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ORDER OF SUPREME COURT UNDER CONTEMPT CAN BE CHALLENGED IN WRIT PETITION.

1. Two Judge Bench of the Supreme Court (**Coram:- Justice Deepak Gupta & Justice Aniruddha Bose)** in its Judgment dated **04.05.2020** in ***SMCP (Cri) 02 of 2019 'In Re: Vijay Kurle & Ors'*** observed that, the Writ Petition against order of the Supreme Court is not maintainable.

2. Like other per-incuriam & overruled views in the said proceeding the abovesaid view taken by two Judge Bench of Justice **(Retd) Deepak Gupta & Justice Aniruddha Bose** is also per- incuriam as it is against the binding precedent of Larger Benches in **M. S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278**, **Rupa Ashok Hurra Vs. Ashok Hurra and Ors. (2001) 4 SCC 388** , **A.R. Antulay vs R.S. Nayak & Anr (1988) 2 SCC 602**.

3. A Commissioner of Police **Mr. M.S.Ahlawat** was Convicted by 2-Judge Bench under Article 129 for Contempt & Perjury. **(Afzal Vs. State AIR 1996 SC 2326).** Said Conviction is challenged in Writ Petition before Larger Bench of Three Judges. Larger Bench in M. S. Ahlawat Vs. State of Haryana (2000) 1 SCC 278 set aside the Conviction under perjury holding that the procedure adopted was against the provisions of Cr.P.C.

4. Similarly, wrong order under Contempt passed by 3-Judge Bench in **Vinay Chadra Mishra (1995) 2 SCC 584** under Article 129, 142 was set aside by a Five-Judge Bench in **Supreme Court Bar Association Vs. Union Of India (1998) 4 SCC 409**.

5. The abovesaid law of power of the inherent Jurisdiction of Supreme Court to set aside the unlawfull orders of smaller benches in Contempt jurisdiction is again confirmed by the Constitution Bench in the case of **Rupa Ashok Hurra Vs. Ashok Hurra and Ors. (2001) 4 SCC 388** where is it ruled as under**;**

> *"**45.** In M.S. Ahlawat case [(2000) 1 SCC 278 : 2000 SCC (Cri)*
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> *193] the petitioner, who was found guilty of forging signatures and making false statements at different stages before this Court, was inflicted punishment under Section 193 IPC in Afzal*
> *v. State of Haryana [(1996) 7 SCC 397 : 1996 SCC (Cri) 424] . **He filed an application under Article 32 of the Constitution assailing the validity of that order.** Taking note of the complaint of miscarriage of justice by the Supreme Court in ordering his incarceration which ruined his career, acting without jurisdiction or without following the due procedure**, it was observed that to perpetuate an error was no virtue but to correct it was a compulsion of judicial conscience. The correctness of the judgment was examined and the error was rectified.***
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> ***42.** In Antulay's case (supra), the majority in the seven-Judge Bench of this Court set aside an earlier judgment of*

the Constitution Bench in a collateral proceeding on the view that the order was contrary to the provisions of the Act of 1952; in the background of that Act without precedent and in violation of the principles of natural justice, which needed to be corrected ex debito justitiae.

43. In Supreme Court Bar Association's case (supra), on an application filed under Article 32 of the Constitution of India, *the petitioner sought declaration that the Disciplinary Committees of the Bar Councils set up under the Advocates Act, 1961, alone had exclusive jurisdiction to inquire into and suspend or debar an advocate from practising law for professional or other misconduct and that the Supreme Court of India or any High Court in exercise of its inherent jurisdiction had no such jurisdiction, power or authority in that regard.* ***A Constitution Bench of this Court considered the correctness of the judgment of this Court in Re: Vinay Chandra Mishra*** *MANU/SC/0471/1995 : 1995CriLJ3994 : 1995CriLJ3994 . The question which fell for consideration of this Court was : whether the punishment of debarring an advocate from practice and suspending his licence for a specified period could be passed in exercise of power of this Court* ***under Article 129 read with Article 142 of the Constitution of India.*** *There an errant advocate was found guilty of criminal contempt and was awarded the punishment of simple imprisonment for a period of six weeks and was also suspended from practice as an advocate for a period of three years from the date of the judgment of this Court for contempt of the High Court of Allahabad. As a result of that punishment all elective and nominated offices/posts then*

held by him in his

capacity as an advocate had to be vacated by him. Elucidating the scope of the curative nature of power conferred on the Supreme Court under Article 142, it was observed :

"The plenary powers of the Supreme Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which the Supreme Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. It is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Supreme Court to prevent "clogging or obstruction of the stream of justice"."

