

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****O.J.APPEAL No. 16 of 2006****In****MISC. CIVIL APPLICATION No. 47 of 2006****In****MISC. CIVIL APPLICATION No. 27 of 2006****with****CIVIL APPLICATION No. 55 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE ANIL R. DAVE****HONOURABLE MR.JUSTICE K.A.PUJ**

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Whether Reporters of Local Papers

1 may be allowed to see the  
judgment ?2 To be referred to the Reporter or  
not ?3 Whether their Lordships wish to see  
the fair copy of the judgment ?Whether this case involves a  
substantial question of law as to  
4 the interpretation of the  
constitution of India, 1950 or any  
order made thereunder ?5 Whether it is to be circulated to  
the civil judge ?

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**SHARAD BANSILAL VAKIL - Appellant(s)****Versus****SUO MOTU - Opponent(s)**

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**Appearance :**

MR M.J. THAKORE, SR. ADVOCATE, MR. S.N. SOPARKAR,  
SR. ADVOCATE, with MR PRAKASH K JANI for  
Appellant(s) : 1  
NOTICE SERVED for Opponent(s) : 1,  
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**CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE  
and  
HONOURABLE MR.JUSTICE K.A.PUJ**

**Date : 31/03/2006**

**ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE ANIL  
R. DAVE)**

This appeal has been directed against the  
order dated 24.2.2006 passed in Misc. Civil  
Application No. 47 of 2006 in Misc. Civil  
Application No. 27 of 206.

2. Brief facts, giving rise to this appeal, are  
as under:

2.1 On 17.2.2006, in one of the courts, mobile  
phone of the appellant, who is a senior advocate

practising in this court, started ringing. The appellant, upon finding that his mobile phone had started ringing, switched off the phone while going out of the court room so as to see that the court is not disturbed. When the learned single Judge noticed that the phone of the appellant had started ringing in the court, he issued notice to the appellant calling upon him to show cause as to why he should not be punished under the Contempt of Courts Act, 1971 (hereinafter referred to as '**the Act**') for ignoring the directions given by that court that nobody should bring his working mobile phone in the court so as to allow his mobile phone to ring. The notice was made returnable on 24.2.2006. It was also directed that the appellant should remain present in the court on that day. The said proceedings were registered as Misc. Civil Application No. 27 of 2006.

2.2 The appellant filed Misc. Civil Application No. 47 of 2006, which came up for hearing on 24.2.2006, under sec. 14(2) of the Act with the following prayers:

- “A. to allow this application and cause the matter to be placed together with a statement of facts of the case before the Hon'ble the Chief Justice for such direction as he may think fit to issue as respects the trial of the charge against the applicant.
- B. to extend the time for the filing of affidavit-in-reply to Miscellaneous Civil Application No.27 of 2006 by the applicant till expiry of one week from the date of order of this Hon'ble Court on this Miscellaneous Civil Application.
- C. to stay pending the hearing and final

disposal of this application, further proceedings in Miscellaneous Civil Application No.27 of 2006.

D. to grant such other and further relief as this Hon'ble Court deems fit and proper.”

In the said application the appellant submitted that looking to the provisions of sec.14(2) of the Act, and more particularly in view of the judgment delivered by the Hon'ble Supreme Court in the case of Mohmad Zaher Khan v. Vijai Singh and others, AIR 1992 SC 642, the appellant had the option to have the charge against him heard by some judge or judges other than the judge or judges in whose presence or hearing he was alleged to have committed contempt. In para 2.2 of the said application, the appellant has explained the circumstances in which his mobile phone had rung and that he felt sorry for ringing

of his mobile phone in the court room.

2.3 On 24.2.2006, when the said application – M.C.A. No. 47 of 2006 – was placed for hearing, the learned single Judge did not pass any final order on the said application and adjourned the hearing to 16.3.2006 by passing an order incorporating some other facts. According to the learned single Judge, for the reasons stated in the said order, no final order was passed on the said application. However, the learned single Judge assured the learned counsel for the appellant that before proceeding further in the matter, he would certainly pass an order on the application.

2.4 According to the facts incorporated in the impugned order, due to the incident of ringing of mobile phone of the appellant, the Bar Association of Gujarat High Court had passed

resolutions, copies of which have been annexed as Annexures-1 & 2 to the said order. So far as the first resolution is concerned, which pertains to intervention of the Bar Association in the said matter, the learned single Judge observed that it was for the Bar to decide as to what the Bar should do. Similarly, so far as the second resolution is concerned, the learned single Judge observed that it had nothing to do with the contempt matter, but he had taken the said resolution on record.

2.5 Thereafter, the learned single Judge has referred to the news published in newspapers named 'Rajsthan Patrika', 'Gujarat Vaibhav', 'Divya Bhaskar' (Ahmedabad Edition) and 'Gujarat Samachar' (Ahmedabad Edition) on 21.2.2006. He has also referred to 'Dainik Bhaskar' published from Indore. The relevant extracts of the said newspapers have been annexed as Annexure-2 to the

impugned order. The learned single Judge has observed in the impugned order that "the report says that the Bar has stated to the said reporter that since after his appointment Justice Garg did not regularly sit in the Court and does not work for more than two hours. The report also says that in the Resolutions passed by the Lawyers, it has been alleged that instead of entitlement of Rs. 5.50 Lakhs, Justice Garg spent more than Rs. 25 Lakhs for renovation of his bungalow. This report is marked Annexure-5."

2.6 According to the learned single Judge, the contents of the resolution of the High Court Bar Association and the news reported in the aforesaid newspapers are different. The learned single Judge has observed, "....From the above referred Resolutions 1 and 2, it would be clear that the Resolutions were altogether different than what has been further reported by the press.



I don't know about the correctness of the reports. I also don't know who is the DNA Reporter, but, in any case, the allegations made against the Court are patently false and do undermine the authority of the Court.”

2.7 The learned single Judge issued notices to the printers, the publishers and the editors of the said newspapers calling upon them to show cause as to why they should not be held guilty under the Act and be not awarded appropriate punishment. The said persons were also directed to appear in person and to file their replies. They were also directed to place a copy of the press note which might have been received by them.

2.8 In the aforesaid circumstances, the appellant has approached this court with a prayer that papers of Misc. Civil Application No. 27 of 2006

be directed to be placed before the Hon'ble Chief Justice so that appropriate direction can be given by the Hon'ble Chief Justice.

3. Learned Counsel Shri Mihir Thakore has appeared for the appellant, whereas learned counsel Shri J.N. Pardiwala has appeared as amicus curiae as, normally, in all matters wherein the High Court of Gujarat is a litigant, Shri Pardiwala represents the High Court.

4. Learned counsel Shri Thakore has submitted that according to the provisions of sec. 14(2) of the Act, the person charged with contempt under sec. 14(1) of the Act has an option to be tried by some judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed and, therefore, according to the learned counsel, the application submitted by the appellant ought to have been granted or

otherwise disposed of because the learned single Judge had no jurisdiction to conduct the matter in view of the provisions of sec. 14(2) of the Act.

5. It has been submitted by him that the cause of action in the case of the persons, concerned with publication of some contemptuous averments or allegation against the learned single Judge had nothing to do with the ringing of mobile phone with which the appellant was concerned. In view of the said fact, according to the learned counsel, the learned single Judge has erred by tagging cases of other persons with the appellant's case.

6. According to him, looking to the law laid down in the case of *Bachharaj Factories Ltd. v. Hirjee Mills Ltd.*, AIR 1955 Bombay 355, and in the case of *Shankarlal Aggarwala and others v.*

Shankarlal Poddar and others, AIR 1965 SC 507, it has been held that if an order or decision, which causes prejudice to a litigant, the said order or decision can be challenged by filing an appeal.

7. The learned counsel has also referred to the provisions of Rule 11 of the Contempt of Courts (Gujarat High Court) Rules, 1984 (hereinafter referred to as 'the Rules') and has submitted that according to the provisions of the said Rule, every proceedings under the Act should be heard and determined by a Bench of not less than two judges as the Chief Justice might from time to time appoint. Thus, according to him, the learned single Judge was not competent to conduct the case according to the Rules and, therefore, he ought not to have retained control over the proceedings with him and he ought to have referred the matter to the Chief Justice or to the Division Bench taking up contempt matters.

