

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE Mr. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE  
&  
HON'BLE Mr. JUSTICE NINALA JAYASURYA

**CONTEMPT APPEAL No.6 of 2021**

*(Through Video-Conferencing)*

Pola Bhaskar, IAS, S/o. P. Venkataiah, aged about  
55 years, Commissioner of Collegiate Education,  
Government of Andhra Pradesh, ANR Towers, 1<sup>st</sup> floor,  
Prasadampadu, Vijayawada, Andhra Pradesh-521108 ... Appellant

Versus

Shaik Shain Bi, W/o. Shaik Kalesha, aged 40 years,  
R/o. Ward No.29, Vijaya Nagar Colony, Ongole,  
Prakasam District, and others ... Respondents

Counsel for the appellant : Mr. P.V. Krishnaiah  
Counsel for respondents : Mr. V.S.R. Anjaneyulu

**ORAL JUDGMENT**

**Dt: 15.09.2021**

*(Arup Kumar Goswami, CJ)*

Heard Mr. P.V. Krishnaiah, learned counsel for the appellant and  
Mr. V.S.R. Anjaneyulu, learned counsel for the respondents.

2. This contempt appeal is filed under Section 19 of the Contempt of Courts Act, 1971 (for short, "the Act of 1971") by one Mr. Pola Bhaskar, Commissioner of Collegiate Education, Government of Andhra Pradesh, who is respondent No.2 in C.C.No.1300 of 2020, against an order dated 26.07.2021. The said order reads as follows:

*"Issue notice in Form-I to the respondents 1 to 3.*

*Post on 27.08.2021."*

3. It is contended by Mr. Krishnaiah that before issuing notice in Form-I, there was no consideration with regard to the responses filed by the appellant, wherein it is categorically stated that there is no violation of the order of the Court, which is alleged to have been violated. It is submitted

that the learned single Judge committed grave error in issuing notice in Form-I and directing the appellant to appear before the Court, as no reasons were given for directing appearance under Rule 18 of the Contempt of Court Rules, 1980. It is also submitted that petitioners had produced fake and fabricated material and, therefore, contempt case should have been dismissed after considering the averments made in the counter-affidavit.

4. Mr. Krishnaiah further submits that issuance of notice in Form-I indicates framing of charge and, therefore, the appeal is maintainable under Section 19 of the Act of 1971 and in support thereof, he places reliance on a decision of the Chattisgarh High Court in **Anil Kumar Dubey v. Pradeep Kumar Shukla**, reported in **Law Finder Doc Id # 834177**, wherein by a majority decision, it was held that appeal lies against an order framing charge in contempt proceedings.

5. Mr. Krishnaiah has also placed reliance on a decision of the Hon'ble Supreme Court in **State of Uttar Pradesh and others v. Manoj Kumar Sharma**, reported in **2021 SCC OnLine SC 460**, to impress upon the Court that the learned single Judge was in error in directing personal appearance, which is deprecated by the Hon'ble Supreme Court.

6. Section 19 of the Act of 1971, which is relevant for the purpose of this case, reads as follows:

*19. Appeals.—(1) An appeal shall lie as of right from any order or decision of the 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.”*

7. In ***D.N. Taneja v. Bhajan Lal***, reported in **(1988) 3 SCC 26**, the Hon'ble Supreme Court, at paragraphs 8, 10 and 12 held as under:

*“8. The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of*

*such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.*

*10. There can be no doubt that whenever a court, tribunal or authority is vested with a jurisdiction to decide a matter, such jurisdiction can be exercised in deciding the matter in favour or against a person. For example, a civil court is conferred with the jurisdiction to decide a suit; the civil court will have undoubtedly the jurisdiction to decree the suit or dismiss the same. But when a court is conferred with the power or jurisdiction to act in a particular manner, the exercise of jurisdiction or the power will involve the acting in that particular manner and in no other. Article 215 confers jurisdiction or power on the High Court to punish for contempt. The High Court can exercise its jurisdiction only by punishing for contempt. 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 Article 215 of the Constitution.*

*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.”*

8. A perusal of the aforesaid paragraphs, amongst others, indicate that the right of appeal will be available under sub-section (1) of Section 19 of the Act of 1971 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. Article 215 of the Constitution 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. The High Court exercises its jurisdiction or power as conferred by Article 215 of the Constitution where it imposes a punishment for contempt. When no punishment is imposed by the High Court, it cannot be said that High Court has exercised its jurisdiction or power as conferred by Article 215 of the Constitution.

9. It was also held in **D.N. Taneja** (supra) that 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. It was categorically laid down that aggrieved party under Section 19(1) of the Act of 1971 can only be the contemnor who has been punished for contempt of court.

10. In **Midnapore Peoples' Co-op Bank Ltd. & Ors. v. Chunilal Nanda & Ors.**, reported in (2006) 5 SCC 399, the Supreme Court at paragraph 11, had observed as follows:

*“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."*

11. A perusal of the above would go to show that an appeal under Section 19 of the Act of 1971 is maintainable 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. 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 Act of 1971.

12. In the instant case, no punishment has been imposed on the contemnor and, therefore, till now the High Court has not exercised its power under Article 215 of the Constitution to impose punishment.

13. In the decision in **Anil Kumar Dubey** (supra), by 2:1 majority, it was held that any order which is not an interlocutory order but by which the High Court proceeds to exercise its jurisdiction for contempt, would be appealable and, therefore as a corollary, it was held that an appeal shall lie under Section 19 of the Act of 1971 against an order framing charge in contempt proceedings. Minority view was that an order framing charge neither decides any bone of contention between the parties affecting their substantive right nor does it impose any of the punishments/penalties and, therefore, same not being an order or decision within the meaning of sub-section (1) of Section 19 of the Act of 1971, no appeal would lie against such an order framing charge for contempt.

14. We are of the considered opinion that in view of the decisions of the Hon'ble Supreme Court in **D.N. Taneja** (supra) and **Midnapore Peoples' Co-op Bank Ltd.** (supra), wherein it is categorically laid down that an appeal under Section 19 of the Act of 1971 will be maintainable against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, when an order imposing punishment for contempt is passed and not when contempt proceedings are initiated, we



are unable to agree with the view taken by the Chattisgarh High Court in *Anil Kumar Dubey* (supra) that against an order framing charge, an appeal will lie.

15. The Hon'ble Supreme Court in *Manoj Kumar Sharma* (supra), had occasion to say that a practice has developed in certain High Courts to call officers at the drop of a hat and to exert direct or indirect pressure. It was noted that the public officers of the Executive are also performing their duties as the third limb of the governance and it is always open to the High Court to set aside the decision which does not meet the test of judicial review but summoning of officers frequently is not appreciable and the same is liable to be condemned.

16. In the aforesaid case, the Hon'ble Supreme Court noted that despite staying of the operation of the order which had the consequence of contempt proceedings being kept in abeyance, personal appearance was directed. It was also observed that once the order alleging violation of which contempt case was filed was stayed, there would be no cause for calling the officers as there was no question of any non-compliance of the order which had been stayed.

17. Present is not a case of that kind. Here, charge has been framed by issuance of notice in Form-I, which required the contemnor to be present to answer the charge. Therefore, the aforesaid case has no application to the facts of the present case.

18. In view of the above discussion, we hold that this appeal is not maintainable and accordingly, the same is dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

**ARUP KUMAR GOSWAMI, CJ**  
MRR

**NINALA JAYASURYA, J**