pending determination of the charge, the person charged with contempt may be detained in such custody as the court deems fit. Wherever the matter is not disposed of forthwith, we also feel that the person charged should be enlarged on bail pending determination on the execution of a

bond for due appearance for such sum and with or without sureties as the court considers proper. We are happy to note that this is generally the practice."

48. Thus, clauses (a), (b), (c) and (d) of sub-section (1) of Section 14 of the Contempt of Courts Act, 1971, are based on the recommendations of the Sanyal Committee and expressly provide for compliance with the rules of natural justice in case where contempt is committed in the face of a High Court or the Supreme Court, as the case may be.
49. The procedure envisaged under Section 14 of the Contempt of Courts Act, 1971 came to be considered before the Supreme Court in the matter of **Leila David v. State of Maharashtra and others**¹². Justice Ganguly in his separate and dissenting opinion held that four steps provided under Section 14(1) of the Act are mandatory in nature and the court must act with utmost restraint and caution and must follow all the procedural requirements since the liberty of persons is involved, and held as under: -

"9. ... It is clear from a perusal of Section 14(1) of the said Act that in initiating a contempt proceeding and when contempt is allegedly committed in the face of the Court, the Court has to inform the alleged contemnors in writing the charge of contempt and then afford them an opportunity to make their defence to the charge and thereafter on taking such evidence as may be necessary or as may be offered by the persons and after hearing them, proceed either forthwith or after adjournment to determine the matter of the charge and may make such order for the punishment or discharge of such persons as may be just.

17. The safeguards statutorily engrafted under Section 14 of the Act are basically reiterating the fundamental guarantee given under Article 21 of the Constitution. This guarantee which possibly protects the most precious fundamental right is against deprivation of one's personal liberty "except according to procedure established by law". This Court, being the guardian of this right, cannot do anything by which that right is taken away or even abridged and especially when the court is acting *suo motu*."

50. In **Leila David** (supra), on account of disagreement on the question of opportunity of hearing particularly with reference to Section 14 of the Contempt of Courts Act, 1971, the matter was placed before larger bench. The three-judge bench of the Supreme Court in the matter of **Leila David (6) v. State of**

¹² (2009) 4 SCC 578

Maharashtra and others¹³ resolved the difference of opinion and observed as under:-

"35. Section 14 of the Contempt of Courts Act no doubt contemplates issuance of notice and an opportunity to the contemnors to answer the charges in the notice to satisfy the principles of natural justice. However, where an incident of the instant nature takes place within the presence and sight of the learned Judges, the same amounts to contempt in the face of the Court and is required to be dealt with at the time of the incident itself. This is necessary for the dignity and majesty of the courts to be maintained. When an object, such as a footwear, is thrown at the Presiding Officer in a court proceeding, the object is not to merely scandalise or humiliate the Judge, but to scandalise the institution itself and thereby lower its dignity in the eyes of the public."

51. Leila David (6) (supra) was followed with approval by the Supreme Court in the matter of **Ram Niranjana Roy v. State of Bihar and Ors.**¹⁴.

52. Thus, the purpose of noticing and considering the nature and scope of Section 14(1) of the Contempt of Courts Act, 1971 is to lay emphasis that when steps enumerated in clauses (a) to (c) of Section 14(1) are followed, then only, clause (d) of Section 14(1) steps in, where the Court hearing the contempt petition gets an opportunity to exercise the jurisdiction to make an order to punish for contempt or discharge of person accused of contempt and therefore unless steps as engrafted in clauses (a) to (c) of Section 14 of the Act of 1971 are completed, question of exercise of jurisdiction by the court to punish for contempt does not arise at all. Framing of charge is only the first step while proceeding with contempt petition. Clause (a) of sub-section (1) of Section 14 provides that the court shall cause him to be informed in writing of the contempt with which he is charged, which is based on the recommendations of the Sanyal Committee. Framing of charge against the contemnor is only to comply with the principles of natural justice and to clearly specify the accusation which a contemnor is supposed to meet by filing reply and further to adduce evidence in his or her defence, as the case may be, on the charges so levelled against him.