He has further submitted that as there was no publication of contemptuous statements at the instance of the appellant, there was no reason for the learned single Judge to retain the proceedings with him and more particularly when the learned single Judge had expressly stated that he was not concerned with the resolutions, which had been passed by the Bar Association in relation to ringing of the mobile phone.

8. The learned counsel has further submitted that by an interim order passed by this appellate court on 6.3.2006, the learned single Judge was restrained from proceeding further with Misc. Civil Application No. 27 of 2006, so far as it pertained to the appellant and yet the learned single Judge had passed a further order in the said Misc. Civil Application on 16.3.2006 by misinterpreting the order of the appellate court. He has submitted that the learned single

Judge ought to have initiated separate proceedings against the persons concerned with the press, if he so desired. Incidentally, the learned counsel has submitted that the learned single Judge should not have made any averment or raised doubt with regard to jurisdiction of the appellate court as it would adversely affect the judicial discipline. He has referred to the judgment delivered by the Hon'ble Supreme Court in the case of Tirupati Balaji Developers (P) Ltd. & others v. State of Bihar and others, (2004) 5 SCC 1, to substantiate his aforesaid submission.

9. Learned counsel Shri Thakore has also cited some other judgments to substantiate his above referred submissions, but we do not think it necessary to enumerate and discuss the same as they also lay down the same principles and the settled legal position.

10. Thus, while summarising his submissions, he has submitted that the learned single Judge has erred by not passing an order on Misc. Civil Application No. 47 of 2006 and he ought not to have proceeded further with Misc. Civil Application No. 27 of 2006 in violation of the order passed by the appellate court in Civil Application No. 55 of 2006 in O.J.Appeal No. 16 of 2006.

11. Learned advocate Shri Pardiwala appearing as amicus curiae has fairly submitted that though he was not holding brief for the High Court, he would assist the court in the matter and he has submitted that if the impugned order had been only a procedural order, it could not have been an appealable order.

12. He has fairly submitted that according to law

laid down by the Hon'ble Supreme Court in the case of R.N. Dey and others v. Bhagyabati Pramanik and others, (2000)4 SCC 400, any order passed after initiation of the contempt proceedings is an appealable order, if the said order is not an order for discharging the rule issued in contempt proceedings. If any order causes any prejudice to a person alleged to have committed contempt, according to his submission, the said order becomes appealable.

13. He has also submitted that according to the law laid down by the Hon'ble Supreme Court in the case of Purushottam Dass Goel v. Hon'ble Mr. Justice B.S. Dhillon and others, AIR 1978 SC 1014, if any order affecting rights of a party is passed, such an order can be challenged by filing an appeal as per sec. 19(1) of the Act.

14. He has fairly submitted that it is a right



of the contemner to make an application for being tried by some judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed.

15. We have heard the learned counsel at length and have also gone through the material on record.

16. So far as maintainability of the appeal is concerned, even at the time when the appeal was notified for admission for the first time on 6.3.2006, we had considered the said aspect. Prima facie we were of the view that the appeal was maintainable and, therefore, we had admitted the appeal. We also note that the learned single Judge, against whose order the appeal has been filed, has observed in his order dated 16.3.2006 as under:

“ No one can dispute that an appeal is a statutory remedy. An appeal shall lie to an appellate forum either under a particular statute or under the Rules or under the provisions of the Letters Patent. Under Section-19 of the Act, an appeal is maintainable before the appellate forum, provided the Judge has exercised his contempt jurisdiction.

In certain matters, where proceedings were initiated or some other orders were passed on earlier occasions, the matters were taken to the Appellate Court under Section-19 of the Act and the matter went upto the Supreme Court. The Supreme Court, in number of decisions, has observed that an appeal would be maintainable only if the Court has exercised its contempt jurisdiction and not otherwise. In the matter of D. N. Taneja vs.

Shri Bhajan Lal, [(198) 3 S.C.C. 26], the Supreme Court has observed that except in cases where the alleged contemnor is convicted of the contempt, an appeal shall not be maintainable; third party has no right to intervene in the matter as the matter is between the court and the alleged contemnor. I do not know whether this legal position has been brought to the notice of the Division Bench or not. Ordinarily, it is expected of the Counsel, who appears for the appellant before a particular Court, that, instead of obtaining a favourable order, he would provide to the Court the correct legal position. Reference may also be made to the judgments of the Supreme Court reported in AIR 1974 SC 2255, AIR 1976 SC 1206 and AIR 1978 SC 1014.

The matter has to be adjourned in view of

the stay granted by the Court. At the same time, I would request the Division Bench to make a clarification in the matter that if, under the High Court Rules, in relation to the contempt proceedings, except Section-14 proceedings, the jurisdiction is conferred upon the Division Bench, then, what shall be the meaning, impact and effect of the liberty given by the Division Bench. The said observations read as under:

“It is, however, clarified that it would be open to the learned Single Judge to continue proceedings against the press and others under separate contempt proceedings.”

If I observe the order passed by the Division Bench and accept the liberty given to me, I will be committing flagrant violation of the Rules of this Court and if I

do not observe the order, then also, I may be committing contempt of the lawful authority of the Appellate Court's order. I am in the horns of a dilemma. I hereby direct the Registrar General to place a copy of this order before the Division Bench so that appropriate orders are passed in the matter."

The aforesaid order was passed after the appellate court passed an order on 6.3.2006.

17. The learned single Judge has expressed his doubt with regard to maintainability of the appeal. In our humble opinion, the appeal is maintainable because by virtue of the impugned order passed by the learned single Judge prejudice had been caused to the appellant. In view of the law laid down by the Division Bench of Bombay High Court in the case of Bachharaj Factories Ltd. (supra), which has been confirmed

by the Hon'ble Supreme Court in the case of Shankarlal Aggarwala and others (supra), the appeal is maintainable.

18. In the case of Bachharaj Factories Ltd. (supra), being aggrieved by an order of adjournment made by the learned Company Judge in a winding up proceedings, an LPA was filed. The question with regard to maintainability of the appeal was raised. Speaking for the Bench, Chagla, C.J. observed in the said judgment that if an order is merely procedural in character, which does not affect rights or liabilities of parties, it would not become appealable, but when the order is not purely procedural in character and if it affects rights and liabilities of the parties, an appeal against such an order is maintainable. Of course, in that case, an appeal against such an order had been filed under the provisions of sec. 202 of [The Indian] Companies

Act, 1913. The said section read as under:

**“202. Appeals from orders.-** Re-hearings of, and appeals from, any order or decision made or given in the matter of the winding up of a company by the Court may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction.”

19. Section 202 of the Companies Act, 1913, dealt with “any order or decision” which could have been subject-matter of an appeal. Similarly, if one looks at the provisions of sec. 19 of the Act, that also deals with “any order or decision” against which an appeal can be filed. Section 19 of the Act reads as under:

**“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-

(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) .....”

20. The Bombay High Court in the case of Bachharaj Factories (supra) has held that ".....what we have to construe is the expression "order or decision" used by the Legislature, and in our opinion in its context and in the juxtaposition in which the two words "order" and "decision" have been used, the Legislature clearly intended that that order or decision should be subject to appeal which was not purely procedural in character but which affected the rights or liabilities of parties."

21. The said interpretation given to word 'order' and 'decision' has been confirmed by the Hon'ble Supreme Court in the case of Shankarlal Aggarwala and ors. v. Shankarlal Poddar and others, AIR 1965 SC 507. Thus, in the instant case, even if the order, which has been challenged is an order



of adjournment, as it causes prejudice to the appellant, it becomes an appealable order.

22. It is pertinent to note a subsequent development in the matter. The apprehension of the appellant has in fact turned out to be true. In fact, the persons concerned with publication of contemptuous statements in the newspapers have challenged validity of the order dated 16.3.2006, whereby they have also been directed to remain present before the learned single Judge and in the appeals filed by them the present appellant has been joined as a respondent. This fact reveals that in fact prejudice has been caused to the appellant as apprehended by him because he has been dragged to another litigation, which is not concerned with ringing of his mobile phone.

23. The learned single Judge has also referred to some judgments in his order dated 16.3.2006. The

intention of the learned single Judge is to show that the appeal filed against his order dated 24.2.2006 is not maintainable. Looking to the facts of the case, the said judgments do not lay down legal position to the effect that the impugned order is not appealable.