44. *In spite of the width of power conferred by Article 142,*

the Constitution Bench *took the view that suspending the advocate from practice and suspending his licence was not within the sweep of the power under the said Article and* ***overruled the judgment in Re V.C.Mishra's case (supra).***

46. *In the cases discussed above this Court reconsidered its earlier judgments, inter alia, under Articles 129 and 142 which confer very wide powers on this Court to do complete justice between the parties. We have already indicated above that the scope of the power of this Court under Article 129 as a court of record and also adverted to the extent of power under Article142 of the Constitution.*

47. The upshot of the discussion in our view is that this Court, to prevent abuse of its process and to cure a gross miscarriage of justice, may re-consider its judgments in exercise of its inherent power."

6. In Ramesh Maharaj's case (1978) 2 WLR 902 a Five Judge Bench of Privy Council had ruled that, if in a Contempt Proceeding the person was convicted without framing the charges then writ is maintainable to grant compensation to said person. It is ruled as under;

*"According their Lordships in agreement with Phillips J.A. would answer question (2): "****Yes; the failure of Maharaj J. to inform the appellant of the specific nature of the contempt of Court with which he was charged did contravene a constitutional right of the appellant*** *in respect of which he was entitled to protection under s.1(a)."*

The order of Maharaj J. committing the appellant to prison was made by him in the exercise of the judicial powers of the State; the arrest and detention of the appellant pursuant to the judge's order was effected by

the executive arm of the State. So if his detention amounted to a contravention of his rights under S.1(a), it was a contravention by the State against which he was entitled to protection*.*

*…**This is not vicarious liability; it is a liability of the State itself. It is not a liability in tort at all; it is a liability in the public law of the State, not of the judge himself, which has been newly created by S.6(1) and (2) of the Constitution.***

.. It is only ***in the case of imprisonment or corporal punishment already undergone before an appeal can be heard that the consequences of the judgment or order cannot be put right on appeal to an appellate court. It is true that instead of, or even as well as, pursuing the ordinary course of appealing directly to an appellate court, a party to legal proceeding who alleges that a fundamental rule of natural justice has been infringed in the course of the determination of his case, could in theory seek collateral relief in an application to the High Court under.***

For these reasons the appeal must be allowed and ***the case remitted to the high court with a direction to assess the amount of monetary compensation to which the appellant is entitled .The respondent must pay the costs of this appeal and of the proceeding in both Courts below."***

7. Full Bench of Supreme Court in **Nidhi Keim Vs. State (2017) 4 SCC 1** warned all the Judges of Supreme Court to not to pass any order against binding precedents. It is ruled as under;

"Article 142, 141 of the Constitution - Supreme Court cannot disregard statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances.

We are bound, by the declaration of the Constitution Bench , in Supreme Court Bar Association v. Union of India (1998) 4 SCC 409. It

is, not possible for us to ignore the decision of a Constitution Bench of this Court- In terms of the above judgment, with which we express our unequivocal concurrence, it is not possible to accept, that the words "complete justice" used in Article 142 of the Constitution, would include the power, to disregard even statutory provisions, and/or a declared pronouncement of law Under Article 141 of the Constitution, even in exceptional circumstances. - In our considered view, the hypothesis-that the Supreme Court can do justice as it perceives, even when contrary to statute (and, declared pronouncement of law), should never as a rule, be entertained by any Court/Judge, however high or noble. Can it be overlooked, that legislation is enacted, only with the object of societal good, and only in support of societal causes? Legislation, always flows from reason and logic. Debates and deliberations in Parliament, leading to a valid legislation, represent the will of the majority. That will and determination, must be equally "trusted", as much as the "trust" which is reposed in a Court. Any legislation, which does not satisfy the above parameters, would per se be arbitrary, and would be open to being declared as constitutionally invalid. In such a situation, the legislation itself would be struck down.

