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AFR
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**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

SPECIAL APPEAL No. - 84 of 2025

██████████

.....Appellant(s)

Versus

██████████████████

.....Respondent(s)

Counsel for Appellant(s)	:	Priyanka Singh, Abhay Pratap Singh
Counsel for Respondent(s)	:	Pranshu Agrawal,

Court No. - 3

HON'BLE SHEKHAR B. SARAF, J.
HON'BLE ABDHESH KUMAR CHAUDHARY, J.

SHEKHAR B. SARAF, J.: The present Special Appeal has been filed by the appellant under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952 (hereinafter referred to as the 'Rules, 1952') against the order dated August 13, 2024 passed by the learned Single Judge in Contempt Application No. 3201 of 2024 whereby the learned Single Judge disposed of the contempt application on the ground that proceeding under Section

379 of Bharatiya Nagarik Surakhsha Sanhita, 2023 (hereinafter referred to as 'BNSS' ; formerly Section 340 of the Code of Criminal Procedure, 1973) has already been filed and is pending before the trial court.

FACTS

1. The factual matrix giving rise to the present special appeal has been delineated below:

a. The marriage between the appellant and the respondent, Sonakshi Verma was solemnized on February 15, 2021 in accordance with Hindu rites and rituals. Disputes arose soon thereafter which led respondent to file multiple cases against the appellant and his family members, including maintenance application under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as 'DV Act') registered as Case No. 3288 of 2022 (P.S. Aliganj, Lucknow) before the Court of Civil Judge (J.D.)/F.T.C., Lucknow.

b. In the said proceedings, the respondent filed an Affidavit of Assets and Liabilities (A.O.A.) dated June 27, 2022 in accordance with the directions of the Hon'ble Supreme Court in **Rajnish v. Neha** reported in AIR 2021 SC 569. In the said affidavit, the respondent stated her income as "NA" (Non-Applicable) and stated "NA" against properties/assets even though the respondent at that time was a serving judicial officer of the Bihar Judiciary (Civil Judge/Judicial Magistrate-I, presently posted as Registrar, Bihar Land Tribunal, Patna).

c. The maintenance application was decided ex-parte against the appellant on November 2, 2023, whereby maintenance of ₹10,000 per month was granted alongwith a restraint order in respect of a matrimonial

house and compensation of Rs.2,00,000/-.

d. Aggrieved by allegedly false affidavit filed by the respondent in maintenance proceedings, the appellant initiated proceedings under Section 340 Cr.P.C. by filing Misc. Application No. 83439 of 2024 before the court of ACJ (J.D.) (Crime Against Women) F.T.C. 50.

e. Thereafter, the appellant also filed Contempt Application (Civil) No. 3201 of 2024 before this Hon'ble Court, seeking initiation of contempt against the respondent for deliberately filing a false affidavit in violation of the mandate given in *Rajnish v. Neha* (Supra), which expressly provides that false statements and misrepresentations in maintenance affidavits may invite proceedings under Section 340 Cr.P.C. and contempt of court. The learned Single Judge disposed of the contempt application by the judgment and order dated August 13, 2024 without recording any finding whether *prima facie* contempt was made out or not and directed the appellant to pursue the application under Section 340 Cr.P.C. before the learned trial court. It is this judgment dated 13.08.2024, which has been impugned in the present intra-court appeal.

CONTENTIONS OF THE APPELLANT

2. The learned counsel appearing on behalf of the appellant has made the following submissions:

a. The learned Single Judge erred in failing to decide the core issue as to whether contempt was made out against the respondent in light of the clear dictum of the Hon'ble Supreme Court in *Rajnish v. Neha* (Supra), particularly para (h) of the guidelines, which mandates initiation of contempt proceedings for making false

statements in the affidavit of assets and liabilities.

b. There is no bar against proceeding simultaneously under Section 379 of BNSS and Contempt of Court.

c. A Special Appeal is maintainable against an order of the Contempt Court where it has overstepped its jurisdiction. In the present case, the Hon'ble Single Judge exceeded the bounds of contempt jurisdiction by directing the appellant to file a transfer application and pursue proceedings under Section 340 Cr.P.C. and *inter alia* holding that multiple litigations cannot be permitted, thereby delving into the merits of the original controversy. Such an order is therefore liable to be challenged by way of the present Special Appeal.