¹³ (2009) 10 SCC 337

¹⁴ JT 2014 (4) SC 477

53. The High Court of Australia in **Coward v. Stapleton**¹⁵ while emphasizing the need for explicitly informing the specific charge to the contemnor held as under: -

"It is a well-recognised principle of law that no person ought to be punished for contempt of court unless the specific charge against him be distinctly stated and an opportunity of answering is given to him..... The gist of accusation must be made clear to the person charged, though it is not always necessary to formulate the charge in a series of specific allegations. The charge having been made sufficiently explicit, the person accused must then be allowed a reasonable opportunity of being heard in his own defence, that is to say a reasonable opportunity of placing before the court any explanation or amplifications of his evidence and any submissions of fact of law which he may wish the court to consider as bearing either upon the charge itself or upon the question of punishment. Resting as it does upon accepted notions of elementary justice, this principle must be rigorously insisted upon."

54. The Supreme Court in the matter of **Santosh Kumari v. State of Jammu and Kashmir and others**¹⁶ has held that the object of charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. Similarly, in the matter of **Chandra Prakash v. State of Rajasthan**¹⁷ while highlighting the purpose of framing charge under the provisions of the Code of Criminal Procedure; it was held that purpose of framing charge is that accused should be informed with certainty and accuracy of charge brought against him and there should be no vagueness.

55. Thus, the order framing charge does not decide any right of parties and it does not touch jurisdiction. The exercise by order framing charge is only to find out whether the material placed and available before the court is sufficient for court to put the accused/contemnor for trial as such, while framing the charge, neither the court embarks upon merits of the matter nor decides the rights of parties and as such, the order does not come within the sweep of Section 19(1) of the Contempt of Courts Act, 1971.

56. Justice R.S. Pathak (as His Lordship then was) speaking for a Division Bench of the Himachal Pradesh High Court way back in the year 1977 in the matter of

¹⁵ (1953) 90 CLR 573

¹⁶ (2011) 9 SCC 234

¹⁷ (2014) 8 SCC 340

L.D. Khanna and others v. M/s. Chohan Huhtamaki (India) Pvt. Ltd.,

Chambaghat and others¹⁸ illuminatingly held that appeal under Section 19(1) of the Contempt of Courts Act, 1971 lies only against decision concluding contempt proceedings and observed as under: -

"The concluding stage is the stage contemplated by clause (d), where the Court exercises the jurisdiction to make an order for the punishment or discharge of the person accused of contempt. In our opinion it is to that stage of the exercise of jurisdiction that subsection (1) of [Section 19](#) refers. It speaks of the High Court exercising "its jurisdiction to punish for contempt". The jurisdiction to punish for contempt is specifically referred to in [Section 12](#) of the Act, which lays down the limits within which such jurisdiction will be exercised. Section 12 declares that 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, and that no Court can impose a sentence in excess of such punishment. The jurisdiction to punish may alternatively be exercised, in the case of a civil contempt, by directing that the person found guilty be detained in a civil prison for such period not exceeding six months as the Court may think fit. The jurisdiction to punish for contempt may also be exercised in the case of a company. Section 12 details the various orders or decisions which the High Court may make in the exercise of its jurisdiction to punish for contempt. The more comprehensive jurisdiction, relating to the entire range of the proceeding, is indicated in provisions such as [Section 11](#), which declares that a High Court shall have jurisdiction, to enquire into or try a contempt. Another provision is [Section 18](#), which declares that every case of criminal contempt under Section 15 "shall be heard and determined" by a Bench of not less than two Judges. Had Parliament intended that Section 19 should provide an appeal from any order or decision of the High Court made at any stage during a contempt proceeding, one would have expected Section 19 to read:"

