**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**Present:**

**THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR**

**&**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**Tuesday,the 2nd day of February 2021/13th Magha,1942**

**Contempt Case(C) No.1073/2014(S) in WP(C) No.25527/2014**

**PETITIONER/PETITIONER**

M.P. VARGHESE,
AGED 44 YEARS, S/O.M.J. PHILIP,
ASSISTANT PROFESSOR IN MECHANICAL ENGINEERING,
MODEL ENGINEERING COLLEGE, THRIKKAKARA,
ERNAKULAM, RESIDING AT 33/988 B, KALEECKAL,
PATTATH ROAD, CHALIKAVATTOM, VENNALA P.O.,
ERNAKULAM.

BY ADVOCATES M/S S.SUBHASH CHAND,
S.JAYAKRISHNAN,
S.PARAMESWARA PRASAD.

**RESPONDENT/6TH RESPONDENT**

V.P. DEVASSIA,
PRINCIPAL, MODEL ENGINEERING COLLEGE,
THRIKKAKARA, ERNAKULAM, PIN-682 021.

DR.K.P.SATHEESAN (SENIOR ADVOCATE), AMICUS CURIAE.

This Contempt of Court Case (Civil) having come up for orders on 02/02/2021, the court on the same day passed the following:-

P.T.O.

rs.

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**Present:**

**THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR**

**&**

**THE HONOURABLE MR. JUSTICE SHAJI P.CHALY**

**Tuesday,the 2nd day of February 2021/13th Magha,1942**

**Contempt Case(Civil) No.1139/2016 (S)**

**PETITIONERS/PETITIONERS NO.2, 3, 4, 5, 6, 13 AND 16 IN W.P.(C)**

1. K.REJIKUMAR,
S/O.KESAVAN NAIR, AGED 38 YEARS,EMPANELLED DRIVER,
KERALA STATE ROAD TRANSPORT CORPORATION, PALODE AND
RESIDING AT KIZHAKKINKARAVEEDU, PANDIYANPARA, PALODE,
PACHA-P.O., THIRUVANANTHAPURAM-695 562.
2. S.BIJU,
S/O.SAHADEVAN, AGED 45 YEARS,EMPANELLED DRIVER,
KERALA STATE ROAD TRANSPORT CORPORATION, PALODE AND
RESIDING AT THENGUMPANA VEEDU, KOLLAYIL-P.O.,
MADATHARA, KOLLAM-691 541.
3. L.SURENDRAN NAIR,
S/O.LEKASHMANAN PILLAI, AGED 47 YEARS,EMPANELLED DRIVER,
KERALA STATE ROAD TRANSPORT CORPORATION, PALODE AND
RESIDING AT RAJI HOUSE, MYLAMODU P.O., BHARATHANNOOR,
THIRUVANANTHAPURAM-695 609.
4. S.PRADEEPKUMAR,
S/O.SUDHAKARAN NAIR, AGED 38 YEARS,EMPANELLED DRIVER,
KERALA STATE ROAD TRANSPORT CORPORATION, PALODE AND
RESIDING AT ANJANEEYAM,KIZHAKKUMKARA, KALLIPPARA,
PALODE, PACHA-P.O.,THIRUVANANTHAPURAM-695 562.
5. S.SAIJU,
S/O.STEPHENSON, AGED 35 YEARS,EMPANELLED ELECTRICIAN,
KERALA STATE ROAD TRANSPORT CORPORATION,PALODE AND
RESIDING AT KUNNUMPURATHU VEEDU,KANCHIYOORKONAM,
KATTAKKADA P.O.,THIRUVANANTHAPURAM-695 572.
6. SMT.SUMA L.,
W/O.K.S.MATHEW, AGED 33 YEARS, EMPANELLED CONDUCTOR, KSRTC,
KOTTAYAM AND RESIDING AT SUMA BHAVAN, MOTTAKAVU CHULLIMANNOOR P.O.,
NEDUMANGAD-695 541, THIRUVANANTHAPURAM DISTRICT.
7. C.SATHEESH KUMAR,
S/O.CHELLAPPAN NADAR, AGED 40 YEARS, EMPANELLED CONDUCTOR,
KERALA STATE ROAD TRANSPORT CORPORATION, PALODE AND VAYALIL HOUSE,
NELLIKKUNNU, BHARATHANNOOR P.O., THIRUVANANTHAPURAM-695 616.

BY ADVOCATE SRI.N.UNNIKRISHNAN.

**RESPONDENT/RESPONDENT NO.1 IN THE W.P.(C)**

SHRI.ANTONY CHACKO,
S/O.M.A.CHACKO, AGED 52 YEARS,RESIDING AT ETTUKKETTIL HOUSE,
CHATHANAD - P.O., ALAPPUZHA DISTRICT AND WORKING AS CHAIRMAN AND
MANAGING DIRECTOR, KERALA STATE ROAD TRANSPORT CORPORATION,
TRANSPORT BHAVAN, FORT, THIRUVANANTHAPURAM-691 501.

DR.K.P. SATHEESAN, SENIOR ADVOCATE, AMICUS CURIAE.
SRI.T.P. SAJAN, STANDING COUNSEL FOR RESPONDENT.

This Contempt Of Court Case (civil) having come up for orders on 02/02/2021, the court on the same day passed the following:

P.T.O

rs.

"C.R"

**S. MANIKUMAR, CJ**
**&**
**SHAJI P. CHALY, J**

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Cont. Case (C). Nos.1073/2014 & 1139/2016

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Dated this the 2nd day of February, 2021

**O R D E R**

**S. Manikumar, CJ**

Instant contempt cases are posted before us, based on the reference orders passed by learned Single Judges of this Court dated 09.01.2015 and 30.10.2019 respectively. In the reference order dated 09.01.2015 in Cont. Case (C) No. 1073 of 2014, it is stated thus:

> "**Issue for Reference**:
>
> Whether **Jyothilal** (supra) has laid down the correct law in concluding in paragraph 24 of the judgment while declaring : [H]igh Court Rules clearly indicate, after taking cognizance when notice is issued by the Division Bench, unless the respondent contemnor is exempted from personal appearance, he should necessarily appear before the Court. Till then there is no requirement for the appearance of the respondent contemnor especially for the limited purpose of making an enquiry whether a prima facie case is made out to refer the matter to a Division Bench or not."
>
> Accordingly, I direct the Registry to place the matter before my Lord the Hon'ble the Acting Chief Justice for consideration and appropriate action."