The argument advanced by Mr. Nariman, that this Court can pass order against statute is indeed heartening and reassuring. But if such preposition is accepted then, Mr. Nariman, and a number of other outstanding legal practitioners like him, undeniably have the brilliance to mould the best of minds. And thereby, to persuade a Court, to accept their sense of reasoning, so as to override statutory law and/or a declared pronouncement of law.It is this, which every Court, should consciously keep out of its reach. At the cost of repetition, we would reiterate, that such a situation, as is contemplated by Mr. Nariman, does not seem to be possible.

8. *Therefore, the view taken by the* ***Smaller Bench of Justice Deepak Gupta and Justice Aniruddha Bose is not only per-incuriam but also Contempt of the Constitution Benches, for the reason that the abovesaid legal position was mentioned in the application for adjournment being I.A. No. 48484 of 2020. But said case laws are not referred by the both the Ld. Judges and they took a contrary view.***

9. Such tendency of the Judges is termed as 'Judicial Adventurism' by Full Bench in **Dwarikesh Sugar Industries Ltd. (1997) 6 SCC 450** where it is ruled as under;

> ***"It is unfortunate that the High Court did not consider it necessary to refer to various judicial pronouncements of this Court in which the principles which have to be followed while examining an application for grant of interim relief have been clearly laid down. The observation of the High Court that reference to judicial decisions will not be of much importance was clearly a method adopted by it in avoiding to follow and apply the law as laid down by this Court.***
>
> *''**JUDICIAL ADVENTURISM** - When a position, in law, is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate Courts including the High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position - It should not be permitted to Subordinate courts including High Courts to not to apply the settled principles and pass whimsical orders granting wrongful and unwarranted relief to one of the parties to act in such a manner - The judgment and order of the High Court is set aside - The appellant would be entitled to costs which are*

quantified at Rs. 20,000.00."

10. In **Dattani and Co. Vs. Income Tax Officer2013 SCC OnLine Guj 8841** it is ruled as under;

> *''**Precedents - Duty of the Judge when case law is given to him -** Held, whenever any decision has been relied upon and/or cited by any party, the authority/tribunal is bound to consider and/or deal with the same and opine whether in the facts and circumstances of the particular case, the same will be applicable or not.*
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> ***In the instant case, the tribunal has failed to consider and/or deal with the aforesaid decision cited and relied upon by the assessee. Under the circumstances, all these appeals are required to be remanded to the tribunal.''***

11. In **Legrand (India) Private Ltd. vs Union Of India 2007 (6) MhLj 146** it is ruled as under;

> *"9(c) If in spite of the earlier exposition of law by the High Court having been pointed out and attention being pointedly drawn to that legal position, in utter disregard of that position, proceedings are initiated, it must be held to be a wilful disregard of the law laid down by the High Court and would amount to civil contempt as defined in Section 2(b) of the Contempt of Courts Act, 1971."*

12. Hon'ble Supreme Court in **Superintendent of Central Excise and others Vs. Somabhai Ranchhodhbhai Patel AIR 2001 SC 1975**, ruled that the Judge incapable to understand the judgment of Supreme Court should be liable for action under Contempt and also departmental action. It is ruled as under;

> *"(A) Contempt of Courts Act (70 of 1971), S.2 – Misinterpritation of judgment of Supreme Court - The level*

of judicial officer's understanding can have serious impact on other litigants-

Civil Judge of Senior Division erred in reading and understanding the Order of Supreme Court - Contempt proceedings initiated against the Judge - Judge tendered unconditional apology saying that with his limited understanding, he could not read the order correctly. While passing the Order, he inadvertently erred in reading and understanding the Order of Supreme Court - Supreme Court issued severe reprimand – Held, The officer is holding a responsible position of a Civil Judge of Senior Division. Even a new entrant to judicial service would not commit such mistake assuming it was a mistake - ***It cannot be ignored that the level of judicial officer's understanding can have serious impact on other litigants. There is no manner of doubt that the officer has acted in most negligent manner without any caution or care whatsoever*** *- Without any further comment, we would leave this aspect to the disciplinary authority for appropriate action, if any, taking into consideration all relevant facts. We do not know whether present is an isolated case of such an understanding? We do not know what has been his past record? In this view, we direct that a copy of the order shall be sent forthwith to the Registrar General of the High Court. ".*