d. If the learned Single Judge, for any reason, decides an issue or issues any direction relating to the merits of the dispute between the parties in contempt proceedings, then the aggrieved party is not without a remedy and may challenge the same by way of an intra-court appeal, where such a remedy is available.

e. The swearing of a false affidavit in judicial proceedings not only has the tendency to obstruct the due course of justice but also to impede, obstruct, and interfere with the administration of justice.

f. The respondent has deliberately and intentionally filed a false affidavit before the learned Civil Court which is in gross violation of the directions issued by the Hon'ble Supreme Court in *Rajnish v. Neha* (Supra). The specific false statements include:

- i. Stating her source of income as 'N/A' (Non-Applicable), despite being a serving Civil Judge/Judicial Magistrate-I in the Bihar Judiciary

since 2018 and drawing a regular salary from the State exchequer.

- ii. Stating 'N/A' against properties/assets, despite having purchased a four-wheeler car (Hyundai Creta, Reg. No. UP 32 NX 2057) on 12-09-2023 while the PWDVA proceedings were still pending.
- iii. Stating her mother and brother as dependents without any supporting documentary evidence, when in fact her brother is a married man, practicing lawyer, and manager/managing director of a hotel.
- iv. Projecting medical expenses of Rs. 40,000/- as a personal liability, when as a judicial officer, her medical expenses are borne out by the State.

g. The respondent, by filing a false affidavit, misled the learned Civil Judge F.T.C., Lucknow, who passed the *ex-parte* order dated November 2, 2023 on the basis of such affidavit. The appellant being aggrieved party, is left without any remedy, which is contrary to the well-settled maxim '*Ubi jus ibi remedium*'.

h. To buttress her arguments, counsel has placed reliance on the following judgments:

- (i) **Subhash Chandra v. Srikant Goswami, Managing Director, Sahkari Gram Vikas Bank Ltd., Lucknow** in Special Appeal No. 372 of 2023; to contend that a special appeal would be maintainable against the order of contempt court if it has overstepped its jurisdiction.
- (ii) **Midnapore Peoples Cooperative v. Chunni Lal Nanda and Others** reported in (2006) 5 SCC 399; to contend that special appeal would be

maintainable, if the learned Single Judge has made any direction relating to merits of the dispute in contempt jurisdiction .

(iii) **Pratibha v. Kunwar Singh Tanwar & Ors.;** RFA 695/2016 (Delhi High Court); to contend that misleading statements made before the court can invoke its contempt jurisdiction.

(iv) **Secretary, Hailkandi Bar Association v. State of Assam and Anr.** reported in AIR 1996 SC 1925; to contend that contempt of court and proceedings under Section 340 CrPC can run simultaneously.

(v) **Board of Cricket Control in India v. Cricket Association of Bihar and Ors.** in (Civil Appeal No. 4235 of 2014); wherein the court has issued notice to explain as to why proceedings under Section 340 CrPC and contempt of court should not be initiated against the contemnor.

(vii) **M.S. Ahlawat v. State of Haryana and another** reported in AIR 2000 SC 168; to contend that petitioner therein was prosecuted for giving false evidence as well as for contempt of court.

(viii) **Dhananjay Sharma v. State of Haryana** reported in (1995) 3 SCC 757; to contend that swearing of false affidavit in judicial proceedings had the tendency to impede, obstruct, and interfere with the administration of justice and therefore amounts to criminal contempt of court.

CONTENTIONS OF THE RESPONDENT:

3. The learned counsel appearing on behalf of respondent has made the following submissions:

a. The impugned order passed by contempt court does

not contain any direction nor does it discuss the merits of the original controversy. The learned Single Judge merely observed that multiple proceedings on the same subject matter are not permissible when an application under Section 340 Cr.P.C. was already pending before the competent court. Hence, the contempt court has rightly declined to entertain parallel proceedings, and accordingly, the Special Appeal is liable to be dismissed on the ground of maintainability itself.

b. The affidavit in question did not contain the notation 'NIL', rather, the entry 'N/A' was merely an inadvertent slip of the pen, constituting a human error and without any *mens rea* to mislead the learned Court. This contention is corroborated by the affidavit itself, wherein the respondent declared her occupation as 'Civil Judge, Bihar Judicial Service.' Furthermore, in her maintenance application under Section 12 of the DV Act, the respondent had expressly acknowledged her status as a Judicial Officer, as well as in the final order dated November 2, 2023, the learned magistrate expressly recorded that the respondent was working as Sub-Divisional Judicial Magistrate (East), Muzaffarpur, Bihar and that both parties are working persons.