2. Cont. Case (C) No.1073 of 2014 is referred by a learned Single Judge, doubting the correctness of a decision of this Court in **Jyothilal K.R. v. Mathai M.J.**[1], whereas, Cont. Case (C) No.1139 of 2016 is referred by a learned Single Judge, having found that the respondent has committed contempt of the judgment in W.P.(C) No.16813 of 2015 dated 5.6.2015.

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1 2014 (1) KLT 147

3. In view of the reference made in Cont. Case (C) No.1073 of 2014, we propose to examine the correctness of doubt expressed by the learned Single Judge in the judgment in ***Jyothilal*** *(cited supra)*.

4. In ***Jyothilal*** *(cited supra)*, three contempt cases were considered and in all of them, a common issue has been formulated as follows:

> "In the absence of any finding to the effect that the appellants/respondents had committed any willful disobedience of the directions of the Court or had any contumacious conduct warranting initiation of contempt proceedings against them, was there any justification for the learned single Judge issuing the orders impugned directing appearance of the appellants officials?

5. Facts leading to raising of such an issue are as follows:

5.1. During the course of a preliminary enquiry, the contemnor appeared and filed a detailed affidavit. Despite the said affidavit, the contemnor was asked to appear on the next hearing as well. Resultantly, the order of the learned Single Judge was challenged before a Hon'ble Division Bench. The argument advanced was that the order of the learned Single Judge compelling personal appearance continuously in a case, despite the interim order getting vacated under Article 226(3) of the Constitution of India, is without any justification. The Hon'ble Division Bench has placed reliance on the decision of the Hon'ble Supreme Court in **State of Gujarat v. Turabali Gulamhussain Hirani and Ors**.[2].

2 (2007) 14 SCC 94

5.2. Apart from the above, the Hon'ble Division Bench observed that Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971 (hereinafter referred to as the 'Rules, 1988', for short) provides that a Division Bench alone can take cognizance of the contempt proceedings; that Rule 8 provides for preliminary hearing and notice when the matter is placed for preliminary hearing before the Division Bench; and that Rule 13 provides for hearing of the case and trial; followed by Rule 15 indicating the procedure for trial. Accordingly, relying on ***Turabali Gulamhussain Hirani*** *(cited supra)*, the Hon'ble Division Bench observed thus:

> "The learned single Judge is required to hold a preliminary enquiry, only to find out whether there is or not a prima facie case. He shall not take cognizance in the matter. He directs the matter to be posted before the Division Bench only if he finds that there is a prima facie case. Only after learned single Judge finds that a prima facie case is made out, the petition would be placed before a Division Bench for a preliminary hearing as per Rule 8 of the Contempt of Courts (CAT) Rules. Again, at the time of preliminary hearing as per sub rule (ii) of Rule 8, Division Bench also has to satisfy itself whether a prima facie case is made out against the respondent. Only when the Division Bench satisfies that a prima facie case is made out, notice to the respondent shall be issued. When notice is issued to the respondent it shall be served in the manner specified in the Contempt Rules. On service of notice as per Rule 10 and the format provided therein, the respondent shall appear in person before the court on the first day of hearing or when the case

> stands posted unless he is exempted from such appearance. This exemption to appear must be an order of the court. Once a reply is filed, Division Bench shall consider the same and proceed further. After hearing the parties, it is permissible for the Division Bench either to proceed with the matter in case prima facie case is made out by framing charges against him only after being satisfied that there is a prima facie case as required under Rule 13 of the Rules. In other words, prior to issuance of notice, Division Bench must satisfy that there is a prima facie case and before framing charges, on consideration of the matter, including the reply to be filed by the respondent contemnor, the Division Bench has to ponder over the matter to find out whether a prima facie case is made out or not. The rules framed by the High Court mentioned above explicitly make the position clear that Division Bench alone has to take cognizance of the contempt petition and the learned single Judge, in the case of a civil contempt, has only to hold a preliminary enquiry to find out whether a prima facie case is made out or not."

5.3. It is also observed that finding of the learned Single Judge does not preclude the Division Bench from proceeding with the trial, as the rules make it clear that Division Bench also has to find out a *prima facie* case at the time of hearing and that issuance of notice to the contemnor by the learned Single Judge to hold a preliminary enquiry is only to ascertain as to whether a *prima facie* case is made out or not. That apart, in paragraph 22, it is observed that Rules 6 and 9 of the Rules, 1988, read together, did not make the Division Bench sitting in appeal over the decision of the learned

Single Judge from holding a preliminary enquiry. Ultimately, it is concluded that only the Division Bench can initiate contempt proceedings and if it finds that no *prima facie* case is made out or if it differs in its opinion from that of the learned Single Judge, with regard to the *prima facie* case, it can dismiss the contempt petition or drop the proceedings.

5.4. In regard to the issue of summoning the contemnor, the Hon'ble Division Bench observed as under:

> "The decision in *Turabali Gulamhussain Hirani (supra)* clearly lays down the proposition that summoning of senior officials like Secretaries and Directors of Government should be done in rare and exceptional cases and only under compelling circumstances. The work moment means a particular occasion. Summoning of respondents, who appear in person, in order to hold an enquiry, as contemplated under second proviso to Rule 6 of the Contempt Rules of the High Court does not require presence of the respondent for the purpose of satisfaction that a prima facie case is or not made out. One has to necessarily remember summoning of Government officials also burdens public exchequer."

5.5. Again, in paragraph 24, the Hon'ble Division Bench further observed thus:

> ".....as contemplated under second proviso to Rule 6, learned single Judge has to find out whether a prima facie case of contempt is made out or not and then refer the matter to a Division Bench which alone can take cognizance and proceed with the matter further. High Court Rules clearly indicate, after taking cognizance when notice is issued by the Division Bench, unless the respondent contemnor is exempted from personal appearance, he should necessarily appear before the court. Till then there is no requirement for the appearance of the respondent contemnor especially for the limited purpose of making an enquiry whether a prima facie case is made out to refer the matter to a Division Bench or not."

5.6. Thus, in the above backdrop, the matter was referred by a learned Single Judge, doubting the correctness of the decision in ***Jyothilal*** *(cited supra)*.

5.7. In ***Turabali Gulamhussain Hirani*** *(cited supra)*, the fact was that the State has filed a criminal appeal with a delay of 25 days. A learned Single Judge of the Gujarat High Court on the application for condonation of delay in filing the appeal, passed the impugned order directing the Chief Secretary and Law Secretary of the Gujarat Government to be personally present before him on 20.04.2007. The explanation offered in the petition was that there was shortage of staff, including stenographers, in the office of the Public Prosecutor. It was basically in that context, the Hon'ble Apex Court observed that the learned Single Judge of the Gujarat High Court was totally unjustified in summoning the Chief Secretary and Law Secretary, merely because there was a delay of 25 days in filing the appeal. The Hon'ble Apex Court has further observed in the said decision that the same learned Single Judge in several other cases has also summoned the Chief Secretary to appear before him personally.

