

PETITIONER:
PURSHOTAM DAS GOYAL

Vs.

RESPONDENT:
HON'BLE MR. JUSTICE B. S. DHILLON AND ORS.

DATE OF JUDGMENT 17/03/1978

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
SHINGAL, P.N.

CITATION:
1978 AIR 1014 1978 SCR (3) 510
1978 SCC (2) 370
CITATOR INFO :
RF 1981 SC 723 (9)
F 1982 SC 691 (6)
D 1984 SC 1826 (3)

ACT:
Contempt of Courts Act, 1971-Sec. 19-20-What orders of High Court are appealable-Order initiating contempt proceedings whether appealable.

HEADNOTE:

The High Court passed an order directing issue of notice to the appellant to show cause why he should not be proceeded against for committing contempt of the High Court. The notice was issued in accordance with the procedure prescribed under section 17 of the Contempt of Courts Act, 1971. The appellant filed an appeal against the said order under section 19(1) of the Act in this Court.

The counsel for the respondent raised a preliminary objection that no appeal under section 19(1) is maintainable against the order in question.

Dismissing the appeal the Court,

HELD : (1) An appeal lies 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. However, an appeal cannot lie from any kind of order made by the High Court in the proceeding for contempt. The proceeding is initiated under section 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 does not decide any question. [511 F-H]

2. if the alleged contemner in response to the notice appears before the High Court and asks it to drop the proceedings on the ground of its being barred under Section 20 of the Act but the High Court holds that the proceedings is not barred, it may well be that an appeal would lie to this Court under section 19 It is neither possible nor

advisable to make an exhaustive list of the type of orders which may be appealable under section 19. [512 B-C]
Baradakanta Mishra v. Orissa, High Court, A.I.R. 1976 S.C. 1206, relied on.
Baradakanta Mishra v. Justice Gatikrushna Mishra [1975] 1 S.C.R. 524, 53132, distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 568 of 1976.

(From the Order dt. 2-4-1975 of the Punjab and Haryana High Court at Chandigarh in Criminal Original No. 15/Crl.11975).
Mohan Behari Lal for the Appellant.

Hardev Singh, Sunada Bhandare and Mohini for the Respondents Nos. 1-2.

511

S. M. Kacker, Sol. Genl. & R. N. Sachthey for Respondent No. 3.

The Judgment of the Court was delivered by

UNTWALIA, J.-This is an appeal filed by the alleged contemner under s. 19(1) of the Contempt of Courts Act, 1971 (hereinafter called the Act), from the order dated 2nd April, 1975 of the High Court of Punjab and Haryana directing the issue of notice to the appellant to show cause why he should not be proceeded against for committing contempt of the High Court. The Notice was issued in accordance with the procedure prescribed under s. 17 of the Act, to show cause against the appellant's alleged liability to be punished under s. 15.

A preliminary objection was raised by the, Learned Solicitor General,, on behalf of the respondents that no appeal lies to this Court under s. 19 of the Act from an order issuing notice as nothing yet has been decided by the High Court. Mr. Mohan Behari Lai, learned counsel for the appellant combated this argument and submitted that an appeal does lie to this Court as a matter of right under s. 19.

In our opinion, the preliminary objection raised on behalf of the, respondents is well-founded and must be accepted as correct. S. 19(1) says

.lm15

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."

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,

512

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. A final order, surely, will be appealable. Our attention was drawn by Mr. Mohan Behari Lai, to S. 20 of the Act which provides

"No Court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

He submitted that initiation of the proceeding by the High Court will be, without jurisdiction if it is in violation of S. 20. It may be so. If the alleged contemner in response to the notice appears before the High Court and asks it to drop the proceeding on the ground of its being barred under s. 20 of the Act but the High Court holds that the proceeding is not barred, it may well be that an appeal would lie to this Court under S. 19 from such an order although the proceeding has remained pending in the High Court. We are not called upon to express our final opinion in regard to such an order, but we merely mention this type of order by way of an example to show that even orders made at some intermittent stage in the proceeding may be, appealable under S. 19. In our considered judgment, an order merely initiating the proceeding without anything further, does not decide anything against the alleged contemner and cannot be appealed against as a matter of right under S. 19. In a given case special leave may be granted under Art. 136 of the Constitution from an order initiating the proceeding. But that is entirely a different matter. What we are deciding in this case is that the present appeal filed under S. 19 (1) of the Act does not lie and is incompetent.

We find some support to, the view expressed by us above from the decision of this Court in *Baradakanta Mishra v. Orissa High Court*, (1) where it has been held that no appeal lies to this Court under s. 19 of the Act from an order rejecting the prayer of the alleged contemner for bearing the case piecemeal.

Mr. Lai placed reliance on the observations of this Court in *Baradakanta Mishra v. Justice Gatikrushna Mishra* (2). What has been decided therein is this : that on a reference made by the Advocate General if the Court declines to take cognisance and to initiate proceeding for contempt, the order is not an order initiating contempt proceeding. Surely, it is not appealable under S. 19. But there are no observations by this Court nor on the facts of that case there can be any, to show that an appeal would lie to, this Court from an order of the High Court merely initiating the proceeding by issuance of a notice. We, may repeat that it may be, a different matter if the order does decide

(1) A.I.R. 1976 S.C. 1206.

(2) [1975] 1 S.C.R. 524 (at pp. 531-32).

513

some disputes raised before it by the contemner asking it to drop the proceeding on one ground or the other. 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.

The appeal is, therefore, dismissed as being not maintainable.

P H. P.

Appeal dismissed.

514

JUDIS