24. The learned single Judge has referred to the judgment delivered in the case of D.N. Taneja v. Bhajan Lal, (1988) 3 SCC 26. The facts and circumstances of the said case were different. The High Court did not impose any punishment on the alleged contemner and the order acquitting the contemner was held to be not appealable under the provisions of sec. 19(1) of the Act.

25. The learned single Judge has also referred to the judgment delivered by the Hon'ble Supreme Court in the case of Barada Kanta Mishra v. Orissa High Court, AIR 1976 SC 1206, wherein the

Hon'ble Supreme Court has held that an interlocutory order, which is procedural in nature, is not appealable. As observed hereinabove, in the instant case, the impugned order is not merely procedural in nature but it also prejudicially affected the appellant and, therefore, the law laid down in the said judgment cannot be looked into in the instant case.

26. The learned single Judge has also referred to the judgment delivered in the case of Baradakanta Mishra v. Mr. Justice Gatikrishna Misra, C.J. of the Orissa High Court, AIR 1974 SC 2255. In the said case, by virtue of the order challenged, the motion made by the appellant to initiate proceedings for contempt against the Chief Justice and other Judges was rejected and, therefore, according to the provisions of sec.19(1) of the Act, it was held that the appeal was not maintainable.

27. Similarly, in the judgment delivered in the case of Purushottam Dass Goel v. Hon'ble Mr. Justice B.S. Dhillon and others, AIR 1978 SC 1014, it has been held by the Hon'ble Supreme Court that the order by virtue of which contempt proceedings are initiated is not appealable under sec. 19(1) of the Act. In the said case, the order of the High Court directing issuance of notice to show cause as to why the person alleged to have committed contempt should not be proceeded against and the said notice was challenged under the provisions of sec. 19(1) of the Act. The Hon'ble Supreme Court held in the said case that the said order was not appealable under sec. 19(1) of the Act. In the instant case, the facts are absolutely different and, therefore, reference to the said judgment is also not relevant.

28. Thus, we come to a conclusion that the impugned order is an appealable order because prejudice has been caused to the appellant by virtue of the said order and, therefore, the appeal is maintainable.

29. Citation of judgments and certain observations made by the learned single Judge in his order dated 16.3.2006 reveals that indirectly he has questioned maintainability of the present appeal. With a heavy heart, we have to observe that as per the observations made by the Hon'ble Supreme Court in the case of Tirupati Balaji Developers (P) Ltd. & Ors. v. State of Bihar and ors., (2004)5 SCC 1, the learned single Judge should not have questioned the maintainability of the appeal, which was pending before the appellate court against his order.

30. Once the proceedings under sec. 14(1) of the

Act are initiated by issuance of a notice, according to the provisions of sec. 14(2) of the Act, it is a right of the person alleged to have committed contempt to be tried by some judge other than the judge or judges in whose presence or hearing the offence is alleged to have been committed. In this case also, once the learned single Judge had issued notice to the appellant and in pursuance thereof the appellant had submitted an application under sec. 14(2) of the Act, in our opinion, there was no reason for the learned single Judge to keep the said application pending, and as per the right given to the appellant under the provisions of sec. 14(2) of the Act, the application ought to have been decided. We fail to understand as to why the learned single Judge did not pass any final order on the said application and issued notices to other persons, not concerned with the ringing of mobile, in the proceedings initiated against the

appellant and thereby causing prejudice to the appellant.

31. We are, therefore, of the view that the impugned order, whereby the proceedings had been adjourned and notices were issued to other persons, is bad in law. Pendency of litigation puts severe stress and strain on a litigant. Normally, a litigant will always wish to get rid of a case filed against him at the earliest. In the circumstances, we can definitely say that even if the other persons would not have been issued notices in the proceedings of the appellant, even by mere adjournment and keeping the application pending without any justifiable reason, the learned single Judge had acted in a manner prejudicial to the interest of the appellant and more particularly when cases of other persons, with which the appellant was not concerned, were tagged with his case.

32. Looking to the facts of the case and for the reasons stated hereinabove, we restrain the learned single Judge from proceeding further with Misc. Civil Application No. 27 of 2006 and other related matters. We quash and set aside the notices issued to persons other than the appellant and also quash the order dated 16.3.2006 passed in Misc. Civil Application No. 47 of 2006 in Misc. Civil Application No. 27 of 2006. We also direct the Registry to separate proceedings initiated against persons other than the appellant and direct the Registry to place the record pertaining to Misc. Civil Application No. 27 of 2006 before the learned Chief Justice of this court so that appropriate decision can be taken as per provisions of the Act and the Rules made thereunder.

In the result, the Appeal stands disposed of



as allowed to the above extent.

In view of the above order passed in the appeal, the civil application does not survive and is disposed of accordingly.

(hn) (Anil R. Dave, J.) (K.A. Puj, J.)

**(Per : HONOURABLE MR.JUSTICE K.A.PUJ)**

1.The appellant – original applicant has filed this appeal under Section 19 of the Contempt of Courts Act, 1971 and Clause 15 of the Letters Patent against the order dated 24.02.2006 passed by the Learned Single Judge of this Court whereby he has not decided the appellant's M.C.A. No. 47 of 2006 and ordered in the said application to issue notices to Printers, Publishers and Editors of certain newspapers to show cause as to why they should not be held liable under the provisions of the Act for publication of 'patently false' reports

against the Court and be awarded punishment and issuing other directions.

2.It is the case of the appellant that the Learned Single Judge by his order dated 17.02.2006 ordered notice to issue to the appellant to show cause why he should not be punished under the provisions of the Act for ignoring the directions issued by this Court that nobody should bring his working mobile phone in the Court nor should allow his mobile to ring. The appellant has pointed out in the application the mistake in the narration of the facts in the order of Learned Single Judge dated 17.02.2006. Pursuant to the order of the Learned Single Judge and on receipt of the said notice on 21.02.2006, the appellant filed an application u/S. 14 (2) of the Act on 23.02.2006 and at the time of hearing of the said application on 24.02.2006, the appellant's

counsel made it clear that neither he or nor the appellant could answer any question put by the Learned Single Judge pertaining to the newspaper reports and that the appellant desired that the application be disposed of on merits. After hearing the application on merits, the Learned Single Judge declined to decide it observing orally that till the other matters, now referred to in the order under appeal are disposed of, he proposed to keep the application pending. The appellant being aggrieved by the said order preferred the present appeal before this Court.

3.Mr. Mihir J. Thakore, learned senior advocate appearing with Mr. P.K. Jani learned counsel for the appellant has submitted at the time of admission hearing of this appeal that by not deciding the application and keeping it pending till other issues are disposed of, would

prolong the appellant's agony by keeping the sword of contempt of Court on his head and by postponing the decision on the application without lawful justification and wrongfully widening its scope to extraneous matters, which do not fall under Section 14 of the Act and using the application as a medium to exercise jurisdiction not vested in the Learned Single Judge either under the Act or under business allocated by the Hon'ble Chief Justice, who is the Master of the Roster, the order under appeal made in the appellant's application is an abuse of the process of the Court and prejudicial to the appellant.

4.Mr. Thakore has further submitted that the Learned Single Judge has erred in holding that it was not necessary for him to decide the application, because he was not proceeding to hear the matter i.e. the charge against the

appellant. An application under Section 14 (2) of the Act has to be decided by the Judge/s in whose presence or hearing the alleged contempt is committed before the Court hears on the charge against the alleged contemnor does not mean that the decision thereon or on the charge can be postponed or stalled indefinitely or on an untenable ground or for an extraneous reason. A person charged u/S 14(1) of the Act with ex-facie contempt of Court has a right to clear himself expeditiously of the charge and the Court and the law have a corresponding obligation and duty to enable him to do so without keeping the sword of contempt of Court hanging on his head longer than necessary. He has further submitted that expansion of the scope of an application u/S. 14(2) of the Act by extending it to extraneous matters with which the alleged contemnor is not concerned would unduly burden and lengthen the

proceedings to the prejudice of the alleged contemnor and is not a valid reason to postpone the decision on an application u/S. 14(2) of the Act. The inquiries undertaken by the Learned Single Judge under the order under appeal are matters extraneous to the application and with which the appellant is not concerned.