5.8. It is in the factual backdrop, the Hon'ble Supreme Court in ***Turabali Gulamhussain Hirani*** *(cited supra)*, at paragraphs 7, 10 & 11, observed as under:

> "7. There is no doubt that the High Court has power to summon these officials, but in our opinion that should be done in very rare and exceptional cases when there are

> compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the drop of a hat.
>
> 10. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated. We are constrained to make these observations because we are coming across a large number of cases where such orders summoning of high officials are being passed by the High Courts and often it is nothing but for the ego satisfaction of the learned Judge.
>
> 11. We do not mean to say that in no circumstances and on no occasion should an official be summoned by the Court. In some extreme and compelling situations that may be done, but on such occasions also the senior official must be given proper respect by the Court and he should not be humiliated. Such senior officials need not be made to stand all the time when the hearing is going on, and they can be offered a chair by the Court to sit. They need to stand only when answering or making a statement in the Court. The senior officials too have their self-respect, and if the Court gives them respect they in turn will respect the Court. Respect begets respect."

6. After going through the findings rendered by the Hon'ble Division Bench in ***Jyothilal's case*** *(cited supra)*, and on the basis of the decision in ***Turabali Gulamhussain Hirani*** *(cited supra)*, a learned Single Judge has doubted the correctness of the decision in ***Jyothilal*** *(cited supra), and* referred the matter holding that in ***Turabali Gulamhussain Hirani*** *(cited supra),* the issue has not arisen under the Contempt of Courts Act, 1971, nor has Article 215 of the Constitution of India, considered.

7. It was also observed in the reference order that it cannot be said that under no circumstances and on no occasion, should an official be summoned by the Court and even the Hon'ble Apex Court acknowledged

that in some extreme and compelling situation, it can be done. However, the Hon'ble Division Bench in the decision in ***Jyothilal*** *(cited supra)*, held that under no circumstance is there any need for the presence of the contemnor before the learned Single Judge. Therefore, the learned Single Judge was of the opinion that it is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be complete 'law' declared by the Court. Therefore, the sum and substance of the observations of the learned Single Judge is that the judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court and a decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, detached from the context of the questions under consideration by the Court to support their reasoning.

8. In order to arrive at such a conclusion, the learned Single Judge has relied on the decision of the Hon'ble Apex Court in **CIT v. Sun Engg. Works (P) Ltd.**, reported in (1992) 4 SCC 363, **Quinn v. Leathem** (1901 AC 495), and **Balwant Rai Saluja v. Air India Ltd**. [(2014) 9 SCC 407]. Therefore, according to the learned Single Judge, the decision of the Hon'ble Division Bench in ***Jyothilal*** *(cited supra)*, is not a correct proposition and has not

taken into account the real purport of Article 215 of the Constitution of India and the Rules, 1988.

9. Insofar as Cont. Case (C) No.1139 of 2016 is concerned, it will be guided by the decision in Cont. Case (C) No.1073 of 2014.

10. In order to find out as to whether the decision in ***Jyothilal*** *(cited supra)* was rendered correctly, reference to some of the provisions of the Constitution of India, the Contempt of Courts Act, 1971 and the Rules, 1988 thereto, the Kerala High Court Act, 1958, and the Rules of the High Court of Kerala, 1971 is required. In view of the important questions of law involved, we requested the assistance of learned Senior Counsel Dr. K.P.Satheesan, as *Amicus Curiae* and he readily obliged.

11. We have heard Dr. K. P. Satheesan, learned *Amicus Curiae*, learned counsel for the contempt petitioner Mr. S. Subash Chand and Sri. N. Unnikrishnan, Mr. T. P. Sajan, learned counsel for the respondent in C.C.(C) No.1139 of 2016, perused the pleadings and materials on record.

12. Article 215 of the Constitution of India reads thus:

> "**215. High Courts to be court of record.-**
>
> Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."

13. Article 225 of the Constitution of India reads thus:-

> **"225. Jurisdiction of existing High Courts**
>
> Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by

> virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution:
>
> PROVIDED that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction."

14. Bearing in mind the aforesaid Constitutional principles, we proceed to scrutinize the provision of the Contempt of Courts Act, 1971.

15. The Contempt of Courts Act, 1971 was passed by the Parliament in 1971 and came into force with effect from 24.12.1971. Sections 2, 10, 11, 12, 14, 15, 17, 18, 19 & 23 of the Act, 1971 read thus:

> "**2. Definitions -**
>
> In this Act, unless the context otherwise requires -
>
> (a) "Contempt of Court" means civil contempt or criminal contempt.
>
> (b) "Civil Contempt" 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.
>
> (c) "Criminal Contempt" 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.

(d) "High Court" means the High Court for a State or a Union territory, and includes the court of the Judicial Commissioner in any Union territory.

**10. Power of High Court to punish contempts of subordinate courts.**

Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself:

PROVIDED that no High Court shall take cognizance of a contempt alleged to have been committed in respect of a court subordinate to it where such contempt is an offence punishable under the Indian Penal Code (45 of 1860)."

"**11. Power of High Court to try offences committed or offenders found outside jurisdiction.**

A High Court shall have jurisdiction to inquire into or try a contempt of itself or of any court subordinate to it, whether the contempt is alleged to have been committed within or outside the local limits of its jurisdiction, and whether the person alleged to be guilty of contempt is within our outside such limits."

"**12. Punishment for contempt of court.**

(1) Save as otherwise expressly provided in this Act or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both: Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.

*Explanation*.— An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it *bona fide*.

(2) Notwithstanding anything contained in any law for the time being in force, no court shall impose a sentence in excess of that specified in sub-section (1) for any contempt either in respect of itself or of a court subordinate to it.

(3) Notwithstanding anything contained in this section, where a person is found guilty of a civil contempt, the court, if it considers that a fine will not meet the ends of justice and that a sentence of imprisonment is necessary shall, instead of sentencing him to simple imprisonment, direct that he be detained in a civil prison for such period not exceeding six months as it may think fit.

(4) Where the person found guilty of contempt of court in respect of any undertaking given to a court is a company, every person who, at the time the contempt was committed, was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of each such person:

PROVIDED that nothing contained in this sub-section shall render any such person liable to such punishment if he proves that the contempt was committed without his knowledge or that he exercised all due diligence to prevent its commission.

(5) Notwithstanding anything contained in sub-section (4), where the contempt of court referred to therein has been committed by a company and it is proved that the contempt has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contempt and the punishment may be enforced, with the leave of the court, by the detention in civil prison of such director, manager, secretary or other officer.