c. The appellant had already filed an application under Section 340 Cr.P.C. on the same subject matter before the learned trial court. The initiation of parallel proceedings in two separate courts of law pertaining to the same subject matter is not permissible. The Contempt Court rightly observed that multiple proceedings should not be permitted. The respondent relied on the proviso to Section 10 of the Contempt of Courts Act, 1971, which stipulates that no High Court

shall take cognizance of contempt alleged to have been committed in respect of a subordinate court where such contempt constitutes an offence punishable under the IPC.

d. The appellant had filed more than nine cases against the respondent and her family. He also has a habit of lodging complaints against the presiding officer of the Court whenever he fails to secure a favourable order and in effect to it, he has filed a complaint against the Additional Chief Judicial Magistrate who accepted the final report in an FIR lodged by the appellant.

e. The appellant has wrongly interpreted the directions contained in para h of the judgment of the Supreme Court in **Rajnesh v. Neha** (Supra). The conjunction 'and' in the expression '*u/s. 340 Cr.P.C., and for contempt of Court*' must be read disjunctively, i.e., as 'or', to give effect to the true intention of the Hon'ble Supreme Court. The jurisdiction to punish for contempt is vested exclusively in the High Courts under the Contempt of Courts Act. The Supreme Court's observation cannot be read to mean that both remedies must be pursued cumulatively.

f. To buttress his arguments counsel has placed reliance on the following judgment:

(i) **Ishwar Singh Bindra and Others v. State of U.P.** reported in **AIR 1968 SC 1450**, wherein it was held that 'and' may, by force of context, be read as 'or' to effectuate legislative intent.

ANALYSIS

4. After hearing the arguments canvassed by learned counsel appearing on behalf of both the parties and perusal of materials placed on record, the following issue

emerges:

- I. Whether Special Appeal under Chapter VIII Rule 5 of the Rules, 1952 is maintainable against the order of the Contempt Court? If so, under what circumstances?
5. The petitioner contends that a Special Appeal/Intra-Court appeal would be maintainable as the learned Single Judge by declining to initiate contempt proceedings had traversed its jurisdiction by not deciding as to whether any contempt has been made out or not but instead relegated the parties to approach the lower court in a pending proceeding under Section 379 BNSS. As per the judgment of the Supreme Court in **Rajnesh v. Neha** (Supra) , the pleadings made in the applications for maintenance and replies should be responsible; if false statements are made, the court may consider initiation of proceedings under Section 379 BNSS and for contempt of court. There is no exclusionary bar for filing proceeding under contempt of court and Section 379 BNSS. Furthermore, the discovery of the fact that the proceedings under Section 379 BNSS has been dismissed will render the appellant remediless.
6. Per contra, learned counsel appearing on behalf of respondent has vehemently opposed the aforesaid arguments and submits that the present special appeal is not maintainable as the order passed by the Contempt Court neither adjudicated the merits of the dispute nor issued any substantive directions, and rightly discouraged multiplicity of proceedings since the appellant had already invoked Section 379 BNSS on the same subject matter before the court below. It is contended that the appellant has attempted to mislead the Court regarding

the respondent's affidavit, whereas the alleged discrepancy ('N/A') was merely an inadvertent error without any intention to misrepresent, which stands contradicted by consistent disclosures of her status as a judicial officer in prior proceedings and orders. The respondent emphasizes that parallel proceedings on the same issue are impermissible, and in view of the proviso to Section 10 of the Contempt of Courts Act, 1971, contempt jurisdiction is barred where the alleged act constitutes an offence under the IPC, which the appellant himself has invoked through Section 340 Cr.P.C. proceedings. The appellant's reliance on **Rajnish v. Neha** (Supra) is misconceived, as the expression 'and' therein must be read disjunctively as 'or', in line with settled principles of interpretation. It is further pointed out that the appellant's application under Section 340 has already been dismissed on merits.

7. Section 10 of the Contempt of Courts Act, 1971 refers to the power of a High Court to punish for contempt of its subordinate courts which is sanctioned by Article 215 of the Constitution of India. The proviso excludes the jurisdiction of the High Court only in cases where the act alleged to constitute contempt of a subordinate court are punishable as contempt under specific provisions of the Indian Penal Code, 1860, but not where such acts merely amount to offences of other description for which punishment has been provided in the IPC, 1860.