13. In **Smt. Prabha SharmaVs. Sunil Goyal (2017) 11 SCC 77** where it is ruled as under;

"Article 141 of the Constitution of India - disciplinary

proceedings against Additional District Judge for not following the Judgments of the High Court and Supreme Court - ***judicial officers are bound to follow the Judgments of the High Court and also the binding nature of the Judgments of this Court in terms of Article 141 of the Constitution of India.*** *We make it clear that the High Court is at liberty to proceed with the disciplinary proceedings and arrive at an independent decision.*

BRIEF HISTORY (From : (MANU/RH/1195/2011))

High Court initiated disciplinary proceedings against Appellant who is working as Additional District Judge, Jaipur City for not following the Judgments of the High Court and Supreme Court. Appellant filed SLP before Supreme Court - Supreme Court dismissed the petition.

14. In **Re: M.P. Dwivedi AIR 1996 SC 2299** it is ruled as under;

"VIOLATION OF GUIDELINES LAID DOWN BY SUPREME COURT BY JUDGE OF SUBORDINATE COURTS – THEY ARE GUILTY OF CONTEMPT.

Contemner No.7, B. K. Nigam, was posted as Judicial Magistrate First Class - contemner was completely insensitive about the serious violations of the human rights of accused and defiance of guidelines by Police - This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated - Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be

kept in the personal file of the contemner.

Held, The contemner Judicial Magistrate has tendered his unconditional and unqualified apology for the lapse on his part - The contemner has submitted that he is a young Judicial Officer and that the lapse was not intentional. But the contemner, being a judicial officer is expected to be aware of law laid down by this Court - It appears that the contemner was completely insensitive about the serious violations of the human rights of the undertrial prisoners in the matter of their handcuffing in as much as when the prisoners were produced before him in Court in handcuffs, he did not think it necessary to take any action for the removal of handcuffs or against the escort party for bringing them to the Court in handcuffs and taking them away in the handcuffs without his authorisation. This is a serious lapse on the part of the contemner in the discharge of his duties as a judicial officer who is expected to ensure that the basic human rights of the citizens are not violated. Keeping in view that the contemner is a young Judicial Officer, we refrain from imposing punishment on him. We, however, record our strong disapproval of his conduct and direct that a note of this disapproval by this Court shall be kept in the personal file of the contemner.

We also feel that judicial officers should be made aware from time to time of the law laid down by this Court and the High Court, more especially in connection with protection of basic human rights of the people and, for that purpose, short refresher courses may be conducted at regular intervals so that judicial officers are made aware about the developments

in the law in the field."

15. In <u>Re: C.S. Karnan (2017) 7 SCC 1</u> it is ruled that, if contempt is committed by any Judge and petition is filed by a common man then Supreme Court will enquire the allegations on the petition even if the contemnor is a Judge of the constitution Court.

> ***"1. Shri Justice C.S. Karnan has entered appearance in Court in person. He was repeatedly asked, whether he affirms the contents of the letters, written by him, as are available on the record of the case. He was also asked whether he would like to withdraw the allegations.*** *The instant latter query was made on the basis of a letter dated 25-3-2017, which Shri Justice C.S. Karnan personally handed over to us, in Court today.* ***He has not responded, in any affirmative manner, one way or the other. We would, therefore, proceed with the matter only after receipt of his written response. Shri Justice C.S. Karnan is hereby called upon to respond to the factual position indicated in the various letters, addressed by him to this Court, within four weeks from today.*** *His response shall be filed by way of an affidavit. Shri Justice C.S. Karnan is directed to appear in Court in person on the next date of hearing.*
>
> ***60.*** *Faced with an unprecedented situation resulting from the incessant questionable conduct of the contemnor perhaps made the Chief Justice of India come to the conclusion that all the abovementioned questions could better be examined by this Court on the judicial side.* ***We see no reason to doubt the authority/jurisdiction of this Court to initiate the contempt proceedings. Hypothetically speaking, if somebody were to move***