*Explanation :* For the purpose of sub-sections (4) and (5),-

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

**"14. Procedure where contempt is in the face of the Supreme Court or a High Court**.—(1) When it is alleged, or appears to the Supreme Court or the High Court upon its own view, that a person has been guilty of contempt committed in its presence or hearing, the Court may cause such person to be detained in custody, and, at any time before the rising of the Court, on the same day, or as early as possible thereafter, shall

(a) cause him to be informed in writing of the contempt with which he is charged;

(b) afford him an opportunity to make his defence to the charge;

(c) after taking such evidence as may be necessary or as may be offered by such person and after hearing him, proceed, either forthwith or after adjournment, to determine the matter of the charge; and

(d) make such order for the punishment or discharge of such person as may be just;

(2) Notwithstanding anything contained in sub-section (1), where a person charged with contempt under that sub-section applies, whether orally or in writing, to have the charge against him tried by some judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, and the Court is of opinion that it is practicable to do so and that in the interests of proper administration of justice the application should be allowed, it shall cause the matter to be placed, together with a statement of the facts of the case, before the Chief Justice for such directions as he may think fit to issue as respects the trial thereof.

(3) Notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it shall not be necessary for the Judge or Judges in whose presence or hearing the offence is alleged to have been committed to appear as a witness and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

(4) Pending the determination of the charge, the Court may direct that a person charged with contempt under this section shall be detained in such custody as it may specify: Provided that he shall be released on bail, if a bond for such sum of money as the Court thinks sufficient is executed with or without sureties conditioned that the person charged shall attend at the time and place mentioned in the bond and shall continue to so attend until otherwise directed by the Court: Provided further that the Court may, if it thinks fit, instead of taking bail from such person, discharge him on his executing a bond without sureties for his attendance as aforesaid.

**"15. Cognizance of criminal contempt in other cases**.

(1) In the case of a criminal contempt, other than a contempt referred to in section 14, the Supreme Court or the High Court may take action on its own motion or on a motion made by—

(a) the Advocate-General, or

(b) any other person, with the consent in writing of the Advocate-General, [or]

(c) in relation to the High Court for the Union territory of Delhi, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf, or any other person, with the consent in writing of such Law Officer.] [Ins. by Act 45 of 1976, S. 2 (w.e.f. 30-3-1976)].

(2) In the case of any criminal contempt of a subordinate court, the High Court may take action on a reference made to it by the subordinate court or on a motion made by the Advocate-General or, in relation to a Union territory, by such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(3) Every motion or reference made under this section shall specify the contempt of which the person charged is alleged to be guilty.

*Explanation:* In this section, the expression "Advocate-General" means,-

(a) in relation to the Supreme Court, the Attorney-General or the Solicitor-General;

(b) in relation to the High Court, the Advocate-General of the State or any of the States for which the High Court has been established;

(c) in relation to the court of a Judicial Commissioner, such Law Officer as the Central Government may, by notification in the Official Gazette, specify in this behalf.

"**17. Procedure after cognizance.**

(1) Notice of every proceeding under section l5 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied,—

(a) in the case of proceedings commenced on a motion, by a copy of the motion as also copies of the affidavits, if any, on which such motion is founded; and

(b) in case of proceedings commenced on a reference by a subordinate court, by a copy of the reference.

(3) The Court may, if it is satisfied that a person charged under section 15 is likely to abscond or keep out of the way to avoid service of the notice, order the attachment of his property of such value or amount as it may deem reasonable.

(4) Every attachment under sub-section (3) shall be effected in the manner provided in the Code of Civil Procedure, 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and

shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

(5) Any person charged with contempt under section 15 may file an affidavit in support of his defence, and the Court may determine the matter of the charge either on the affidavits filed or after taking such further evidence as may be necessary, and pass such order as the justice of the case requires."

"**18**. **Hearing of cases of criminal contempt to be by Benches.**—
(1) Every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two judges.

(2) Sub-section (1) shall not apply to the Court of a Judicial Commissioner."

"**19**. **Appeals.—**

(1) An appeal shall lie as of right from any order or decision of the High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single judge, to a Bench of not less than two judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court: Provided that where the order or decision is that of the Court of the Judicial Commissioner in any Union territory, such appeal shall lie to the Supreme Court.

(2) Pending any appeal, the appellate Court may order that—

(a) the execution of the punishment or order appealed against be suspended;

(b) if the appellant is in confinement, he be released on bail; and

(c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

(3) Where any person aggrieved by any order against which an appeal may be filed satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2).

(4) An appeal under sub-section (1) shall be filed—

(a) in the case of an appeal to a Bench of the High Court, within thirty days;

(b) in the case of an appeal to the Supreme Court, within sixty days, from the date of the order appealed against."

"**23**. **Power of Supreme Court and High Courts to make rules.-** The Supreme Court or, as the case may be, any High Court, may make rules, not inconsistent with the provisions of this Act, providing for any matter relating to its procedure."

16. With reference to the meaning of the word "inconsistency", let us consider a decision of the Madhya Pradesh High Court in **Gandhi Travels v. Secretary, Regional Transport Authority and Ors.** reported in (1990 MPLJ 210), wherein it was held thus:

> "....'Inconsistency' means incompatible, dissonant, inharmonious, in accordant, inconsonant, discrepant, contrary, contradictory, not in agreement, incongruous, or irreconcilable. Thus, in the light of this meaning assigned to the term 'inconsistent', we find ourselves unable to agree with the learned counsel for the petitioner that the State amendment to second proviso to section 44 under which the Regional Transport Authority was appointed is in any way inconsistent with a similar proviso appended to section 68 of the new Act....."