8. Before proceeding further, it is relevant to note that the appellant has initiated a contempt proceedings before the High Court under Section 10 of the Act wherein the learned Single Judge in its contempt jurisdiction has

passed the following order. The relevant part of the order is extracted hereinbelow:

"4. It is evident from the pleading that application under Section 340 Cr.P.C. has already been filed and is pending before the Competent Court, in such circumstances, multiple proceeding not to be permitted. As in case, the Court is vacant then it is appropriate to move transfer application before the Chief Judicial Magistrate concerned.

5. In view of the above, the present contempt application is disposed of with liberty to applicant to move transfer application before the Chief Judicial Magistrate concerned for transfer of application under Section 340 Cr.P.C. pending before Civil Judge, Junior Division, FTC, (Women related offences). In case, such application is filed within a period of two weeks from today then it is expected from the Chief Judicial Magistrate to pass appropriate order on the application."

9. The question is whether the observation of learned Single Judge that 'multiple proceedings not be permitted' defies the right of the appellant to pursue the two remedies as per the judgment of **Rajnesh v. Neha** (Supra), wherein it was observed that for filing false affidavits, court may initiate proceedings under Section 340 CrPC and for contempt of court.

10. The power of the intra-court appeal has been conferred on this Court by Chapter VIII Rule 5 of the Rules, 1952 which reads as under:-

"Chapter VIII [5. Special appeal :- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to

the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction [or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award–

(a) of a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or

(b) of the Government or any officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.]”

11. From the perusal of the impugned order passed in contempt proceedings, it transpires that learned Single Judge had declined to initiate the contempt proceedings in order to curtail the multiplicity of proceedings as a proceeding under Section 379 of the BNSS was already filed and was pending before the competent court.

12. The issue with regard to maintainability of a special appeal relating to a contempt proceeding is no more res integra. The Supreme Court in **Midnapore Peoples' Coop. Bank Ltd.** (Supra) has culled out the following circumstances for filing special appeal against orders passed in contempt proceedings:

"11. The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:

I. An appeal under Section 19 is maintainable only

against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.

II. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.

III. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.

IV. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of "jurisdiction to punish for contempt" and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.

V. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is

not without remedy. Such an order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases)."

(Emphasis added)

13. The co-ordinate bench of this Court in **Subhash Chandra** (Supra) relying upon the judgment of Supreme Court in **Midnapore Peoples' Coop. Bank Ltd.** (Supra) has held that generally special appeal under Rules, 1952 against the order of learned Single Judge in contempt proceeding is not maintainable unless the contempt court oversteps its jurisdiction by deciding into the merits of the dispute and inter-alia observed that 'merits' refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation. The relevant paragraphs of the judgment are quoted hereinbelow:

"46. Thus, it cannot be said as an inflexible rule that an intra-court appeal in no circumstance can be maintained. If an order passed in contempt jurisdiction has the trappings of a final order and/or it has the impact of diluting, varying the original order by which the disputes between the parties have been decided on merits or the Contempt Court touches the merit or passes an order beyond its scope then in such cases an intra court appeal can be maintained.

69. The pith and substance of the aforesaid discussion, the legal principles involved and circumstances when an appeal may lie under Section 19 of the Contempt of

Courts Act, 1971 and when a Special Appeal may lie from an order passed in contempt jurisdiction can be summarized as under:-

(A) Section 19 (1) of the Contempt of Courts Act can be invoked only when the Contempt Court has exercised its jurisdiction to punish for contempt. The essence of this provision is to provide a remedy against decision where the court has taken a definitive action to penalize a contemnor. This includes orders that impose fines, imprisonment, or other punitive measures directly related to the contemptuous behavior. Interlocutory orders, which do not entail punishment for contempt, do not fall within the ambit of Section 19. Such orders may include directions to produce documents, file affidavits, or procedural directives necessary for the continuation of the contempt proceedings. These are routine judicial actions that facilitate the progress of the case but do not constitute a final determination on the issue of contempt. Routine orders passed during the pendency of contempt proceedings are also excluded from the scope of Section 19. These orders are typically procedural and administrative in nature, ensuring that the proceedings move forward without addressing the substantive issues of the original case or the merits of the contempt.