57. Yet another judgment, Justice Bhawani Singh (Acting CJ) (as His Lordships then was) speaking for a Division Bench of the Himachal Pradesh High Court in the matter of **Kundan Ram and etc. v. Darshan and etc.**¹⁹ condensely held that appeals are maintainable only to the extent expressly provided under Section 19(1) of the Contempt of Courts Act, 1971 and in no other case. The view eloquently expressed states as under: -

"16. ... Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise the jurisdiction to punish for contempt and as such a decision cannot be regarded as a decision in exercise of its

¹⁸ 1977 Cri.L.J. 1530

¹⁹ 1997 Cri.L.J. 473

jurisdiction to punish for contempt. It would not be a decision within sub-section (1) of Section 19 of the Act, therefore, no appeal would lie against it. The informer may or may not appear before the Court in the matter. The question whether proceedings for contempt deserve to be initiated and if so initiated, whether the contemner ought to be punished, is in the sole discretion of the Court. In case the Court declines to take action or to punish the contemner after having found guilty, does not make the informer an aggrieved party entitling him to file an appeal under Section 19(1) of the Act. Aggrieved party, in such cases, would be the contemner who has been punished for having committed the contempt of Court."

58. The view which I have taken is also supported by the provision contained in sub-section (2) of Section 19 of the Contempt of Courts Act, 1971. Clause (a) of Section 19(2) provides that the appellate Court may suspend "the execution of the punishment or order appealed against". The execution enumerated here could be either of order mentioned in Section 12 or an order of cost(s). Clause (b) of Section 19(2) speaks that if the appellant is in confinement, consequent to order of punishment, he be released on bail. Clause (c) of Section 19(2) contemplates a stage where the appellant has already been found guilty of contempt.

59. Their Lordships of the Supreme Court have delivered umpteen number of judgments on the law regarding maintainability of contempt appeal under sub-section (1) of Section 19 of the Act of 1971. I would like to notice few of them profitably and usefully herein.

59.1) Section 19(1) of the Contempt of Courts Act, 1971 came up for consideration before the Supreme Court in **Baradakanta Mishra v. Mr. Justice Gatikrushna Misra, C.J. of the Orissa High Court** (supra). Explaining the import of expression "in the exercise of its jurisdiction to punish for contempt", it was held by the Supreme Court that where the court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Their Lordships have further held that only those orders or decisions in which some point is

decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt, are appealable under Section 19 of the Contempt of Courts Act, 1971. It was observed as under: -

"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 terminous (*sic*) a *quo* for the period of limitation provided in section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its jurisdiction to punish for a 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."

59.2) In **Purushotam Dass Goel v. Hon'ble Mr. Justice B.S. Dhillon and others**²⁰,

Their Lordships of the Supreme Court while examining the scope and ambit of appeal under Section 19 of the Contempt of Courts Act, 1971, broadened the area of appealability to an order which decided some bone of contention raised before the court affecting the right of the party aggrieved and held as under: -

"3. ... The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. ...

5. ... 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."

59.3) This view was reiterated by the Supreme Court in the matter of **Union of India and Ors. v. Mario Cabral-e-Sa**²¹.

60. In the matter of **D.N. Taneja v. Bhajan Lal**²², a three Judge Bench of the Supreme Court in no uncertain terms held that right of appeal is available under sub-section (1) of Section 19 of the Contempt of Courts Act, 1971 only against any decision or order of a High Court in exercise of its jurisdiction to punish for contempt. Their Lordships took cognizance of Article 215 of the Constitution of India which provides that every High Court shall be a court of record and shall

²⁰ AIR 1978 SC 1014

²¹ (1982) 3 SCC 262

²² (1988) 3 SCC 26

have all the powers of such a court including the power to punish for contempt of itself, implied that High Court could exercise its jurisdiction only by punishing for contempt and not by refusing to punish. Their Lordships opined as under: -

"10. ... It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under [HYPERLINK "https://indiankanoon.org/doc/207538/"](https://indiankanoon.org/doc/207538/)Article 215 of the Constitution."