17. We may also refer to the decision in **Government of Balochistan through Secretary, Local Government Department and 3 Others v. Messrs Shershah Industries Ltd. and Another** [1992 SCMR 1062], wherein the Supreme Court of Pakistan observed thus:

"11..... In Black's Law Dictionary, 'inconsistent' has been defined as "mutually repugnant or contradictory, contrary, the one to the other, so that both cannot stand, but the acceptance or establishment of the one implies the abrogation or abandonment of the other....". In Venkataramaiya's Law Lexicon, the word "inconsistency" has been defined as hereunder:--

> **Inconsistency**.-- The word 'inconsistency' implies antagonism, opposition, repugnance. 'Inconsistence' is a word of broad signification, implying contradiction, qualities which cannot co-exist, not merely a lack of uniformity in details and judicially defined as meaning contradictory, inharmonious, logically incompatible, contrary, the one to the other, so that both cannot stand, mutually repugnant or contradictory. Things are said to be inconsistent when they are contrary the one to the other, or, so that one infers the negation, destruction, or falsity of the other. The term has been compared with 'incompatible'. (42 C.J.S. 541, 542).
>
> 'Inconsistent' means 'mutually repugnant or contradictory, contrary, the one implies the abrogation or abandonment of the other; as, in speaking of inconsistent defences or the repeal by a statute of all laws inconsistent herewith.-- ***Berry v. City of Fort Worth-tax Civil Appeal 110 A.W. 21 at p. 25 103)***.
>
> 'Inconsistency' implies opposition, antagonism, repugnance. One definition of 'inconsistency' given

by the Lexicons is repugnance and one definition given of 'repugnance' is inconsistency. These words, though not exactly synonymous, may be, and often are, used interchangeably, and such are their use in regard to statutes; as being inconsistent.--Words and Phrases, Permanent Ed., 10th, p. 342; ***Premchand Jain v. Regional Transport Authority, Gwalior***, [1977 M.P. L.J. 94 at p. 98 (F.B.)].

**Inconsistent**.--A thing is said to be consistent if it is in conformity with or congruous with the other. In other words, what is not inconsistent is consistent. The word 'inconsistency' is used with reference to two laws, a stage where there is an impossibility of simultaneous operation of both laws. It signifies the idea of incompatibility. In case, therefore, where two laws can exist side by side, one law cannot be said to be inconsistent with the other.-- ***Smt. Chandra Rani v. Vikram Singh*** [(1979) 5 A.L.R. 56 at p. 83 (All.)].

In **Clyde Engineering Co. Ltd. v. Cowburn, (1926) 37 Com. W.L.R. 466**, the learned Judge observed thus:--

> “When is a law 'inconsistent' with another law? Etymologically, I presume that things are inconsistent when they cannot stand together at the same time; and one law is inconsistent with another law when the command or power or other provision in one law conflicts directly with the command or power or provision in the other. Where two Legislatures operate over the same territory and come into

> collision, it is necessary that one should prevail; but the necessity is confined to actual collision, as when one Legislature says 'do' and the other says 'don't'."

According to Griffith, C.J., 'the test of inconsistency is, of course, whether a proposed act is consistent with obedience to both directions'. The opinion of the majority (Knox, C.J., and Gavan Duffy, J., with the concurrence of Isaacs, J.) was:

> "Two enactments may be inconsistent although obedience to each of them may be possible, without disobeying the other. Statutes may do more than impose duties; they may, for instance, confer rights; and one statute is inconsistent with another when it takes away a right conferred by that other even though the right be one which might be waived or abandoned without disobeying the statute which conferred it' -- Indian Oil Corporation v. C.D. Singh, (1972) 24 F.L.R. 372 at pp. 382-83."

12. The word 'inconsistency' came up for consideration by this Court in Chittaranjan Cotton Mills Ltd. v. Staff Union (PLD 1971 SC 197). In that case the decision in Arbitration between John Knight and Tabernacle Permanent Building Society [(1891) L.J.Q.B. 633] was relied upon for concluding that "inconsistency would result if the obligations imposed by the subsequent Act "would be so at variance with the machinery and procedure indicated by the previous Act that if that obligation were added, the machinery of the previous Act would not work"."

18. It is on the basis of of Articles 215 and 225 of the Constitution of India and Section 23 of the Contempt of Courts Act, 1971, the High Court of

Kerala has framed "the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971 and published in the Kerala Gazette Extraordinary No.39 dated 04.10.1988, which came into force on the same day itself. Rules 6, 7 and 9 of the Rules,1988 read thus:

> "**6. Taking cognizance**.-- Every proceedings for contempt shall be dealt with by a Bench of not less than two Judges:
>
> Provided that a proceeding under Section 14 of the Act shall be dealt with by the Judge or Judges in whose presence or hearing the offence is alleged to have been committed and in accordance with the provisions thereof;
>
> Provided further that where civil contempt is against in respect of the judgment, decree, direction, order, writ or other process of a Single Judge, the matter shall be posted before that Judge who shall hold the preliminary enquiry in the matter. The Judge, if satisfied that no *prima facie* case has been made out, as it is not expedient to provide with the matter, may dismiss the petition. If a *prima facie* case is made out and unconditional apology is not tendered by the respondent and accepted by the Court, the Judge may direct that the matter be posted before the Bench dealing with contempt matters;
>
> Provided that where the Judge concerned is not available, the Chief Justice may direct the application be posted before some other Judge for orders.
>
> **7. Initiation of *suo motu* proceedings, on information**.- (I) Any information other than petition under Rule 3 or reference or any petition for initiation of criminal contempt other than those mentioned in Section 15 of the Contempt of Court Act shall, in the first instance, be placed before the Chief Justice on the Administrative side.

(ii) If the Chief Justice, or such other Judge as may be designated by him for the purpose, considers it expedient or proper to take action under the Act, he shall direct that the said information be placed for a preliminary hearing

Provided that if action for Contempt of Court is directed to be taken by any Judge or Judges in any proceedings before the High Court, the same shall be placed before the appropriate Bench.

(iii) When *suo motu* action is taken by the High Court, the statement of facts constituting the alleged contempt and the copy of the draft charges shall be prepared and signed by the Registrar.

**9. Preliminary hearing and notice**.- (i) Every petition, reference, information or direction shall be placed for preliminary hearing before the appropriate Bench.

(ii) (a) The Court, if satisfied that the *prima facie* case has been made out, may direct issue of notice to the respondent, otherwise, it shall dismiss the petition or drop the proceedings.

(b) The notice shall be in Form No.I and shall be accompanied by a copy of the petition, reference, information or direction and annexures, if any, thereto."

19. The aforesaid rules delineate provisions to deal with a Contempt of Court case. The Kerala High Court Act, 1958 is an Act to make provision regulating the business and the exercise of the powers of the High Court of the State of Kerala. Section 3 of the Act, 1958 deals with the powers of the Single Judge and it reads thus:

"**3. Powers of Single Judge**. - The powers of the High Court in relation to the following matters may be exercised by a Single Judge, provided that the Judge before whom the matter is posted for hearing may adjourn it for being heard and determined by a Bench of two judges:-

(1) Determining in which of several courts having jurisdiction a suit shall be heard.

(2) Admission of an appeal in *forma pauperis*

(3) Exercise 'or' (it could only be 'of') original jurisdiction under any law for the time being in force.

(4) Exercise of the powers under Section 115 of the Code of Civil Procedure, 1908 and under Section 22 of the Kerala Small Cause Courts Act, 1957.

(5) Any matter of an interlocutory character in appeals and other proceedings.

(6) Admission of an appeal presented after the expiry of the period allowed by the law of limitation.