(B) The crux of the matter lies in the nuanced interpretation of what constitutes "merit" within the context of contempt proceedings, as referenced by the Supreme Court in the Midnapore Peoples Cooperative Bank Limited case. The term "merit" has not been defined in a straight jacket formula, leading to varying interpretations.

However, a cumulative reading of the judgments provide clarity on several key aspects. In the Midnapore case, the Supreme Court held that in contempt proceedings, it is inappropriate to adjudicate or decide any issue related to the merits of the dispute between the parties. This principle aims to ensure that contempt proceedings do not encroach upon the substantive rights of the parties involved in the original dispute. The focus of contempt jurisdiction is to uphold the dignity and authority of the court, not to resolve the underlying dispute. The term "merit" in this context refers to the substantive issues of the original case that led to the contempt proceedings. It encompasses the core legal and factual questions that were or are being contested in the original litigation.

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

dispute.

(D) The interpretation of each case depends on its specific facts and circumstances. Courts must carefully distinguish between orders that address the procedural aspects of contempt proceedings and those that encroach upon the substantive issues of the original case. This distinction is crucial to maintaining the integrity of contempt jurisdiction and ensuring that appeals under Section 19 of the Act of 1971 are appropriately limited to cases where punitive action for contempt has been taken.

Thus, Special appeals in contempt cases are warranted only when the Contempt Court oversteps its jurisdiction by addressing the merits of the original dispute, ensuring that the substantive rights of the parties are protected. The interpretation of each case must consider the specific facts and circumstances to uphold the integrity of contempt jurisdiction and provide appropriate remedies for aggrieved parties."

(Emphasis added)

14. The coordinate bench of this court in **Vinod Kumar Gupta v. Shri Veer Bahadur Yadav** reported in 2023(7) ADJ 107 (DB) dealing with a similar issue has held that an order of Single Judge exercising contempt jurisdiction in a contingency, when contempt proceedings are not being initiated, is not amenable to an appeal under Chapter VIII Rule 5 of the Rules, 1952. The relevant paragraphs of the judgment are quoted hereinbelow:

"30. Further in the case of Hemendra Swaroop Bhatnagar v. Sri P.S. Gosain, 2006(1) ADJ 483 (DB),

this Hon'ble Court had the occasion to consider the issue of maintainability of special appeal under Chapter VIII Rule 5 of the 1952 Rules against the judgment and order dropping the contempt proceedings wherein this Court has observed as under:

"7. Appeal under Section 19 is maintainable when the order is passed by Contempt Judge in exercise of jurisdiction to punish for contempt. In the present case the Contempt Judge has discharged the notice, hence, there is no question of filing of appeal under Section 19.

8. The question regarding maintainability of the special appeal against an order rejecting a contempt application or discharging a contempt has come for consideration before this Court earlier. A Division Bench judgment of this Court in A.P. Verma, Principal Secretary, Medical Health and Family Welfare, U.P., Lucknow and others v. U.P. Laboratory Technicians Association, Lucknow and others, 1998 (3) UPLBEC 2333, had considered the said question. That Division Bench held in the said judgment that special appeal against an order refusing to initiate contempt proceeding is not maintainable.

9....

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11. The learned contempt Judge while discharging the contempt notice has not issued any direction or passed any order. The submission of the appellant's counsel that learned Judge has decided an issue on merit also cannot be accepted. The learned contempt Judge has only taken into consideration the earlier judgments of this Court contempt of which was alleged. The learned

contempt Judge after taking into consideration all facts and circumstances observed that from the facts there does not appear to be any wilful or deliberate disobedience committed either by the Collector or by the Special Land Acquisition Officer. The order of contempt Judge discharging contempt notice cannot be said to be a judgment issuing any direction or deciding any issue on merits. "

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

15. Before proceeding further this court would like to deal with the judgments that have been relied upon by the appellant. In **Rajnish v. Neha** (Supra), the Hon'ble Supreme Court laid down a general caution that irresponsible pleadings may invite action under Section

340 Cr.P.C. or contempt, but did not mandate automatic initiation of such proceedings, particularly in cases of inadvertent or immaterial errors in disclosure affidavits.