In para 12 of the judgment it has further been said that:

"12. 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 propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under Section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. 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 contemnor. It may be one of the reasons which weighed with the legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court."

61. In the matter of **Modi Telefibres Ltd. and others v. Sujit Kumar Choudhary and others**²³, the Supreme Court has held that the order of a Single Judge of the High Court finding the alleged contemnor to be guilty of contempt but adjourning the contempt proceedings to enable the contemnor to purge the contempt or else for deciding the quantum of punishment, is appealable under Section 19(1) of the Contempt of Courts Act, 1971.

²³ (2005) 7 SCC 40

62. The Supreme Court in the matter of **Midnapore Peoples' Coop. Bank Ltd. and others v. Chunilal Nanda and others**²⁴, Their Lordships noticed all earlier judgments on Section 19(1) of the Contempt of Courts Act, 1971 and formulated following two questions for determination which are as under: -

"(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether the same is appealable under Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra-court appeal is available under clause 15 of the Letters Patent?"

Their Lordships finally answered the first question as under:-

"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),

²⁴ (2006) 5 SCC 399

or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly."

63. In the matter of Parents Association of Students v. M.A. Khan and another²⁵,

the Supreme Court held as under: -

"11. The controversy as regards exercise of jurisdiction of the appellate court under Section 19 of the Contempt of the Courts Act is a vexed one. Whereas one line of decisions beginning from Baradakanta Mishra v. High Court of Orissa (supra) till Midnapore Peoples' Coop. Bank Ltd. (supra) is that an appeal would be maintainable only when an order of punishment has been made, in R.N. Dey v. Bhagyabati Pramanik²⁶ it has been held to be maintainable if the jurisdiction is exercised by any court under the Contempt of Courts Act."

64. Very recently, the Supreme Court in the matter of Sujitendra Nath Singh Roy v.

State of West Bengal and others²⁷ relying upon Midnapore Peoples' Coop.

Bank Ltd. (supra) and State of Maharashtra v. Mahboob S. Allibhoy and

another²⁸ clearly held that under Section 19 of the Contempt of Courts Act, 1971

an appeal lies before the Supreme Court only against such order of the High

Court which imposes punishment for contempt and no appeal will lie against an

interlocutory order or an order dropping or refusing to initiate contempt

proceedings.

65. In Mahboob S. Allibhoy's case (supra) the Supreme Court has held that in

order to be appealable, the order or decision must be in the nature of

punishment for contempt. The Court explained that the words "any order" has to

be read with the expression 'decision' used in clauses (a) and (b) of sub-section

(1) of Section 19 of the Contempt of Courts Act, 1971. It was observed as

under:-

"3. ... "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

²⁵ (2009) 2 SCC 641

²⁶ (2000) 4 SCC 400

²⁷ (2015) 12 SCC 514

²⁸ (1996) 4 SCC 411

Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result."

66. In the matter of Tamilnad Mercantile Bank Shareholders Welfare Association

(2) v. S.C. Sekar and others²⁹, the Supreme Court has noted with approval the judgment of the Calcutta High Court in the case of **Ashoke Kumar Rai v. Ashoke Arora**³⁰ wherein it has been held as under: -

"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."

67. Restatement of Indian Law – Contempt of Court published by the Supreme

Court Project Committee on Restatement of Indian Law The Indian Law Institute, New Delhi 2011 in Chapter 9 (Appeals) considered Section 19 of the Contempt of Courts Act and in paragraph 9.4 while considering the nature of order appealable under Section 19 laid down the principles discernible from various decisions as under: -

“(1) Where an order actually imposes punishment, it is clearly appealable by the alleged contemnor under sec. 19;

(2) Where an order declines to impose punishment, it is not appealable at the instance of a third party (i.e. the complainant or informer);

(3) Where an order declines to impose punishment, but contains

²⁹ (2009) 2 SCC 784

³⁰ 96 CWN 278

some adverse finding against the alleged contemnor, or decides some bone of contention raised before the court affecting the right of the party aggrieved, it may be appealable by the alleged contemnor;

(4) An order not imposing punishment and not substantively deciding anything against the contemnor, is not appealable by the alleged contemnor. This is in line with the judgment of P.N. Bhagwati, J (as he then was) in *Baradakanta Mishra*, where his Lordship held, "the exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether *suo motu* or on a motion or a reference. (Emphasis supplied.)"

