



2025:AHC:152808-DB

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 788 of 2025

Alok Kumar Yadav

.....Appellant(s)

Versus

Sri Ashish Kumar Pandey

.....Respondent(s)

Counsel for Appellant(s)	:	Ashish Agrawal, Uttam Singh
Counsel for Respondent(s)	:	

Chief Justice's Court

HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE KSHITIJ SHAILENDRA, J.

1. This appeal under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 (for short, 'the Rules of 1952') is directed against order dated 30.07.2025 passed by learned Single Judge in Contempt Application (Civil) No. 3759 of 2025 whereby, the learned Single Judge based on the order passed qua which contempt was alleged, pleadings in the affidavit and the documents annexed with the same came to the conclusion that the same did not reveal any wilful disobedience and consequently dismissed the contempt application.
2. At the outset, learned counsel for the appellant was put to a query pertaining to the maintainability of the appeal as office has raised objection in this regard.
3. Learned counsel for the appellant, by relying on an order of co-ordinate Bench of this Court in **Tasneem Fatima Vs. Sri Amit Mohan Mishra: 2025:AHC-LKO:11415-DB**, made submissions that the Division Bench with reference to the provisions contained in Chapter VIII Rule 5 of the Rules of 1952 has come to the conclusion that there is no bar in maintaining the special appeal and, therefore, the special appeal is maintainable.
4. An attempt was made to make submissions pertaining to the merits of the case so as to question the dismissal of the contempt application.

5. We have considered the submissions made by learned counsel for the appellant and have perused the order passed in the case of **Tasneem Fatima (supra)**.

6. The issue of maintainability of appeal against dismissal of contempt application under Chapter VIII Rule 5 of the Rules of 1952, is not a new issue. The said aspect has been repeatedly argued, deliberated upon and it has consistently been ruled that the appeal under Chapter VIII Rule 5 of the Rules of 1952 against dismissal of contempt petition, is not maintainable.

7. Hon'ble Supreme Court in **Midnapore Peoples' Co-operative Bank Ltd. & Ors. V. Chunilal Nanda & Ors.: (2006) 5 SCC 399**, has laid down the following qua the maintainability of appeal and the remedy available to a party aggrieved of the order passed by the contempt Court, 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), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).

The first point is answered accordingly."

8. The Hon'ble Supreme Court while dealing with the appeals against orders in contempt proceedings *inter alia* laid down in Clause II above, that 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 a contemnor is appealable under Section 19 of the Contempt of Courts Act, 1971 and further observed that in special circumstances, those orders may be open to challenge under Article 136 of the Constitution of India.

9. Under Clause V, a window was kept open by Hon'ble Supreme Court that in cases if the High Court decides an issue or makes any direction relating to the merits of the dispute between the parties in a contempt proceedings, the aggrieved party can question the same in an intra court appeal or under Article 136 of the Constitution of India.

10. It would be seen that it was categorically laid down that appeal against an order declining to initiate proceedings for contempt or an order dropping the proceedings for contempt, the appeal is not maintainable and even qua intra court appeals, the power has been restricted qua nature of orders as indicated herein before.

11. The issue is no more *res integra* as this Court has repeatedly laid down in **Jagdamba Prasad Vs. Balgovind and 10 Others: 2016: AHC:77023-DB**, **Sheo Charan Vs. Naval and Others 1997 SCC OnLine All 1136**, **Hub Lal Yadav Vs. Mahendra and Others 2017 ADJOnline 0638** that an order passed by contempt judge in exercise of powers of his contempt jurisdiction whereby the contempt proceedings have been discharged cannot be made the subject matter of intra court

appeal.

12. In **Vinod Kumar Gupta and Ors. v. Veer Bahadur Yadav and Ors.: 2023 (7) ADJ 107**, again the Division Bench after taking into consideration the entire law on the subject and referring to various precedents, came to the following conclusion:

"32. While applying the above noted judgment in the facts of the present case, now this Court has to bestow its anxious consideration as to whether the present intra-court appeal is maintainable against the judgment and order of the learned Single Judge while declining to initiate contempt proceedings against the opposite parties.

33. As noticed above, the Hon'ble Apex Court and this Court has consistently held that an intra-court appeal is not maintainable against the order of the learned Single Judge exercising contempt jurisdiction in a contingency, when the contempt proceedings are not being initiated. The reliance placed upon the judgment in the case of Durga Nagpal (supra) is misconceived and misplaced as in the said case, the Hon'ble Judges while exercising appellate jurisdiction were confronted with the situation where the contempt court reviewed its own order after entertaining miscellaneous application for modification of the final judgment. The Division Bench opined that when accused are discharged and proceedings are closed, miscellaneous application for modification is not maintainable. In the said perspective, the Special Appeal was held to be maintainable. Since the present case originates from a judgment and order of the contempt court declining to exercise contempt jurisdiction, thus, the said judgment is of no aid to the appellants.

34. Accordingly, we are of the firm opinion that the present intra-court appeal against the judgment and order of the learned Single Judge dated 17.03.2023 declining to initiate contempt proceedings is not maintainable under Chapter VIII Rule 5 of the Rules of the Court."