16. We need not join issue with judgments of the Supreme Court in **The Secretary, Hailkandi Bar Association** (Supra) and **Board of Control for Cricket in India** (Supra) wherein the Supreme Court has stated that simultaneous proceedings of contempt and proceedings under Section 379 BNSS are possible. The above principles only allow a person to invoke both the jurisdictions simultaneously but that does not mean that the courts are bound to initiate action under both the provisions.

17. We make it further clear that we do not join issue with judgments cited in **M.S. Ahlawat** (Supra), **Dhananjay Sharma** (Supra) and **Pratibha** (Supra) wherein the courts have identified instances that would lead to the invocation of the contempt jurisdiction. With respect to the judgement of the Supreme Court in **Midnapore Peoples' Coop. Bank Ltd** (Supra), the judgment of Allahabad High Court in **Subhash Chandra** (Supra) and **Vinod Kumar Gupta** (Supra), we are at consensus at idem with the said judgments wherein the courts have held that a special appeal would be maintainable against the order of contempt court, if the contempt court has overstepped its jurisdiction and/or made a direction relating to the merits of the dispute in the original order, the contempt of which is being sought for.

18. It may be noted that the scope of jurisdiction of Contempt Court is to determine whether contempt is committed and to impose appropriate sanctions if it has

been committed. The merits of the original controversy are outside the domain of the contempt court. However, when the Contempt Court issues directions or discusses on the merits of the original controversy, it oversteps its jurisdiction.

19. The learned Single Judge by observing that multiple proceedings cannot be permitted as a proceeding under Section 379 BNSS was already pending and giving liberty to approach the competent court to pursue the grievance therein exercising contempt jurisdiction has neither entered into the merits of dispute nor decided any question, inter alia, which may affect the valuable rights of the parties as filing contempt against a contemnor does not confer any right against which a special appeal can be filed.

20. There is another aspect of the matter, inasmuch as it has been vehemently argued by the learned counsel for the petitioner that the learned Single Judge, by conflating these observation of 'multiplicity of proceedings', with the direction of 'relegating the parties to pursue perjury application' has actually commented on the merits of the contempt petition and as such the present Special Appeal was maintainable. We are afraid that the said submissions cannot be subscribed by us in any manner as the observation and/or direction of the learned Single Judge are not even peripheral to the merits of the contempt petition. *Arguendo*, one cannot argue that these observation and/or direction amounts to refusal of the Contempt Court to exercise its jurisdiction and/or has a trapping of dismissal of the said petition. However, in both the cases, wherein the Contempt Court has refused to entertain and/or has rejected the contempt petition,

neither an Appeal would lie under Section 19 of the Contempt of Courts Act, 1971 nor a Special Appeal under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, as held in ***Subhash Chandra*** (*Supra*).

21. An appeal is a creation of statute and once the legislature in its wisdom has chosen not to provide for any remedy of appeal against an order passed, whereby the contempt court has declined to initiate contempt proceeding, then appeal cannot be construed to be maintainable as the proceedings under the Contempt of Courts Act are self-contained. Right of appeal has been conferred only on the contemnor under Section 19 of the Act who has been punished under the Act and in rest of the contingency there is no remedy of appeal. If there is no provision of appeal in the statute, one cannot take aid of any other provisions as such of the Rules as *quando aliquid prohibetur ex directo, prohibetur et per obliquum*, that is, what cannot be done directly cannot be done indirectly.

22. Upon sifting through the ratios laid down in a catena of judgments of the Supreme Court and the High Court, one may come to an indubitable finding that a special appeal under Chapter VIII Rule 5 of the Rules, 1952 is only maintainable if the learned Single Judge has overstepped its jurisdiction and jumped into deciding on merits of the earlier order. A special appeal against an order of contempt Court would not be maintainable if the learned Single Judge has declined to initiate the contempt proceeding without delving into the merits of the dispute.

23. In view of the factual and legal position without going into the merits of the order passed by the learned Single Judge as also the maintainability of contempt

proceeding in respect of violation of guidelines laid down by the Supreme Court in **Rajnesh v. Neha** (Supra), we unhesitatingly hold that the present special appeal/intra court appeal filed under Chapter VIII Rule 5 of the Rules, 1952 is not maintainable and the same is ***dismissed*** without demur.

Date: 29 April, 2026

Ashotosh/Cks

(Shekhar B. Saraf,J.)

I agree

(Abdhesh Kumar Chaudhary,J.)