this Court alleging that the activity of Justice Karnan tantamounts to contempt of court and therefore appropriate action be taken against him, this Court is bound to examine the questions. It may have accepted or rejected the motion. But the authority or jurisdiction of this Court to examine such a petition, if made, cannot be in any doubt. *Therefore, in our opinion, the fact that the present contempt proceedings are initiated suo motu by this Court makes no difference to its maintainability."*

16. That, Supreme Court itself made it clear that, the following order under Contempt are appealable.

i) Order framing charge or referring to discharge (**Anil Kumar Dubey Vs. Pradeep Shukla 2017 SCC OnLine Chh 95 (FB)**).

ii) Order holding guilty and fixing the case for hearing on sentence (**Modi Telefibres Ltd. Vs. Sujit Kumar Chaudhary (2005) 7 SCC 40**).

iii) Order imposing heavy bail amount in section 14 of the Contempt of Courts Act, Show Cause Notice under Contempt, Conviction.

(Tamilnad Mercantile Bank Share Holders Welfare Association Vs. S.C. Sekar (2009) 2 SCC 784), Jagjit Singh 2008 Cri. L.J. 801.

17. Since there is no Court Superior than the Supreme Court therefore, only Writ Petition is the remedy. Constitution Bench in **Anita Khushwha & Ors.Vs. Pushap Sudan (2016) 8 SCC 509** had ruled that when there is no provision in the Act then the citizen can invoke the jurisdiction under writ as per Article 32 of the Constitution to safeguard his fundamental rights as under;

"42. *Now if* ***access to justice is a facet of the right to life***

guaranteed Under Article 21 of the Constitution, a violation actual or threatened of that right would justify the invocation of this Court's powers Under Article 32 of the Constitution. Exercise of the power vested in the court under that Article could take the form of a direction for transfer of a case from one court to the other to meet situations where the statutory provisions do not provide for such transfers. Any such exercise would be legitimate, as it would prevent the violation of the fundamental right of the citizens guaranteed Under Article 21 of the Constitution.''

18. The **Sanyal Committee Report** in **Chapter XI** para **1 and 3.1** had observed that for every Conviction under Contempt the appeal should lie as a matter of right. It is observed as under;

*"**1.** The feature of the law of contempt which has given rise to consideration criticism relates to the non-applicability as of right of a sentence passed for criminal contempt. It is urged that much of criticism against the large power of the court to punish contemners will disappear if a right of appeal is provided. In an earlier chapter, we have pointed out how judge, like other human beings, are not infallible and inasmuch as any sentence of imprisonment for contempt involves a fundamental question of liberty, it is only proper that there should be provision for appeal as a matter of course. **As the Shaw-cross committee Observe**.*

*……**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 recognised principle in the case of sentences for contempt.***

3.1. It *may be said that the discretionary right of appeal as it exist at present is adequate as in most of the cases the High Court itself may grant the appropriate certificate under article 134 fit cases and where the High Court refuses, the Supreme Court may intervene by granting special leave under article 136. There is no doubt some force in this argument and it is perhaps for this reason that in one or two of the suggestions received we have been told that it is not necessary to provide for appeals as a matter of right or that the right may be allowed only if the sentence exceeds a certain limit.* ***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 Bench of Judges of a High Court, 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 a Supreme Court.*

2.2. The discretionary right to appeal is contempt cases, so far it goes has served a very useful purpose, both in the direction offsetting aside erroneous decision as also in the direction of bringing about some degree of uniformity and certainty in regards to the principles of law relating to contempt. The Showcross committee has referred to eight reported cases in which convictions for criminal contempt were considered by the Judicial Committee of the Privy Council on merits, those being the only cases of the type which they could discover. ***They pointed out that it is***

noteworthy that in every case except one (in which the fine was reduced), the appeal was allowed and the conviction quashed. *The story of the cases which have come up on appeal before our Supreme Court is not very much different.* ***In a considerable majority of the cases, the Supreme Court has found it necessary either to modify or reverse the decision of the High Court.*** *Mention made in this connection of following :*

(1) Rizwan –ul- Hasan V. State of Utter Pradesh, 1953 S.C.R 581. (Judgment of High Court set aside).