5.Mr. Thakore has further submitted that issuance of notices to printers, publishers and/or editors of a Newspaper for publication of false allegations against the Court to show cause why the noticees be not held liable under the provisions of the Act and be not awarded appropriate punishment, would not be ex-facie contempt and outside the jurisdiction of the Learned Single Judge of this Court under the Act as well as under the business assigned to the Learned Single Judge and if it were so, to

burden the proceedings of the application with such matters may amount to abuse of the process of the Court and there is no valid ground to postpone the decision of the application. Neither the appellant nor any one else was heard or given any opportunity to be heard on the question why the Learned Single Judge should not order show cause notices under the Act as done in the order under appeal.

6. After hearing the learned counsel appearing for the appellant, this Division Bench has issued rule and passed an interim order on 06.03.2006. The Court has observed that looking to the provisions of Section 14 (2) of the Contempt of Courts Act, 1971, it is directed that the proceedings initiated against the applicant under M.C.A. No. 27 of 2006 shall not be proceeded further before the Court taking up the said application at present. The Court has,

however, clarified that it would be open to the Learned Single Judge to continue proceedings against the press and others under separate contempt proceedings. The Division Bench has kept the matter for further hearing on 16.03.2006.

7. On 16.03.2006, despite the fact that the above referred order was passed by the division Bench of this Court and the same was pointed out to the Learned Single Judge, an order was passed on 16.03.2006 by the Learned Single Judge in M.C.A. No. 47 of 2006 wherein it is, inter alia, observed that it appears that the order passed by the Court not deciding the application was not palatable to the alleged contemnor, therefore, he took up the matter in appeal. The Learned Single Judge has further observed that none can dispute that an appeal is a statutory remedy. An appeal shall lie to



an appellate forum either under a particular statute or under the Rules or under the provisions of the Letters Patent. Under Section-19 of the Act, an appeal is maintainable before the appellate forum, provided the Judge has exercised his contempt jurisdiction. The Learned Single Judge has further observed that in certain matters, where proceedings were initiated or some other orders were passed on earlier occasions, the matters were taken to the Appellate Court under Section-19 of the Act and the matter went upto the Supreme Court. The Supreme Court, in number of decisions, has observed that an appeal would be maintainable only if the Court has exercised its contempt jurisdiction and not otherwise. In the matter of *D. N. Taneja vs. Shri Bhajan Lal*, *[(1988) 3 S.C.C. 26]*, the Supreme Court has observed that except in cases where the alleged contemnor is convicted of the contempt, an

appeal shall not be maintainable; third party has no right to intervene in the matter as the matter is between the Court and the alleged contemnor. The Learned Single Judge has further observed that he did not know whether this legal position has been brought to the notice of the Division Bench or not. Ordinarily, it is expected of the Counsel, who appears for the appellant before a particular Court, that, instead of obtaining a favourable order, he would provide to the Court the correct legal position. The Learned Single Judge has also referred to the judgements of the Supreme Court reported in AIR 1974 SC 2255, AIR 1976 SC 1206 and AIR 1978 SC 1014.

8. After observing the above, the Learned Single Judge has adjourned the hearing in view of the stay granted by the Division Bench. However, at the same time, he has requested the Division

Bench to make a clarification in the matter that if, under the High Court Rules, in relation to the contempt proceedings, except Section-14 proceedings, the jurisdiction is conferred upon the Division Bench, then, what shall be the meaning, impact and effect of the liberty given by the Division Bench. After reproducing the observation made by the Division Bench in its order dated 06.03.2006, the Learned Single Judge has stated in the order that if he observed the order passed by the Division Bench and accepted the liberty given to him, he would be committing flagrant violation of the Rules of this Court and if he did not observe the order, then also, he might be committing contempt of the lawful authority of the Appellate Court's order. The Learned Single Judge has, therefore, found himself in the horns of a dilemma and he, therefore, directed the Registrar General to place a copy

of the said order before the Division Bench so that appropriate orders are passed in the matter. The Learned Single Judge has also clarified that he has not said even a single word against the order passed by the Division Bench. He has brought the legal position to the notice of the Counsel with a belief and a pious hope that the legal position would be brought to the notice of the Division Bench. At the same time, he has observed that if liberty reserved by the Division Bench is exercised, then, it may amount to breach of the Rules framed by this Court. He has, therefore, not thought that he has done anything, which offends the magnanimity of the Division Bench or which interferes with the jurisdiction of the appeal Court. He has further stated in the order that even assuming that he has done anything like that, he would be ready and willing to tender an apology to the

jurisdiction of the Division Bench, who are in seisin of the matter.

9. The Learned Single Judge has also observed in his order that after the order was passed, Mr. Mihir J. Thakore made a submission that once the proceedings are stayed, then, the Court cannot pass any orders in the matter. While dealing with this submission, the Learned Single Judge has further observed in his order that the order passed by the Division Bench does not say that this Court cannot pass any order. The order of the Division Bench says : "it is directed that the proceedings initiated against the applicant under Misc. Civil Application No.27 of 2006 shall not be proceeded further before the Court taking up the said application at present." According to the Learned Single Judge, the Appellate Court has nowhere said that the Court cannot say

anything in the matter. The Division Bench directed that the Court would not proceed in the matter of contempt before the Court taking up the said application at present. As the Division Bench has granted stay in Civil Application No.55 of 2006, the Learned Single Judge has not proceeded with the matter relating to the appellant. He has, however, issued certain directions with regard to the Editor, Printer and Publisher of the various newspapers.

10. When the present appeal has come up for hearing before this Court on 16.03.2006, the order passed by the Learned Single Judge on the even date i.e. 16.03.2006 was not available and hence, it was adjourned. The appellant has filed a detailed affidavit in respect of the observations made by the Learned Single Judge in his order dated 16.03.2006. Mr. Mihir

Thakore has submitted that the said order dated 16.03.2006 passed by the Learned Single Judge is grossly exceptionable on several grounds inter alia viz;

(a) it is an affront by the Court at the first instance to the process and authority of the appellate Court being

(i) an attempt to participate in and influence the course of appellate proceedings,

(ii) violation of the restraint order of the appellate Court,

(iii) an order seeking clarification from the appellate Court on points which the Learned Single Judge speculated might not have been placed by Counsel before the Division Bench or to which the Division Bench might not have paid attention

(iv) a misrepresentation of the appellate

order that if the Learned Single Judge did not observe the said order meaning thereby if he did not continue proceedings against the press and others under separate contempt proceedings, he might be committing contempt of the lawful authority of the appellate Court's order.

(b) an attempt to pre-empt a decision by appropriate authority, by itself deciding that the Learned Single Judge has not said anything against the order of the Division Bench or done anything which offends the magnanimity of the Division Bench and tendering in advance conditional apology to foreclose any allegation of contempt of Court against the Learned Single Judge,

(c) proceeds on or records partly incorrect facts,



(d) in one breath the Learned Single Judge says or does something and in another breath denies it.

11.Mr. Thakore has further submitted that the issue in M.C.A. No. 27 of 2006 is whether the appellant has committed any contempt of Court in face of the Court as mentioned in the order of the Learned Single Judge dated 17.02.2006 and the notice dated 17/20.02.2006 issued to the appellant in pursuance thereof and the issue involved in M.C.A. No. 47 of 2006 is whether the said charge against the appellant be tried by the Learned Single Judge or M.C.A. No. 47 of 2006 be allowed and the Learned Single Judge shall cause the matter be placed together with a statement of the facts of the case before the Hon'ble Chief Justice for such direction as he may think fit to issue as respects the trial thereof. No other person is

associated with the very same issues or either of them. It is settled law that the matter of contempt and in particular, a contempt in the face of the Court is between the Court and the contemner. The contempt allegedly committed by any other person or the Press people named or not in order of the Learned Single Judge is a matter totally extraneous and irrelevant to any issue involved in the said MCAs or either of them and vice versa. The alleged contempt either by any other person or the Press people is not any contempt in face of the Court and hence the observations made and directions given in para 8 of the order of the Learned Single Judge dated 24.02.2006 are extraneous to and without jurisdiction of the Learned Single Judge in MCA Nos. 27 or 47 of 2006.

12.Mr. Thakore has further submitted that in view of the direction given by the Division Bench

vide its order dated 06.03.2006 in Civil Application No. 55 of 2006 in the appeal and even otherwise, the Learned Single Judge had no jurisdiction to make any further order or to consider whether the appeal is competent or to dilate on Section 19 of the Act or the decisions of the Hon'ble Supreme Court reported in 1988 (3) SCC SCC 26, AIR 1974 SC 2255, AIR 1976 SC 1206 and AIR 1978 SC 1014 or to speculate whether the legal position mentioned by the Learned Single Judge was brought to the notice of the Division Bench or not or to observe that ordinarily the appellant's counsel would, instead of obtaining a favourable order provide to the Court the correct legal position.