It was further provided in continuation as under: -

"Therefore, in cases where no punishment is imposed and yet the alleged contemnor wishes to exercise his right of appeal, the maintainability of the appeal depends on whether some adverse finding was made against the alleged contemnor affecting a substantive right. Even an interlocutory order passed in the course of contempt proceedings would be appealable if it affects substantive rights and obligations."

68. A Full Bench of the Calcutta High Court in the matter of **Arun Kumar Gupta v.**

Jyoti Prasanna Das Thakur³¹ accepted the principle of law laid down in **Ashoke**

Kumar Rai (supra) by holding as under: -

"... We have no reason to differ from the views taken in the said decisions. ..."

69. A five Judges (Full) Bench of the Allahabad High Court in the matter of **Smt.**

Sadhna Upadhyaya v. State of U.P.³² succinctly held as under: -

"84. The order impugned in the present case determines a vital matter namely taking of the cognizance, framing of charges and the order of judicial custody. If this order is quorum nonjudice, and it also curtails the personal liberty of the appellant violating her fundamental rights guaranteed under the Constitution, then in view of the conclusions drawn herein above the order impugned cannot be termed as a mere interlocutory order in a proceeding of contempt.

102. We, therefore, accordingly hold that where in a matter arising out of ex-facie contempt referable to Section 14 of the Contempt of Courts Act, 1971 is concerned, in such a situation if the issue raised is of jurisdiction or competence of the Court to initiate or take cognizance and where the same is coupled with an order of taking a person into custody, an appeal under section 19 of the Contempt of Courts Act would be entertainable and such a person will be entitled to file an appeal as a matter of right."

³¹ (1996) ILR 1 Cal 292

³² (2008) 3 UPLBEC 2113 (FB)

70. A Division Bench of the Allahabad High Court in the matter of **Jai Karan Lal Verma v. Rajesh Kumar Pathak and others**³³ has categorically held that appeal under Section 19(1) of the Contempt of Courts Act, 1971 against order of single Judge holding the contemnors prima facie guilty of contempt and framing charges is not maintainable as such are not the orders imposing punishment.

71. In the matter of **Mohammad Idris and another v. Rustam Jehangir Babuji and others**³⁴, it was held that statutory right of appeal conferred by Section 19 of the Contempt of Courts Act, 1971 may be exercised once. Their Lordships of the Supreme Court have further held that once an appeal is filed against order or decision of a Single Judge to a Division Bench of High Court, remedy of appeal under Section 19(1) of the Act of 1971 is exhausted and further appeal to Supreme Court is not open under that provision, and observed as under: -

"3. If the order of committal for contempt of court is made by a Single Judge of the High Court, there is one statutory right of appeal to a Division Bench of not less than two Judges of the Court. If the order of committal for contempt of court is made by a Bench, an appeal lies as of right to the Supreme Court. Where an appeal is filed against the order of the learned Single Judge to a Division Bench, the statutory right of appeal gets exhausted and there is no further right of appeal to the Supreme Court. ..."