(2) Bramha Prakash V. State of Utter Pradesh 1953 S.C.R 169. (Judgment of High Court set aside).

(3) Shareef V. Hon'ble Judges of the High Court of Nagpur, (1955) 1 S.C.R. 757. (Opportunity given to the High Court to accept the apology by contemners andand on failure by High Court, Sentence of fine passed by the High Court set aside).

(4) State of Madhya Pradesh V. Revashankar, 1959 S.C.R. 1367. [High Court's interpretation of section 3(2) of Contempt of Court Act, 1952, held erroneous].

(5) S.S.Roy V. State of Orissa, A.I.R. 1960 S.C. 190. (Judgment of High Court is set aside).

(6) B. K. Kar V. Chief Justice and the companion Justices of Orissa High Court, A.I.R. 1961 S.C. 1367. (Judgment of High Court Set aside).

4. *In this connection we could also like to refer to the rule of practice observed by courts that a person in contempt cannot be heard in prosecution of his appeal until he purges himself of the contempt. This rule, no doubt, is based on sound reason but in the light of the discussions preceding it would not be difficult to*

conceive that it may work hardship in many cases. In our opinion the law should contain suitable provisions for meeting such a contingency. For this purpose we recommend that ***both the appellant court and the court from whose judgment the appeal is being preferred should have the power to stay executon of the sentence, to release the alleged contemner on bail and hear the appeal or allow it to be heard notwithstanding the fact that the appellant has not purged himself of the contempt."***

19. In regard to the principles of natural justice, it was stated in **Madhav Hayawadanrao Hoskot vs. State of Maharashtra reported in (1978) 3 SCC 552** it is ruled as under;

"11. ***One component of fair procedure is natural justice. Generally speaking and subject to just exceptions, at least a single right of appeal on facts, where criminal conviction is fraught with long loss of liberty, is basic to civilized jurisprudence. It is integral to fair procedure, natural justice and normative universality save in special cases like the original tribunal being a high bench sitting on a collegiate basis.***

In short, a first appeal from the Sessions Court to the High Court, as provided in the Criminal Procedure Code, manifests this value upheld in Article 21."

The legal position was declared as under :

"Where the prisoner seeks to file an appeal or revision, every facility for exercise of that right shall be made available by the Jail Administration;

These benign prescriptions operate by force of Article 21 (strengthened by Article 19(1)(d) read with sub-article (5) from the lowest to the highest court where deprivation of life and personal liberty is in substantial peril."

20. Hence, against the order of conviction passed by the Supreme Court appeal is a right and only writ is the remedy available to the person convicted under Contempt.

21. Under these circumstances the contrary view taken by both the Judges in their order dated 04.05.2020 is per- incuriam and does not hold the field.

22. That, Supreme Court time and now had made it clear that, the Contempt of Court is a criminal offence and the contemnor entitled for all the protections available to an accused. The order passed in the Contempt proceedings be treated as an order passed by the criminal Court (**R.S. Sherawat Vs. Rajeev Malhotra (2018) 10 SCC 574**, **National Fertilizers Limited Vs. Tuncay Alankus (2013) 9 SCC 600**, **Sahdeo Vs. State (2010) 3 SCC 705.**

In **Punjabrao Wankhede Vs. Rajeev Aggrawal (2003) 2 Mh.L.J 1047** it is ruled by Hon'ble Chief Justice of India S.A. Bobde that provisions of section 300, 251 of Cr.PC. are applicable to the cases under contempt proceedings.