13.Mr. Thakore has submitted that the judgments referred to by the Learned Single Judge in his order dated 24.02.2006 are not applicable to

the facts of the appellant's case and they are clearly distinguishable. In the case of D.N. Taneja V/s. Bhajan Lal, (1988) 3 S.C.C. 26, the Hon'ble Supreme Court has held that 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. 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, it does not exercise its jurisdiction or power to punish for contempt under Article 215.

14. In the case of Baradakanta Mishra V/s. Mr. Justice Gatikrushna Misra, C.J. Of the Orissa High Court, AIR 1974 SC 2255, it is held that the exercise of contempt jurisdiction being a

matter entirely between the Court and the alleged contemner, the Court, though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt that it assumes jurisdiction to punish for contempt. The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether suo motu or on a motion or reference. That is why the terminus a quo for the period of limitation provided in Section 20 is the date when a proceeding for contempt is initiated by the Court. Where the Court rejects a motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision cannot be regarded as a decision in the exercise of its

jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision.

15. In the case of Barada Kanta Mishra V/s. Orissa High Court, AIR 1976 S.C. 1206, the Hon'ble Supreme Court has held that only those orders or decisions in which some point is decided or finding is given in the exercise of jurisdiction by the High Court to punish for contempt, are appealable under Section 19 of the Contempt of Courts Act, 1971. The order in question is not such an order or decision. It is an interlocutory order pertaining purely to the procedure of the Court. All that the order in question says is that all the points arising in the case, including the one of maintainability of the proceedings, would be

heard together and it rejected.

16. In the case of Purushotam Dass Goel V/s. Hon'ble Mr. Justice B. S. Dhillon and others, AIR 1978 S.C. 1014, the Hon'ble Supreme Court has held that under S. 19(1) an appeal shall lie to the Supreme 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. Mere initiation of proceeding for contempt by the issuance of the notice under S. 17 on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question. Hence 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 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 a notice is not appealable.

17.Mr. Thakore has further submitted that the appeal filed by the appellant is competent under both Sections 19 of the Act and Clause 15 of the Letters Patent. The order under appeal is not an order of adjournment simpliciter, but it decided that the appellant's application shall not be heard, inter alia, till proceedings for contempt initiated by the Learned Single Judge against Printers, Publishers and Editors of the newspapers are decided and that in appellant's application under Section 14 (2) of the Act, the Learned



Single Judge could initiate contempt proceedings against others for criminal contempt of Court not committed in face of the Court and burden the appellant's application with such proceedings with attendant consequences, namely, proceedings initiated would have title of the appellant's application u/S. 14 (2) of the Act and the appellant would be dragged in all proceedings arising therefrom and that persons to whom notices are ordered to be issued would become parties to the appellant's application u/S. 14 (2) and have all rights as such in appellant's proceedings. He has, therefore, submitted that the order passed by the Learned Single Judge on 24.02.2006 is "judgment" within the meaning of Clause 15 of the Letters Patent. By issuing show-cause notices to Printers, Publishers and Editors of newspapers in appellant's application, the Learned Single Judge has, in

substance, made the said noticees parties to the appellant's proceedings. The order dated 24.02.2006 passed by the Learned Single Judge contains adverse decision on the appellant's right to have his application u/S. 14 (2) decided in accordance with law without undue adjournments on extraneous and irrelevant grounds and without any abuse of the process of appellant's application. He has further submitted that wrongfully prolonging the hearing and disposal of the captioned MCAs prejudices the appellant's rights and keeps the sword of contempt of Court hanging on his head and that too for no lawful reason, but for exercise of jurisdiction not vested in the Learned Single Judge by law entailing the consequence that the title of all proceedings pursuant to the show cause notices ordered by the Learned Single Judge would be the title of appellant's application u/S. 14 (2) of the Act

and the appellant would be dragged in all such proceedings and the appellant's own application would remain undecided.

18.Mr. Thakore has further submitted that the Learned Single Judge cannot directly or indirectly participate in appellate proceedings against his own order. He has placed reliance on the decision of the Hon'ble Supreme Court in the case of Hemkant Jha V/s. State of Bihar and others, 2004 (13) SCC 721 wherein it is held that it goes without saying that a Judge who hears and decides a matter while sitting singly should not participate in any manner whatsoever in the appeal from his order.

19.Mr. Thakore has further submitted that the order passed by the Division Bench on 06.03.2006 worked as a threshold bar for proceedings with the M.C.A. No. 27/2006 and all

subsidiary proceedings therein and the Learned Single Judge had no jurisdiction to pass any further order and in particular the order dated 16.03.2006. The Division Bench exercising its appellate jurisdiction was called upon to issue directions, which has its privilege as an appellate forum and a necessity for meeting the demands of justice and effective exercise of its appellate power. Jurisdictionally and in the hierarchical system, the Court of the Learned Single Judge was inferior to the Court of the Division Bench. The Court of appeal has a role in checking judicial conduct in securing high standards of judicial behaviour to maintain public confidence in the Courts. The Division Bench carried with it in the appeal a power to issue corrective directions binding on the Learned Single Judge. The Division Bench as a superior forum had power to issue a stay order or restraint order or to regulate the

proceedings before the Learned Single Judge. An appeal does not cease to be an appeal, though it may be irregular or incompetent and to enable full and effective exercise of appeal jurisdiction, the Learned Single Judge is obliged to render all assistance and obedience to the appellate order. In support of this submission, he has relied on the decision of the Hon'ble Supreme Court in the case of Tirupati Balaji Developers (P) Ltd. and Others V/s. State of Bihar and others, (2004) 5 SCC 1.

20. He has further submitted that any order passed in appeal is binding on the Learned Single Judge and he cannot question the correctness of the order. Failure on the part of the Learned Single Judge to carry out directions of the appellate Court is tantamount to showing disrespect to such directions or to question the propriety of such directions and

destructive of the hierarchical system in the administration of justice. Any direction given by the Division Bench would have to be complied with by the Learned Single Judge lest the hierarchy becomes meaningless. In support of this submission, Mr. Thakore relied on the decision of the Hon'ble Supreme Court in the case of BPL LTD. AND OTHERS V/S. R. SUDHAKAR AND OTHERS, (2004) 7 SCC 219.

21.Mr. Thakore has further submitted that in the order dated 16.03.2006, request made by the Learned Single Judge to the Division Bench to make a clarification in the matter lacks jurisdiction, propriety and responsibility and betrays ignorance of the function of the Court of first instance vis-a-vis the appellate Court. The Division Bench stayed the proceedings in M.C.A. No. 27 of 2006 which would include all subsidiary proceedings

therein. The liberty granted was only a clarification that the stay granted was limited to the proceedings under Section 14 of the Act and did not extend to continuing the proceedings against the Press and others under separate contempt proceedings. The clarification explains the scope of the restraint order, but does not empower or oblige the Learned Single Judge to continue proceedings against the Press and others. The Division Bench did not adjudicate upon the jurisdiction of the Learned Single Judge in respect of the appellant's application u/S. 14 (2) of the Act to take contempt proceedings against the Press and others. The alleged contempt by the Press and others would not be contempt in the face of Court and would be outside the scope of Section 14 of the Act, but would be criminal contempt governed under Section 15 of the Act. In view of Section 18(1)

of the Act and Rule 11 of the Contempt of Courts (Gujarat High Court) Rules, 1984 the same would be required to be heard and determined by a Bench of not less than two Judges. He has further submitted that the Learned Single Judge was not deterred by Rule 11 while issuing contempt notices to the Press and others in the appellant's application under Section 14 of the Act, but has shown consciousness of Rule 11 while considering the order of the Division Bench passed on 06.03.2006. The dilemma spoken of by the Learned Single Judge arises from an unwarranted insistence that notwithstanding the provisions of the Act, the Learned Single Judge must order issuance of contempt notices to the Press and others in some way or the other. The appellant has no objection to the Division Bench deleting the clarification contained in the order dated 06.03.2006, while continuing stay of all



proceedings before the Learned Single Judge under Section 14 of the Act or quashing the entire order dated 24.02.2006 passed by the Learned Single Judge.

