

Item -		MAT 1502 of 2023
12.	11-12-2023	CAN 1 of 2023
		CAN 2 of 2023
sg	Ct. 8	Shipra Barikdar
		Versus
		Siddhartha Mazumder & Ors.

Mr. Pratik Kumar Dhar, Sr. Adv.
Mr. Ujjal Ray, Adv.
...for the appellant
Dr. Sutanu Kr. Patra, Adv.
Ms. Supriya Dubey, Adv.
...for the WBCSSC
Sk. Md. Galib, Adv.
Ms. Sujata Mukherjee, Adv.
...for the State

1. Affidavit of service filed in Court today is taken on record.

In Re: CAN 1 of 2023

2. This is an application for condonation of delay for preferring the memorandum of appeal.
3. There is delay of 141 days in referring the appeal.
Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation, the delay of 141 days in presenting the memorandum of appeal is hereby condoned.
4. CAN 1 of 2023 is, accordingly, disposed of.

In Re: MAT 1502 of 2023 with CAN 2 of 2023

5. The appeal is arising out of a judgment and order dated 17th February, 2023 in connection with an application filed under Article 215 of the Constitution of India.

6. The writ petitioner is aggrieved by the impugned order as in deciding the contempt application, the learned Single Judge has passed direction which is at variance with the original order.
7. Sk. Md. Galib, learned Counsel appearing on behalf of the State has taken a preliminary point with regard to maintainability of the appeal in view of Section 19 of the Contempt of Courts Act, 1971. It is submitted that in disposing of the contempt application, the learned Single Judge did not impose any punishment for contempt and no appeal would lie against an interlocutory order or any order dropping or refusing to initiate contempt proceeding as laid down in the case of *Sujitendra Nath Singh Roy vs. State of West Bengal & Ors.*; reported in (2015) 12 SCC 514 (paragraph 5). Further reliance is placed on the judgement of the Hon'ble Supreme Court in *State of Maharashtra vs. Mahboob S. Allibhoy & Ors.* reported in (1996) 4 SCC 411.
8. Mr. Pratik Kumar Dhar, learned Senior Counsel appearing on behalf of the writ petitioner submits that there cannot be any two opinions with regard to scope of appeal arises in the appeal under Section 19 of the Contempt of Courts Act, 1971. However, regard being had to the nature of the order, the Appellate Court is not precluded from considering whether in disposing of the contempt application, the learned Single Judge has jurisdiction beyond the scope of contempt application and made observations that essentially alter the original order from

which the contempt proceeding arose. Mr. Dhar has relied upon the jurisdiction of the Hon'ble Supreme Court in ***Midnapore Peoples' Coop. Bank Ltd. & Ors. vs. Chunilal Nanda & Ors.*** reported in (2006) 5 SCC 399.

9. Indisputably, an order passed in the contempt jurisdiction would be appealable in terms of Section 19 of the Contempt of Courts Act, 1971. For the purpose of brevity the said section is reproduced below:

"Section 19 in the Contempt of Courts Act, 1971

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— —(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.”

10. The said section clearly postulates that only an appeal was lie if so imposed punishment. All other orders in the same jurisdiction are not appealable. The jurisdiction cited on behalf of the State, however, does not take care of a situation where the Court in deciding the contempt application has passed an order which, in effect, disturbs the integrity of the original order. This situation has been addressed in *Midnapore Peoples' Coop. Bank Ltd. [paragraph 11(v)]* (supra).

11. Undoubtedly, in any case, the learned Single Judge has decided the issue and passed direction relating to the merits of the dispute already adjudicated upon by the learned Single Judge and no appeal was preferred by the State against the said judgement. In a contempt jurisdiction, the Court is required to find out whether there is any willful or deliberate violation of the order and contemptuous conduct of the parties, if any. The Court may accept the explanation offered by the State in discharging the rule. The Court, however, cannot decide the matter afresh in the contempt jurisdiction on an issue already decided in the writ petition.

12. On that score, we are in agreement with the submissions made by Mr. Dhar that the order impugned is beyond the jurisdiction of the learned Single Judge while deciding a contempt application. Moreover, the issue involved in the writ petition has been decided by a coordinate Bench in *Prapti Chakraborty vs. State of West Bengal & Ors.* in *MAT 205 of 2023 with IA No. CAN 1 of 2023* on 10th August, 2023. In any event, it was not open for the State to take a stand in the contempt petition after having accepted the order and without seeking a review or recalling of the order.
13. Under such circumstances, we set aside the order of the learned Single Judge and direct the State to implement the order passed by the learned Single Judge within a period of eight weeks from the date of communication of this order by either of the parties.
14. The appeal stands disposed of. However, there shall be no order as to costs.
15. Since no affidavit is called for, the allegations made therein are deemed not to have been admitted.
16. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)