23. The provisions section 389 (3) of Cr.P.C. mandates that any sentence passed by a criminal court having punishment less than three years should be suspended till the appeal period is over. The section 389 of Cr.P.C. reads as under;

> *"**389.** Suspension of sentence pending the appeal; release of appellant on bail.*
>
> *(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-*
> *(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or*
> *(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal*

and obtain the orders of the Appellate Court under sub- section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended."

24. Full Bench of the Supreme Court in **Hari Nath Sharma Vs. Jaipur Development Authority (1995) 4 SCC 251** in the cases related with Contempt had ruled as under;

> ***"Constitution of India - Art. 215 - Contempt not in the face of the High Court –Yet, the High Court after convicting the appellant for contempt, ordering him to be taken straight from court to jail - In appeal to Supreme Court plea of appellant that, merit apart, in such a case the High Court owed to its own sense of fairness and justice to suspend the sentence for a reasonable time to enable the contemner to approach the higher Court upheld and interim stay of the conviction and sentence granted by Supreme Court - Contempt of Courts Act, 1971, Ss. 12 and 19."***

25. In **Shanti Devi Vs. State (2008) 14 SCC 220** it is ruled that passing of an order under contempt with undue haste and with a view to deprive of the contemnor to avail the remedy before Supreme Court is gross abuse of process of court and such order is liable to be set aside.

The Constitutional issues raised by the appellant regarding provisions of the Act were neither considered nor addressed by the Learned Judges while disposing of the petition. Said order is set aside.

> ***"15.*** *It may be noted that the order disposing of the writ petition filed by the appellant was passed on 26-6-2006 and the period of one week given by the learned Judges to the appellant to vacate the*

tenanted premises lapsed on 3-7-2006. The contempt petition was filed by Respondent 2 on 4-7-2006 and was immediately taken up for hearing on the same day on which it was filed and the appellant was directed to appear before the Court on the very next day to reply to the allegations made by Respondent 2 in the contempt petition. In addition to the above direction to the appellant, a further direction was given to the officer in charge of Ranipool Police Station, to produce the appellant before the Court on 5-7-2006. The Registry was also directed to furnish a copy of the order along with the contempt petition to the officer-in-charge, Ranipool Police Station, to enable him to hand over the same to the appellant with liberty to her to file her reply to the contempt application on 5-7-2006 itself. It will, therefore, be evident from the above that while the appellant was given time till 3-7-2006 to vacate the tenanted premises, on the next day orders were passed for the appellant to appear before the Court and also to file her reply to the allegations made in the contempt petition. The dates speak of the haste with which the orders were passed in the contempt petition which had the effect of ensuring that Respondent 2 obtained possession of the shop room before the appellant could take any steps before the higher forum against the said orders.

16. *To make matters even worse, on 5-7-2006 itself the learned Judges, throwing all restraint to the winds, passed an order which merits reproduction and is reproduced hereinbelow:*

> *"Despite directions and orders of this Court in terms of the order dated 4-7-2006, it appears to us that Smt Shanti Devi is avoiding to receive the notice served upon her by the Registry of this Court and rather absconding herself thus defying not only the*

order dated 4-7-2006 passed in this Contempt Case (C) No. 3 of 2006 but also the order dated 26-6-2006 passed in Writ Petition (C) No. 24 of 2006.

None appears on behalf of Smt Shanti Devi. On perusal of the notice it reveals that notice was received by one Kameshwar Prasad, son of Smt Shanti Devi who is living with the said Smt Shanti Devi in the same house. At this stage, we are of the view that it is a clear case of contempt of court as Smt Shanti Devi wilfully defied the related order and judgment of this Court passed on 26-6-2006 in Writ Petition (C) No. 24 of 2006. It may be mentioned that she has defied the order dated 4-7-2006 passed by this Court in Contempt Case (C) No. 3 of 2006.

After application of our mind in this matter and strictly interpreting the law of contempt, we opine that Smt Shanti Devi obstructed and interfered with the due course of judicial proceedings of this Court. In view of the above position, this Court at this stage passes the following orders and directions:

Non-bailable warrant of arrest be issued against Smt Shanti Devi. The Chief Judicial Magistrate (East and North) shall comply with this direction immediately and Smt Shanti Devi shall be produced before this Court on 7-7-2006 at 10.30 a.m. It is also made clear that the Police Department shall make their best endeavour to comply and execute the order of this Court to meet the ends of justice for which a copy of this order, be sent to the Director General of Police as well as to the Superintendent of Police, East District and OC concerned. The Registry is directed to take immediate action in this matter.