22.Mr. Thakore has further submitted that the Division Bench has not directed the Learned Single Judge to continue proceedings against the Press and others under separate contempt proceedings, but only indicated that the same was not part of any restraint directed by the Division Bench. The order of the Learned Single Judge contains an innuendo that the order passed by the Division Bench places the Learned Single Judge on the horns of dilemma. The order passed by the Learned Single Judge offends the majesty of the Division Bench or the appellate Court and attempts to unduly interfere with the hearing in accordance with law of the appeal by the appeal Court. The

readiness and willingness to tender apology expressed in the order of the Learned Single Judge corroborates that the Learned Single Judge has knowingly not fully complied with the order of the Division Bench, asserted his defences and tendered advance apology in the hope of preventing any possible action for his conduct. There cannot be both justification and apology or a conditional apology.

23. In the case of Baradakanta Mishra V/s. Bhimsen Dixit, (1973) 1 SCC 446, the Hon'ble Supreme Court has held that contempt of Court is disobedience to the court, by acting in opposition to the authority, justice and dignity thereof. It signifies a willful disregard or disobedience of the court's order, it also signifies such conduct as tends to bring the authority of the court and the administration of law into disrepute. It is

further held that it is a commonplace that where the superior court's order staying proceedings is disobeyed by the inferior court to whom it is addressed, the latter court commits contempt of court for it acts in disobedience to the authority of the former court. The act of disobedience is calculated to undermine public respect for the superior court and jeopardise the preservation of law and order.

24. For the purpose of maintainability of appellant's appeal u/S. 19 of the Act, Mr. Thakore has relied on the decision of Bombay High Court in the case of Bachharaj Factories Limited V/s. Hirjee Mills Ltd., AIR 1955 BOMBAY 355, it is held that an order passed by the Learned Single Judge on the original side of the High Court under Section 170 of the Companies Act refusing to wind up the Company

and adjourning the petition after hearing it on merits to a future date is an order which is appealable under Section 202 of the Companies Act. The Court further held that the first part of Section 202 confers a substantive right upon a party aggrieved by an order made or a decision given by a Company Judge in winding up. The second part of Section 202 does not in any way cut down or impair the substantive right conferred by the first part of Section 202. The second part which deals with the manner and the conditions in which an appeal may be preferred only refers to the procedural subject of an appeal and the forum to which the appeal would lie. But to suggest an argument that the right of appeal conferred under the first part of Section 202 must be construed and interpreted by the second part, which deals with merely a procedural implications of the appeal would be in many cases practically and

substantially to deny the right of appeal to a party affected by an order made in the winding up.

25. The ratio laid down by the Bombay High Court is approved by the Hon'ble Supreme Court in the case of Shankarlal Aggarwala and others V/s. Shankarlal Poddar and others, AIR 1965 S.C. 507. After discussing about the controversy relating to scope and ambit of Section 202 of Companies Act and divergent views of different High Courts on this issue, the Hon'ble Supreme Court has observed that, "we thus agree with Chagla, C.J. that the second part of the section which refers to "the manner" and "the conditions" subject to which appeals may be had merely regulates the procedure to be followed in the presentation of the appeal and of hearing them, the period of limitation within which the appeal is to be presented and the

forum to which appeal would lie and does not restrict or impair the substantive right of appeal which has been conferred by the binding words of that section. We also agree with the learned Judges of the Bombay High Court that the words 'order or decision' occurring in the 1<sup>st</sup> part of Section 202 though wide, would exclude merely procedural orders or those which do not affect rights or liabilities of parties".

26. In R.N. Dey and Others V/s. Bhagyabati Pramanik and others, (2000) 4 SCC 400, the Hon'ble Supreme Court has held that when the Court either suo motu or on a motion or a reference, decides to take action and initiate proceedings for contempt, it assumes jurisdiction to punish for contempt. The exercise of jurisdiction to punish for contempt commences with the initiation of a proceeding

for contempt and if the order is passed not discharging the rule issued in contempt proceedings, it would be an order or decision in exercise of its jurisdiction to punish for contempt. Against such order, appeal would be maintainable.

27. In the case of Modi Telefibres Ltd. and others V/s. Sujit Kumar Choudhary and others, (2005) 7 S.C.C. 40, in a contempt proceedings, for the alleged non-compliance with the award of the Labour Court, a Single Judge of the High Court held that the employer had committed contempt by not paying full dues of the workmen under the award. He adjourned the contempt proceedings and directed the officer of the employer to remain present with bank drafts to be paid to the workmen. The employer then filed an appeal before a Division Bench of the High Court. The Division Bench dismissed the appeal

on the ground that the matter arising out of the contempt proceedings was till then pending before the Single Judge. The employer then filed the present appeal by special leave and while allowing the said appeal, the Hon'ble Supreme Court has held that the Division Bench committed gross error in overlooking the contents of the order of the Single Judge in which the finding has been recorded that the employer had committed contempt by not paying full dues of the workmen under the award. Such an order could not have been treated to be an interlocutory order and the right of appeal denied to the appellant employer merely because the Single Judge had adjourned the contempt proceedings to enable the alleged contemnor to purge the contempt or else for deciding the quantum of punishment. In view of the provisions of Section 19 of the Contempt of Courts Act, 1971, the Division Bench was



clearly wrong in refusing the right of appeal to the appellants.

28. In the case of Raj Kulkarni V/s. The State of Bombay, AIR 1954 S.C. 73, the Hon'ble Supreme Court has held that whether the appeal is valid or competent is a question entirely for the Appellate Court before whom the appeal is filed to determine and this determination is possible only after the appeal is heard, but there is nothing to prevent a party from filing an appeal which may ultimately be found to be incompetent.

29. Mr. Thakore has submitted that by virtue of Section 18 (1) of the Act and Rule 11 of the Rules, the Learned Single Judge has no power or jurisdiction to initiate or continue criminal contempt in appellant's proceedings. He relied on the decision in the case of Bal Thackrey.

V/s. Harish Pimpalkhute and others, (2005) 1 SCC 254. The Hon'ble Supreme Court has held that the nature and power of the Court in contempt jurisdiction is a relevant factor in determining the correctness of observations made in Duda case. Dealing with the requirement to follow the procedure prescribed by law while exercising powers under Article 215 of the Constitution to punish for contempt, it was held by this Court in L.P. Misra (Dr.) V/s. State of U.P. (1998) 7 SCC 379 that the High Court can invoke powers and jurisdiction vested in it under Article 215 of the Constitution but such a jurisdiction has to be exercised in accordance with the procedure prescribed by law. The exercise of jurisdiction under Article 215 of the Constitution is also governed by laws and the rules subject to the limitation that if such laws/rules stultify or abrogate the Constitutional power then such laws/rules

would not be valid. In L.P. Misra case it was observed that the procedure prescribed by the Rules has to be followed even in exercise of jurisdiction under Article 215 of the Constitution. To the same effect are the observations in Pallav Sheth case (2001) 7 SCC 549. The procedure and directions issued in L.P. Misra's case are required to be appreciated also keeping in view the additional factor of the Chief Justice being the Master of the Roster. In State of Rajasthan V/s. Prakash Chand, 1998 (1) SCC 1, it was held that it is the prerogative of the Chief Justice of the High Court to distribute business of the High Court both judicial and administrative. He alone has the right and power to decide how the Benches of the High Court are to be constituted; which Judge is to sit alone and which cases he can and is required to hear as also which Judges shall constitute a Division

Bench and what work those Benches shall do. The directions in Duda case when seen and appreciated in the light of what we have noticed hereinbefore in respect of contempt action and the powers of the Chief Justice, it would be clear that the same prescribe the procedure to be followed by High Courts to ensure smooth working and streamlining of such contempt actions which are intended to be taken up by the Court suo motu on its own motion. These directions have no effect of curtailing or denuding the power of the High Court. It is also to be borne in mind that the frequent use of suo motu power on the basis of information furnished in a contempt petition otherwise incompetent under Section 15 of the Act may render the procedural safeguards of the Advocate General's consent nugatory. The Court was of the view that the directions given in Duda case are legal and valid.