72. It is well settled law that right of appeal is a creature of statute. It cannot be conferred or inferred by the courts. The Constitution Bench of the Supreme Court in the matter of **U.P. Awaz Evam Vikas Parishad v. Gyan Devi (Dead) by LRs. and others**³⁵ has held that right to appeal is statutory right and the courts cannot confer or infer it. It has further been held that what is legislatively not permitted cannot be read by implication, not in respect of right of appeal, as it "is a creature of statute". Relying upon the matter of **Shankar Kerba Jadhav v. State of Maharashtra**³⁶, it was held as under: -

"A right of appeal is conferred by statute or equivalent legislative authority; it is not a mere matter of practice or procedure, and

³³ 2008 (1) AWC 61 (LB)

³⁴ (1984) 4 SCC 216

³⁵ (1995) 2 SCC 326

³⁶ (1969) 2 SCC 793

neither the superior nor the inferior court or Tribunal nor both combined can create or take away such a right."³⁷

73. Similarly, the Supreme Court in the matter of **Kamla Devi v. Kushal Kanwar and another**³⁸ held as under: -

"11. A right of appeal under the Code is statutory. Such right of appeal is also conferred under the letters patent of the High Court or the statutes creating the High Court.

12. An appeal, as is well known, is the right of entering a superior court invoking its aid and interposition to redress an error of the court below. The central idea behind filing of an appeal revolves round the right as contradistinguished from the procedure laid down therefor."

74. It is equally well settled that power to create or enlarge jurisdiction of the court is legislative function. A Constitution Bench (seven Judges) of the Supreme Court in the matter of **A.R. Antulay v. R.S. Nayak and another**³⁹ has held that the power to create or enlarge jurisdiction is legislative in character, so also the power to confer a right of appeal or to take away a right of appeal. Parliament alone can do it by law and no court, whether superior or inferior or both combined, can enlarge the jurisdiction of a court or divest a person of his rights of revision and appeal.

75. Thus, on the basis of above-stated legal analysis, I am of the considered opinion that: -

- (i) Only one statutory right of appeal under Section 19(1) of the Act of 1971 is available to the contemnor.
- (ii) Appeal under Section 19(1) of the Act of 1971 is maintainable only if some bone of contention is decided and adverse finding is recorded by the High Court in exercise of jurisdiction to punish for contempt and it affects the substantive right of the contemnor or where the contemnor is held guilty.
- (iii) An order imposing punishment inflicting any of the penalty(ies) specified in Section 12 of the Act of 1971 is clearly appealable by the alleged contemnor

³⁷ Halsbury's Laws of England, Vol. 37, para 677

³⁸ (2006) 13 SCC 295

³⁹ (1988) 2 SCC 602

under Section 19(1) of the Act.

- (iv) An order framing charge for a contempt is only a step towards the exercise of jurisdiction to punish for contempt and to inform the contemnor with certainty and accuracy of the charges levelled against him to enable him to meet those charges effectively by filing appropriate reply and or to take suitable defence and to adduce evidence as envisaged under Section 14(1)(a) to (c) of the Act of 1971 and the matter of charge does not touch the jurisdiction of the court.
- (v) As such, the order framing charge neither decides any bone of contention between the parties affecting their substantive right nor does it imposes any of the punishments/ penalties specified in Section 12 of the Act of 1971, therefore such an order is not an order or decision within the meaning of sub-section (1) of Section 19 of the Act of 1971 as such, no appeal would lie against such an order framing charge for contempt.
- (vi) Concludingly, the view expressed by the Division Bench⁽²⁾ comprising of Hon'ble Mr. Pritinker Diwaker and Hon'ble Mr. P. Sam Koshy, JJ, in the matter of C.L. Sidar (supra) holding that an appeal does not lie under Section 19(1) of the Act of 1971 against the order framing charge, lay down the correct law.

Sd/-
(Sanjay K. Agrawal)
Judge

ORDER OF THE COURT

In view of the majority judgment rendered, the question referred to the Full Bench is answered in the following terms:

"In view of the above discussion, we answer the question referred to this Court by holding that an appeal shall lie under Section 19 of the Contempt of Courts Act, 1971 against an order framing charge in contempt proceedings."

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Prashant Kumar Mishra)
JUDGE

Sd/-

(Sanjay K. Agrawal)
JUDGE