It is also further made clear that if the petitioner is outside the State, the police authority shall contact their counterpart of any

other State or States for production of Smt Shanti Devi before this Court on the date and time mentioned above.

In view of the existing facts and circumstances of the case, the District Collector/District Magistrate, East District is hereby appointed as the Receiver of the articles now lying at the premises of the applicant petitioner Shri Subhash Kumar Pradhan of Ranipool and the District Collector/Magistrate, East is authorised to break open the lock(s), if any found in the said premises and to dispose of all the articles by public auction and the sale proceeds of it shall be deposited in the Registry of this Court or he is at liberty to hand over the same to Smt Shanti Devi or her authorised agent or agents and hand over the possession of the said premises to the owner concerned (Shri Subhash Kumar Pradhan) with immediate effect for which the Police Department shall cooperate and shall make their best endeavour to execute the order of this Court. The District Collector/Magistrate, East is directed to dispose of all those articles within 3 (three) days and submit a report to the Registry of this Court.

The District Collector/Magistrate, East is to prepare an inventory of the articles in the presence of two local residents and put the articles on public auction as the said Smt Shanti Devi claims that some goods are perishable and some are not perishable in the related application submitted by her in the connected main writ petition. At the very outset this Court took the assistance of the learned Advocate General who submitted that the conduct of Smt Shanti Devi virtually amounts to insult to the Court not only defiance of the related Court's orders.

The matter be listed on 7-7-2006 for necessary orders.

` *Let a copy of this order be also sent to all concerned.*

sd/-
(N.S. Singh)
Acting Chief Justice
sd/-
(A.P. Subba)
Judge"

17. *Losing sight of the fact that the notice on the appellant had been issued on a contempt application and was required to be personally served on the alleged contemnor, the learned Judges before passing the draconian order did not even verify whether the notice of the contempt proceedings had been served personally on the contemnor and that despite such service the alleged contemnor had failed to act in terms of the notice. As will be apparent from the order of 5-7-2006 the learned Judges recorded the fact that no one had appeared on behalf of the appellant and that on perusal of the notice it was seen that the same had been received by the son of the appellant. Furthermore, without waiting for any response from the appellant the learned Judges came to a finding that it was a clear case of contempt of court as the appellant had wilfully defied the order and judgment of the High Court passed on 26-6-2006 in the appellant's writ petition. What follows thereafter is nothing short of authoritarianism and complete disregard of the principles of fair play in judicial proceedings. A non-bailable warrant of arrest was issued against the appellant on 5-7-2006 with a direction on the Chief Judicial Magistrate (East and North) to ensure production of the appellant before the Court on 7-7-2006 at 10.30 a.m. Directions were also given to the police department to execute the order of the Court and a copy thereof was sent to the Director General of Police as well as to the Superintendent of Police, East District, together with the officer-in-charge concerned. The District Collector/District*

Magistrate (East District) was appointed as Receiver of the articles lying in the appellant's tenanted premises with authority not only to the District Magistrate but also to Respondent 2 to break open the lock(s), if any found in the said premises and to dispose of all the articles by public auction. The District Magistrate was also directed, after breaking open the locks, to hand over the possession of the premises in question to Respondent 2.

14. *What is even more surprising and of some concern is the alacrity and dispatch with which orders were passed on the contempt petition filed by Respondent 2 on the very next day after the expiry of the stipulated period indicated in the mandatory directions given by the learned Judges directing the appellant to vacate the premises in question within one week from the date of the order. The facts, as revealed in IA No. 1 of 2006, filed by the appellant in the special leave petition, reveal a sordid tale of how the judicial process was used to perpetrate an illegality which had its origin in the order of the learned Judges disposing of the writ petition filed by the appellant."*

Place- Mumbai

06.05.2020

Adv. Nilesh C. Ojha

National President

Indian Bar Association