30. In the case of J.K. Gupta V/s. D.G. Investigation and registration and others, (2004) 8 S.C.C. 766, the Hon'ble Supreme Court has held that from a conspectus of the provisions contained in the Contempt of Courts Act, 1971, it would be clear that by virtue of Section 13-B of the MRTP Act, the Commission has been empowered to exercise all the powers to punish for contempt which have been conferred upon a High Court and the same have to be exercised in the manner prescribed under the Act. Section 2(c) of the Act defines "criminal contempt". From a conspectus of the aforesaid provisions, it would be clear that by virtue of Section 13-B of the M.R.T.P. Act, the Commission has been empowered to exercise all the powers to punish for contempt which have been conferred upon a High Court and the same have to be exercised in the manner prescribed

under the Act. Section 2(c) of the Act defines 'criminal contempt'. Under Section 15 of the Act, action for criminal contempt, other than a contempt referred to in Section 14 of the Act, can be taken. Under Section 14, action can be taken if the contempt has been committed in the presence of or hearing of the Court. Section 18 lays down that every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges which would obviously show that in the case of the Commission, a proceeding for criminal contempt has to be heard and determined by a Bench of not less than two members. Commission to be established under Section 5 of the M.R.T.P. Act shall comprise a Chairman and not less than two and not more than eight members to be appointed by the Central Government which shows that the Commission would consist of a Chairman and at least two members. Language of Section 18 of

the Act that 'criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges' is very clear and unequivocal and in case of criminal contempt, the contempt proceedings has to be heard and determined by a Bench of not less than two Judges. As the Commission consists of Chairman and at least two members, the contempt proceeding for punishing the appellant for criminal contempt ought to have been heard by the Chairman along with another member or the Chairman could have assigned the matter for hearing to any two members of the Commission but he alone was not justified in hearing and determining the proceeding which was in violation of the provisions of Section 18 of the Act. Therefore, the impugned order passed by the Chairman is liable to be set aside on this ground alone and the matter has to be remitted to the Commission for disposal of the

contempt proceeding in terms of Section 15 of the Act.

31.Mr. J.B. Pardiwala, learned advocate appearing as Amicus Curie has submitted that the Learned Single Judge has not decided the application of the appellant filed under Section 14 (2) of the Act and he has simply adjourned the said matter. He has further submitted that since the Learned Single Judge has not taken any decision on the said application, and hence an appeal is not maintainable under Section 19 of the Act. In support of his submission, he has relied on the decision of the Hon'ble Supreme Court in the case of State of Maharashtra V/s. Mahboob S. Allibhoy and another, (1996) 4 SCC 411 wherein it is held by the Hon'ble Supreme Court that an appeal is a creature of a statute. Unless a statute provides for an appeal and specifies



the order against which an appeal can be filed, no appeal can be filed or entertained as a matter of right or of course. Section 19 of the Contempt of Courts Act, 1971, provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. Thus if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of Court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. The words "any order" has to be read with the expression 'decision' used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. "Any order" is not independent of the expression 'decision'. They have been put in an alternative form saying 'order' or 'decision'. In either case, it must be in the nature of punishment for contempt. So construed

an appeal cannot lie under sub-section (1) of Section 19 against an interlocutory order passed in a proceeding for contempt by the High Court. Therefore, no appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt. This is apparent not only from sub-section (1) but also from sub-section (2) of Section 19. He has, however, fairly conceded that in this decision, earlier as well as latter decisions of the Hon'ble Supreme Court were not referred to. While distinguishing this decision, Mr. Thakore has pointed out that the said decision is rendered in the context of the fact that appeal was preferred against an order dropping proceedings for contempt or refusing to initiate proceeding for contempt. Even this was the view earlier expressed by the Hon'ble Supreme Court. However, the same is not the case in the present appeal.

32. After having heard the learned Senior counsel Mr. Mihir Thakore and Mr. J.B. Pardiwala, the learned advocate appearing as Amicus Curie and after having gone through the appeal memo, affidavit of the appellant and orders passed by the Learned Single Judge on 17.02.2006, 24.02.2006 and 16.03.2006 and after having examined with great care and caution the relevant statutory provisions of Contempt of Courts Act, 1971 and rules framed thereunder, we are of the opinion that the appeal of the appellant deserves to be succeeded and not only the orders passed by the Learned Single Judge on 24.02.2006 and 16.03.2006 are liable to be quashed and set aside but the contempt proceedings pending before the Learned Single Judge are required to be transferred to any other learned Judge or Judges of this Court, after obtaining appropriate order from the

Hon'ble Chief Justice, in view of the provisions contained in Section 14 (2) and Section 15 read with Section 18 (1) of the Contempt of Courts Act, 1971.

33. Before touching the point at issue or the controversy arose before the Court, it is of utmost importance to have a close look at the relevant provisions of the Act. Section 2 (b) of the Act defines "Civil Contempt" which means willful disobedience to any judgment, decree, direction, order, writ or other process of a Court or willful breach of an undertaking given to a Court. It is not an issue before this Court in this appeal as to whether the appellant has committed any contempt of Court by willfully disobeying to any judgment, decree, direction, order, writ or other process of a Court. This issue is still pending for adjudication in M.C.A. No. 27 of 2006. It is,

however, relevant when the Hon'ble Chief Justice entrusts this matter to any other Judge or Judges for its adjudication, Section 14 of the Act deals with procedure where contempt is in the face of the Supreme Court or a High Court. Sub-section (1) lays down four stages of such procedure and sub-section (2) carves out an exception. It says that where a person charged with contempt under sub-section (1) applies, whether orally or in writing, to have the charge against him tried by some judge, other than Judge or Judges in whose presence or hearing the offence is alleged to have been committed, in the proper administration of justice, the application should be allowed. Section 15 of the Act talks about cognizance of criminal contempt in other cases and S. 17 lays down the procedure after cognizance. S. 18(1) states that every case of criminal contempt under Section 15 shall be heard and determined

by a Bench of not less than two Judges. Section 19 (1) (a) provides for an appeal as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt where the order or decision is that of a Single Judge, to a Bench of not less than two Judges of the Court. Even Rule 11 of the Contempt of Courts (Gujarat High Court) Rules, 1984 states that every proceedings under the Act shall be heard and determined by a Bench of not less than two Judges as the Chief Justice may, from time to time appoint. Proviso makes it clear that when a contempt proceeding is covered by Section 14 and the Court does not cause the matter to be placed before the Chief Justice under sub-Section (2) of Section 14, the proceedings so arising shall be determined and disposed of by the Judge or Judges of the same Court.

34. Section 2 (c) of the Act defines criminal contempt which means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which – (i) scandalises or tends to scandalise, or lowers or tends to lower the authority of, any Court, or (ii) prejudices, or intends or tends to interfere with, the due course of any judicial proceeding; or (iii) interferes or tends to obstruct, the administration of justice in any other manner.

35. From the foregoing provisions of the Act and the Rules framed thereunder, it is apparent that the contempt proceedings initiated against the present appellant are of civil nature and they are governed by the provisions of S. 14 (1) of the Act, whereas the proceedings initiated against the printer, the Publisher

and the Editor of Gujarat Vaibhav – Ahmedabad, Rajasthan Patrika – Ahmedabad, Dainik Bhaskar – Ahmedabad and Gujarat Samachar – Ahmedabad, vide order dated 24.02.2006 are of criminal nature and they are governed by S. 15 and 18 of the Act. In respect of both these proceedings, the matter shall have to be placed before the Hon'ble Chief Justice and the Learned Single Judge is not justified to continue the said proceedings with him. Section 14 (2) of the Act casts an obligation on the Learned Single Judge to accept forthwith the request made by the contemnor – either orally or in writing to place the matter before the Hon'ble Chief Justice so as to assign it to any other Judge or Judges. Even in the case of Mohd. Zahir Khan V/s. Vijai Singh and Others, AIR 1992 S.C. 642, the Hon'ble Supreme Court has gone one step further and observed that it is the duty of the Court to inform the contemnor of the provision



under Section 14 (2) of the Act. As far as the charge of the criminal contempt against the Printer, Publisher and Editor of the newspapers as indicated above, is concerned, it is altogether a different matter forming part of separate proceedings. Even the contempt notice could not have been issued by the Learned Single Judge. If the Learned Single Judge were of the view that the Printer, Publisher and Editor have committed contempt of Court by publishing false reports of the Court, the matter would have been placed before the Hon'ble Chief Justice who is the master of the roster. Instead of doing that, the Learned Single Judge has not only issued the contempt notices but also continued the said proceedings with him despite an order of the Division Bench passed on 06.03.2006, which is interpreted by the Learned Single Judge as somewhat ambiguous and stated to have been put him in the horn of

dilemma. The Court makes it clear that there was no ambiguity in the said order as the Court wanted to make it clear that the restraint order passed in respect of the present appellant would not apply to the contempt proceedings initiated against Printer, Publisher and Editor and the same should be dealt with in separate proceedings, meaning thereby in accordance with the provisions of the Act and Rules and in consonance with the settled position in law. The Learned Single Judge has, therefore, no other option but to place the matter then and then only before the Hon'ble Chief Justice who being the master of the roster shall assign the said matter to any other Bench consisting two or more Judges.