(7) Admission of an appeal from the judgement or order of any criminal court.

(8) Exercise of the power to revise the proceedings of any criminal court;

Provided that in the exercise of such power a Single Judge shall not impose a sentence of death or imprisonment for life.

(9) Exercise of the powers conferred by sections 426 and 498 of the Code of Criminal Procedure, 1898.

(10) Exercise of powers under -

(i) Section 24 of the Code of Civil Procedure, 1908;

(ii) Sections 526 and 526A of the Code of Criminal Procedure, 1898;

(iii) Clause (1) of Article 226 of the Constitution of India except where such power relates to the issue of a writ of the nature of *Habeas Corpus*; and

(iv) Articles 227 and 228 of the Constitution of India.

(11) Exercise of the power under sub-section (2) of Section 19 of the Kerala Civil Courts Act, 1957.

(12) A report under Section 438 of the Code of Criminal Procedure, 1898.

(13) An appeal -

(a) from a judgment or order of a Criminal Court, except in cases in which the appellant or a person tried with him has been sentenced to death or imprisonment for life;

Provided that in the exercise of such power a Single Judge shall not impose a sentence of death or imprisonment for life;

[(b) from an original decree or order in any suit or other proceeding, where the amount or value of the subject matter of the suit or other proceeding does not exceed [Forty lakh rupees.]]

(c) from an original decree when such appeal relates to costs only;

(d) from an order under Section 104 of the Code of Civil Procedure, 1908, except an order of the kind mentioned in clause (h) of sub-section (1) of the said section or in clauses (c), (d) or (j) of Rule 1 of Order XLIII of the First Schedule to the said Code;

(e) from an appellate decree or order;

(f) under Section 79 (3) of the Insolvency Act, 1955; and

(g) under Section 476B of the Code of Criminal Procedure, 1898.

[(h) from an award passed by the Motor Accidents Claims Tribunal.]"

20. Section 4 of Act, 1958 deals with the powers of a Bench of two Judges, and it reads thus:

"**4. Powers of a Bench of two Judges**. - The powers of the High Court in relation to the following matters may be exercised by a Bench of two Judges, provided that if both Judges agree that the decision involves a question of law they may order that the matter or question of law be referred to a Full Bench:-

(1) Any matter in respect of which the powers of the High Court can be exercised by a Single Judge.

(2) An appeal -

(a) from a decree or order of a civil court, except those coming under Section 3;

(b) from the judgement of a criminal court in which a sentence of death or imprisonment for life has been passed on the appellant or on a person tried with him.

(3) A reference -

(a) under Section 113 of the Code of Civil Procedure, 1908;

(b) under Section 307, Section 374 or Section 432 of the Code of Criminal Procedure, 1898.

(4) An application under Rule 2 of order XLV of the First Schedule to the Code of Civil Procedure, 1908.

(5) An application for the exercise of the powers conferred by Section 491 of the Code of Criminal Procedure, 1898 or by clause (1) of Article 226 of the Constitution of India where such power relates to the issue of a writ of the nature of *habeas corpus*.

(6) An appeal from any original judgement, order or decree passed by a Single Judge.

(7) All matters not expressly provide for in this Act or in any other law for the time being in force."

21. Section 5 of Act, 1958 speaks about appeal from judgment or order of Single Judge, and it reads thus:

**"5. Appeal from Judgment or order of Single Judge**.- An appeal shall lie to a Bench of two judges from--

(i) a judgment or order of a Single Judge in the exercise of original jurisdiction; or

(ii) a judgment of a Single Judge in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of original jurisdiction by a subordinate court; [**********]

(iii) [****]"

22. By virtue of the powers conferred by Article 225 of the Constitution of India, Section 122 of the Code of Civil Procedure, 1908, and all the other provisions enabling in this behalf, with the previous approval of the Government of Kerala vide G.O(MS) No.241/70/Home dated 19.11.1970, and after previous publication, the High Court of Kerala has framed the Rules, 1971.

23. Chapter XII of the Rules, 1971 deals with Contempt Proceedings. Rules 165 and 166 are relevant to the context and they read thus:

> "**165. Application for punishment for contempt**.--(a) An application for punishment for contempt shall be registered as a Original Petition (Contempt);
>
> (B) The application shall be accompanied by a memorandum of charges with a statement of the facts constituting the contempt and shall be supported by an affidavit.
>
> **166. Posting of the application**.-- The application shall be posted before a Bench of two Judges in accordance with the directions of the Chief Justice."

24. Sections 12 and 10 of the Contempt of Courts Act, 1971 empower the High Court to take cognizance of contempt alleged to have been committed in respect of High Court or, in respect of courts subordinate to it, and to impose a punishment of simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees or with both. As per Section 14 of the Contempt of Courts Act, 1971, the Supreme Court, as well as the High Court, is vested with powers to initiate *suo motu* action where contempt is in the face of the Supreme Court or a High Court. Sub-section (3) of Section 14 specifies that notwithstanding anything contained in any other law, in any trial of a person charged with contempt under sub-section (1) which is held, in pursuance of a direction given under sub-section (2), by a Judge other than the Judge or Judges in whose presence or hearing the offence is alleged to have been committed, it

shall not be necessary for the Judge or Judges, in whose presence or hearing, the offence is alleged to have been committed, to appear as a witness, and the statement placed before the Chief Justice under sub-section (2) shall be treated as evidence in the case.

25. It is significant to note that as per Section 15 of the Contempt of Courts Act, 1971, in the case of a criminal contempt, other than the contempt referred to in Section 14, the Supreme Court or the High Court can take action on its motion or on a motion made by,

> (a) the Advocate General, or
>
> (b) any other person, with the consent in writing of the Advocate-General, or
>
> (c) xx xx xxx.

26. As per Section 18 of the Act, every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges. Therefore, reading of Sections 11 and 15 of the Contempt of Courts Act, 1971, makes it clear that there is a clear difference made between civil contempt and criminal contempt.

27. Now let us have a look at the scope of Section 19 of the Contempt of Courts Act, 1971. On an analysis of Section 19, it is manifestly clear that it contemplates an appeal as of right from any order or decision of a Single Judge to a Bench of not less than two judges of the Court; and where the order or decision is that of a Bench, to the Hon'ble Supreme Court. Sub-section (2) of Section 19 specifies that pending any appeal, the appellate

court may order that, (a) the execution of the punishment or order appealed against be suspended; (b) if the appellant is in confinement, he be released on bail; and (c) the appeal be heard notwithstanding that the appellant has not purged his contempt.