13. Recently, another Division Bench to which one of us (Arun Bhansali, CJ.) was a member in **Subhash Chandra Vs. Srikant Goswami Posted Managing Director, Sahkari Gram Vikas Bank Ltd. Lucknow And 2 Others: 2024:AHC-LKO:58884-DB**, again after taking into consideration the entire law laid down as under:

"69. The pith and substance of the aforesaid discussion, the legal principles involved and circumstances when an appeal may lie under Section 19 of the Contempt of Courts Act, 1971 and when a Special Appeal may lie from an order passed in contempt jurisdiction can be summarized as under:-

(A) Section 19 (1) of the Contempt of Courts Act can be invoked only when the Contempt Court has exercised its jurisdiction to punish for contempt. The essence of this

provision is to provide a remedy against decision where the court has taken a definitive action to penalize a contemnor. This includes orders that impose fines, imprisonment, or other punitive measures directly related to the contemptuous behavior. Interlocutory orders, which do not entail punishment for contempt, do not fall within the ambit of Section 19. Such orders may include directions to produce documents, file affidavits, or procedural directives necessary for the continuation of the contempt proceedings. These are routine judicial actions that facilitate the progress of the case but do not constitute a final determination on the issue of contempt. Routine orders passed during the pendency of contempt proceedings are also excluded from the scope of Section 19. These orders are typically procedural and administrative in nature, ensuring that the proceedings move forward without addressing the substantive issues of the original case or the merits of the contempt.

(B) The crux of the matter lies in the nuanced interpretation of what constitutes "merit" within the context of contempt proceedings, as referenced by the Supreme Court in the Midnapore Peoples Cooperative Bank Limited case. The term "merit" has not been defined in a straight jacket formula, leading to varying interpretations. However, a cumulative reading of the judgments provide clarity on several key aspects. In the Midnapore case, the Supreme Court held that in contempt proceedings, it is inappropriate to adjudicate or decide any issue related to the merits of the dispute between the parties. This principle aims to ensure that contempt proceedings do not encroach upon the substantive rights of the parties involved in the original dispute. The focus of contempt jurisdiction is to uphold the dignity and authority of the court, not to resolve the underlying dispute. The term "merit" in this context refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation.

(C) Special appeals from the order or judgment of a single judge bench in contempt cases hinge on the distinction between addressing the merits of the original dispute and the conduct constituting contempt. The primary responsibility of the Contempt Court is to determine whether contempt has occurred and to impose appropriate sanctions if it has. The merits of the original controversy are outside the domain of the contempt court. However, when the Contempt Court issues directions or discusses the merits of the original controversy, it oversteps its jurisdiction. In such cases, a special appeal would lie to the High Court. This ensures that the original substantive issues are not inadvertently decided within the limited scope of contempt proceedings, preserving the parties' rights to a fair adjudication of their dispute.

(D) The interpretation of each case depends on its specific facts and circumstances. Courts must carefully distinguish between orders that address the procedural aspects of contempt proceedings and those that encroach upon the substantive issues of the original case. This distinction is crucial to maintaining the integrity of contempt jurisdiction and ensuring that appeals under Section 19 of the Act of 1971 are appropriately limited to cases where punitive action for contempt has been taken. Thus, Special appeals in contempt cases are warranted only when the Contempt Court oversteps its jurisdiction by addressing the merits of the original dispute, ensuring that the substantive rights of the parties are protected. The interpretation of each case must consider the specific facts and circumstances to uphold the integrity of contempt jurisdiction and provide appropriate remedies for aggrieved parties."

14. The said judgement in the case of **Subhash Chandra (supra)** was followed in **Bhanu Pratap Singh VS. Vikrant Vir and Ors.: 2025:AHC:4796-DB** by a co-ordinate Bench to which one of us (Arun Bhansali, CJ.) was a member wherein again the issue raised in this regard was thoroughly dealt with and it was laid down as under:

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

15. In view of the above, the legal position is well settled and established over a period of about two decades holding that appeal against order passed refusing to initiate proceedings for contempt/dropping of contempt proceedings is not maintainable except for exception carved out in the case of **Midnapore (supra)**.

16. So far as the judgement in the case of **Tanseem Fatima (supra)** is concerned, the Division Bench without referring to any of the binding precedents came to the conclusion that the judgement in the case of **Midnapore (supra)** on the question of maintainability of Special Appeal under Chapter VIII Rule 5 of the Rules of 1952, has no application and provisions of Chapter VIII Rule 5 of the Rules of 1952 do not bar appeal against order dismissing the contempt petition, which judgement apparently on account of ignoring binding precedents is *per incuriam* and cannot be pressed into service as a precedent.

17. In view of the above discussion, as the learned Single Judge has dismissed the contempt petition on coming to the conclusion that the pleadings in the affidavit and the documents annexed with the same do not reveal any wilful disobedience, the intra court appeal is **dismissed** as not maintainable.

(Kshitij Shailendra,J.) (Arun Bhansali,CJ.)

August 28, 2025
Sandeep