36. The other two issues which warrant court's attention and arise for its consideration are (i) maintainability of present appeal under

Section 19 of the Act as well as under Clause 15 of Letters Patent and (ii) the order passed by the Learned Single Judge on 16.03.2006 – whether it amounts to breach of directions issued by the Division Bench vide its order dated 06.03.2006, or causing an interference or showing participation by the Learned Single Judge in the appellate proceedings, or undermining the power, authority and jurisdiction of the appellate Court.

37.As far as the maintainability of the present appeal is concerned, the Court has considered the submission made before the Court and has also gone through the judgments referred to by the Learned Single Judge in his order dated 16.03.2006 and after giving its serious thoughts to all these judgments and applying the ratio of these judgments to the facts of the present case, the Court is of the view that

the order passed by the Learned Single Judge on 24.02.2006 in an application of the appellant moved under Section 14 (2) of the Act, is not an order postponing the hearing simpliciter, but he has discussed certain other issues in the appellant's application with which the appellant is not concerned at all and which will unnecessarily burden the appellant's proceedings. The appeal is, therefore, undoubtedly maintainable under Section 19 of the Act.

38.As far as order dated 16.03.2006 passed by the Learned Single Judge and observations made therein are concerned, this Court restrains itself from making any further observation on the various submissions made by the learned Senior Counsel Mr. Thakore, especially when the said order is passed by the co-ordinate Court of this High Court. Suffice it, however, to

hold after accepting those submissions that the said order is not tenable at law, not only in view of the directions issued and stay granted by the Division Bench on 06.03.2006, but also in view of the statutory provisions and judicial pronouncements as stated herein above. The said order dated 16.03.2006 passed by the Learned Single Judge, being part of the same proceedings which are under challenge in the present appeal, deserves to be quashed and set aside. It is, however, made clear that but for the separate challenge being made by the Printer, Publisher and/or Editor in other two O.J. Appeals being O.J. Appeals No. 31 and 32 of 2006, the Court would not have quashed and set aside the notices and/or proceedings initiated against them.

39.As indicated earlier, it is not an issue before the Division Bench in this appeal as to

whether the appellant has committed any contempt of the Court simply because his mobile was rang in the Court. Earlier, another Division Bench of this Court has taken the view that ringing of mobile in the Court will amount to contempt. We are not expressing any opinion on this issue as we are not called upon to do so. We simply take note of the submissions made before us in this regard. While discussing the issue relating to contempt in the face of the Court, and more particularly, disrupting court proceedings generally, it is to be noted here that conduct which disturbs or disrupts court proceedings constitutes an interference with the due administration of justice, and is a contempt. In *Morris V Crown Office* a group of students protesting against a court order made against one of the leaders of their organisation, invaded a court during the hearing before Lawton J of a libel case, and

shouted slogans, scattered pamphlets and sang songs. Their contempt in interrupting the proceedings was aggravated by the fact that the disruption was a deliberate conspiracy and because the proceedings which were interrupted had no relevance to their cause of protest. There is however a thin dividing line between insulting and disrespectful behaviour; nevertheless case law and statute do seem to recognize a distinction. The jurisdiction to punish misconduct falling short of insulting or disruptive behaviour is a delicate one. Not every act of discourtesy amounts to contempt. Indeed the only justification for punishing disrespectful behaviour which does not otherwise interrupt proceedings is where it is considered to impair the authority of the Court and so interfere with the administration of justice. Judges should be wary about punishing allegedly disrespectful conduct and should

remember that the object of contempt is to protect the administration of justice and not to satisfy their personal feelings. An excessive use of the power will itself detract from the court's authority.

40. In Balogh V/s. St. Albans Crown Court, [1975] Q.B. 73, Lord Denning M.R., has observed that this power of summary punishment is a great power, but it is a necessary power. It is given so as to maintain the dignity and authority of the Court and to ensure a fair trial. It is to be exercised by the Judge of his own motion only when it is urgent and imperative to act immediately so as to maintain the authority of the Court – to prevent improperly enable witnesses to be free from fear – and jurors from being improperly influenced – and the like. The reason is so that the Judge should not appear to be both



prosecutor and Judge, for that is a role which does not become him well.

41. In Weston V/s. Central Criminal Court Courts Administrator, [1977] Q.B. 32, Lord Stephenson L.J., while dealing with a case of a Solicitor not complying with the direction of the Court, whether it amount to contempt punishable by order to cost, it is held that it is of course vitally important for the administration of justice that Solicitors, in less than counsel, should assist the court by co-operating with its administrators and complying with the court's directions, whether they come from the judge as a request for help or as orders to be obeyed. Nowhere is co-operation more important than at the Central Criminal Court, where the enormous number of courts and cases presents special difficulties, and demands the maximum of mutual trust and goodwill if justice to all

is to be done fairly and quickly. But not every failure to co-operate, or refusal to assist the court, is a contempt, and not every dereliction of duty or discourtesy to the court is a contempt, as was laid down in *Izuora's case* [1953] A.C. 327 wherein the judge in Nigeria was to give a reserved judgment. He directed both counsel to attend. One of them did not do so. The judge held that his absence from the Court without leave amounted to a contempt and fined him 10 Pound. The Privy Council held that it was not a contempt of court. Lord Tucker observed that it is not possible to particularize the acts which can or cannot constitute contempt. It is not every act of discourtesy to the Court by counsel that amounts to contempt, nor is conduct which involves a breach by counsel of his duty to his client necessarily in this category. In the present case, the appellant's conduct was

clearly discourteous, it may have been in breach of rule 11 of Order. 16, and it may, perhaps, have been in dereliction of duty to his client, but in their Lordships' opinion it cannot properly be placed over the line that divides mere discourtesy from contempt.

42. In the above view of the matter, we hereby allow this appeal and quash and set aside the orders passed by the Learned Single Judge on 24.02.2006 and 16.03.2006, subject to the direction to the Registry to place M.C.A. No. 27 of 2006 before the Hon'ble Chief Justice so as to assign this matter to any other Judge or Judges to decide as to whether the appellant has committed any contempt of Court. As far as contempt proceedings against the Printers, Publishers and Editors of newspapers named in the order dated 24.02.2006 are concerned, the same should be separated from M.C.A. No. 27 of

2006 and be separately registered and placed before the Hon'ble Chief Justice for assigning the same to the appropriate Division Bench. We make it clear that under no circumstances, matter be placed before the Learned Single Judge who has issued notices for contempt to the appellant and other parties. We also make it clear that the contemnors be required to remain present only after they receive fresh notices from the Bench or Benches so constituted by the Hon'ble Chief Justice.

43. Subject to the aforesaid directions, the appeal and Civil Application both are disposed of as allowed.

**[A.R. DAVE, J.] [K.A. PUJ, J.]**

Though we are pronouncing separate concurring

judgments, we come to the following conclusion.

The appeal is allowed. Notices issued to persons other than the appellant in Misc. Civil Application No. 47 of 2006 in Misc. Civil Application No. 27 of 2006 as well as the order dated 16.3.2006 passed therein, are hereby quashed. All proceedings pertaining to Misc. Civil Application No. 27 of 2006 and other proceedings arising therefrom shall not be heard by the learned single judge. We further direct that the proceedings initiated against persons other than the appellant shall be registered separately and both the proceedings shall be placed before the Hon'ble Chief Justice so as to enable him to pass appropriate order as per provisions of the Contempt of Courts Act, 1971 and Contempt of Courts (Gujarat High Court) Rules, 1984.

**(Anil R. Dave, J.)**

**(K.A. Puj, J.)**

(hn)