28. Sub-Section (3) of Section 19 of the Act stipulates that where any person aggrieved by any order against which an appeal may be filed, satisfies the High Court that he intends to prefer an appeal, the High Court may also exercise all or any of the powers conferred by sub-section (2). sub-section (4) stipulates the time limit for preferring an appeal and in the case of an appeal to a Bench of the High Court, within 30 days; and in the case of an appeal to the Supreme Court, within 60 days from the date of the order appealed against.

29. However, reading of Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Court Act, 1971, (Rules, 1988), makes it clear that every proceedings for contempt shall be dealt with by a Bench of not less than two Judges; provided that a proceeding under Section 14 of the Contempt of Courts Act, 1971 shall be dealt with by the Judge or Judges, in whose presence or hearing, the offence is alleged to have been committed, and in accordance with the provisions thereof. The second proviso to Rule 6 of Rules, 1988 indicates that a Single Judge of this Court has no jurisdiction to take cognizance of a civil contempt, except holding a preliminary enquiry in the matter, and if a *prima facie case* is made out and if

unconditional apology is not tendered by the contemnor, and accepted by the Court, the Judge may direct that the matter be posted before the Bench dealing with contempt matters.

30. As per Section 3(3) of the Kerala High Court, 1958, a learned Single Judge exercises original jurisdiction under any law for the time being in force, and as per sub-section (6) of Section 4 of Act, 1958, a Hon'ble Division Bench exercises powers and jurisdiction on an appeal from any original judgment, order or decree passed by a Single Judge. Therefore, on a conjoint reading of the provisions of Sections 3(3) and 4(6) of the Kerala High Court Act, 1958 and Section 19(1)(a) of the Contempt of Courts Act, 1971, it is clear that an appeal lies to a Bench of not less than two Judges of the Court from the decision of a learned Single Judge.

31. As per Rule 165 of the Rules of the High Court of Kerala, 1971, extracted above, an application for punishment for contempt shall be registered as a Original Petition (Contempt). However, as per Rule 166, the application has to be posted before a Bench of two Judges, in accordance with the directions of the Hon'ble Chief Justice. In this regard, reference to a few decisions of the Hon'ble Supreme Court would be worthwhile to understand the exact legal position of filing an appeal in the context of Section 19 of the Contempt of Courts Act, 1971.

> "(I) In **D.N. Taneja v. Bhajan Lal** reported in (1988) 3 SCC 26, the Hon'ble Supreme Court held thus:

> "8. The right of appeal will be available under Sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt. In this connection, it is pertinent to refer to the provision of Article 215 of the Constitution which provides that every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself. Article 215 confers on the High Court the power to punish for contempt of itself. In other words, the High Court derives its jurisdiction to punish for contempt from Article 215 of the Constitution. As has been noticed earlier, an appeal will lie under Section 19(1) of the Act only when the High Court makes an order or decision in exercise of its jurisdiction to punish for contempt. It is submitted on behalf of the respondent and, in our opinion rightly, that the High Court exercises its jurisdiction or power as conferred on it by Article 215 of the Constitution when it imposes a punishment for contempt. When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.
>
> .....
>
> 12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the Contempt of Courts Act, 1952. It is for the first time that under Section 19(1) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. .....The aggrieved party under Section 19(1) can only be the contemnor who has been punished for contempt of court."

(II) In **State of Maharashtra v. Mahboob S. Allibhoy and Ors.** [(1996) 4 SCC 411], the Hon'ble Apex Court, after considering Section 19(1) of the Contempt of Courts Act, 1971, held thus:

"On a plain reading S.19 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. In other words, 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-s.(1) of S.19 of the Act. As sub-s.(1) of S.19 provides that an appeal shall lie as of right for any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in 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. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under sub-s.(1) of S.19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

4. On a plain reading Section 19 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. In other words, 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. As Sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words 'any order' has to be read with the expression 'decision' used in 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 from saying 'order' or 'decision. In either case, it must be in the nature of punishment for contempt. If the expression 'any order' is read independently of the 'decision' then an appeal shall lie under Sub-section (1) of Section 19 even against any

interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result.

(III) In **Midnapore Peoples' Co-op. Bank Ltd. and Ors. v. Chunilal Nanda and Ors.** reported in (2006) 5 SCC 399, the Hon'ble Apex Court framed the following questions for consideration:

"9. On the aforesaid facts and the contentions urged, the following questions arise for consideration:

(i) Where the High Court, in a contempt proceeding, renders a decision on the merits of a dispute between the parties, either by an interlocutory order or final judgment, whether it is appealable under S.19 of the Contempt of Courts Act, 1971? If not, what is the remedy of the person aggrieved?

(ii) **Where such a decision on merits is rendered by an interlocutory order of a learned Single Judge, whether an intra court appeal is available under Clause.15 of the Letters Patent?**

(iii) In a contempt proceeding initiated by a delinquent employee (against the enquiry officer as also the Chairman and Secretary in charge of the employer Bank), complaining of disobedience of an order directing completion of the enquiry in a time bound schedule, whether the court can direct (a) that the employer shall reinstate the employee forthwith; (b) that the employee shall not be prevented from discharging his duties in any manner; (c) that the employee shall be paid all arrears of salary; (d) that the enquiry officer shall cease to be the enquiry officer and the employer shall appoint a fresh enquiry officer; and (e) that the suspension shall be deemed to have been revoked?

After considering various decisions in *Baradakanta Mishra v. Justice Gatikrushna Misra* (1975 CriLJ 1), *Purushotam Dass Goel v. Justice B.S. Dhillon* (1978 Cri.LJ 772), *Union of India v. Mario Cabral e Sa* (AIR1982SC691) , *D.N. Taneja v. Bhajan Lal* [(1988) 3 SCR 888], *State of Maharashtra v. Mahboob S. Allibhoy* (1996 CriLJ 2879) and *J.S. Parihar v. Ganpat Duggar* (AIR 1997 SC 113), the Hon'ble Apex Court at paragraphs 10 and 11 held thus:

"10. Section 19 of the Contempt of Courts Act, 1971 ['CC Act' for short] provides for appeals.

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

32. Even though the Hon'ble Supreme Court in the decisions extracted above, has only considered the question as to whether an appeal would lie under Section 19(1) of the Contempt of Courts Act, 1971, according to us, one thing significant is that the Hon'ble Apex Court has recognised the statutory right of appeal available to the aggrieved person under Section 19(1) of the Act, 1971. Therefore, it is distinctively clear that there is no ambiguity at all in Section 19 of the Act, 1971 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, (a) where the order or decision is that of a Single Judge to a Bench of not less than two Judges of the Court; and (b) where the order or decision is that of a Bench, to the Supreme Court.

33. Taking into account the provisions of Section 19, right of appeal under Section 19(1) of Act, 1971 is a substantive right and it is trite law that rules framed in exercise of powers under Articles 215 and 225 of the Constitution of India and Section 23 of the Contempt of Courts Act, 1971 are procedural. When a learned Single Judge, under Article 215 of the Constitution of India, is constitutionally and statutorily empowered to take cognizance of contempt, and pass an order or decision in the contempt petition, on the basis of an original jurisdiction, as per the provisions of the Kerala High Court Act, 1958 and under Sections 11 and 12 of the Contempt of Courts Act, 1971, which deals with civil contempt, in Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of

Courts Act, 1971, there is a specific exclusion of exercise of original jurisdiction by a learned Single Judge except holding a preliminary enquiry to find out as to whether there is a *prima facie* case or not, which thus means that a learned Single Judge enjoined with the powers under Article 215 of the Constitution of India, cannot take cognizance of a civil contempt.

34. Having understood the provisions of the Constitution of India as above, the Kerala High Court Act, 1958 and the Contempt of Courts Act, 1971, we are of the definite opinion that Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971, cannot be permitted to overreach the provisions of Constitution of India, in particular, Article 215, and Section 19(1) of the Contempt of Courts Act, 1971.

35. As we have pointed out earlier, Section 18 of the Act, 1971 makes a clear distinction in regard to consideration of a criminal contempt under Section 15, by clearly specifying that it shall be heard only by a Bench of not less than two Judges. Therefore, taking into account all the above legal aspects, we are of the view that Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971, has been framed overlooking the powers under Article 215 of the Constitution of India, in exercise of original jurisdiction by a learned Single Judge, under Section 3(3) of the Kerala High Court Act, 1958, Sections 11 and 12 of the Contempt of Courts Act, 1971, and the same cannot be sustained.

36. To put it otherwise, Rule 6 of the Contempt of Courts (High Court

of Kerala) Rules under the Contempt of Courts Act, 1971, has indirectly taken away the statutory right of an appeal available to an aggrieved person against an order or decision, which requires to be passed by a learned Single Judge and thereby, deprives the statutory right of an appeal under Section 19(1) of the Contempt of Courts Act, 1971.

37. That apart, Section 5 of the Kerala High Court Act, 1958 deals with an appeal from the judgment or order of a learned Single Judge and an appeal shall lie to a Bench of two Judges from,- (1) a judgment or an order of a learned Single Judge in exercise of original jurisdiction; or (2) a judgment of a learned Single Judge in exercise of appellate jurisdiction.

38. In the above factual and legal background, we propose to refer to the following decisions of the Hon'ble Supreme Court.

(i) In **Sukhdev Singh Sodhi v. The Hon'ble Chief Justice S. Teja Singh and Ors.** [AIR 1954 SC 186], the Hon'ble Apex Court had an occasion to consider nature of jurisdiction to punish for contempt, in terms of Article 215 of the Constitution of India and, at paragraphs 4, 5 and 24, held thus:

> “4. The term "special jurisdiction" is not defined in the Code of Criminal Procedure but the words "special law" are defined in Section 41 of the Indian Penal Code to mean "a law applicable to a particular subject." In the absence of any specific definition in the Code of Criminal Procedure we think that that brings out the ordinary and natural meaning of the words "special jurisdiction" and covers the present case. Contempt is a special subject and

the jurisdiction is conferred by a special set of laws peculiar to Court of record.

5. This has long been the view in India. In 1867, Peacock, C.J., laid down the rule quite broadly in these words in In re Abdool and Mahtab 8 W.R. Cr. 52 at 3 :

> "there can be no doubt that every Court of Record has the power of summarily punishing for contempt."

It is true the same learned Judge sitting in the Privy Council in 1893 traced the origin of the power in the case of the Calcutta, Bombay and Madras High' Courts to the common law of England (see Surendranath Banerjea v. Chief Justice and Judges of the High Court of Bengal (1883) 10 I.A. 171 at 179: I.L.R 10 Cal. 109 (P.C.), but it is evident from other decisions of the Judicial Committee that the jurisdiction is broader based than that. But however that may be, Sir Barnes Peacock made it clear that the words "any other law" in Section 5 of the Code of Criminal Procedure do not cover contempt of a kind punishable summarily by the three Chartered High Courts.

…….

24. On reflection it will be apparent that the Code could not be called in aid in such cases, for if the Code applies it must apply in its entirety and in that event how could such proceedings be instituted? The maximum punishment is now limited to six month's simple imprisonment or a fine of Rs. 2,000 or both because of the 1952 Act. Therefore, under the second schedule to the Code contempt would be triable by a High Court and the procedure would have to be a summons procedure. That would take away the right of a High Court to deal with the matter summarily and

> punish, a right which was well established by the case law up to 1945 and which no subsequent legislation has attempted to remove. So also Section 556 could not apply, nor would the rule which prohibits a judge from importing his own knowledge of the facts into the case. We hold therefore that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the condemner made aware of the charge against him and given a fair and reasonable opportunity to defend himself. This rule was laid down by the Privy Council in ***In re Pollard 1863 L.R. 2 P.C. 106 at 120*** and was followed in India and in ***Burma in In re Vallabhas I.L.R.1903 Bom. 394 at 399*** and ***Ebrahim Mamoojee Parekh v. King Emperor 1926 I.L. 4 Ran. 257 at 259-261***. In our view that is still the law."

(ii) In **R.L.Kapur v. State of Madras** reported in (1972) 1 SCC 651, the Hon'ble Supreme Court considered the powers conferred on a High Court under Article 215 of the Constitution of India, and as to whether, the said power is dependent on any Act. At paragraphs 5 & 6, it was held thus:

> "5. The question is, does the power of the High Court of Madras to punish contempt of itself arise under the Contempt of Courts Act, 1952, so that under Section 25 of the General Clauses Act, 1897, Sections 63 to 70 of the Penal Code and the relevant provisions of the Cr.P.C would apply? The answer to such a question is furnished by Article 215 of the Constitution and the provisions of the Contempt of Courts Act, 1952 themselves. Article 215 declares that every High

Court shall be a court of record and shall have all powers of such a court including the power to punish for contempt of itself. Whether Article 215 declares the power of the High Court already existing in it by reason of its being a court of record, or whether the Article confers the power as inherent in a court of record, the jurisdiction is a special one, not arising or derived from the Contempt of Courts Act, 1952, and therefore, not within the purview of either the Penal Code or the Cr.P.C. Such a position is also clear from the provisions of the Contempt of Courts Act, 1952. Section 3 of that Act provides that every High Court shall have and exercise the same jurisdiction, powers and authority in accordance with the same procedure and practice in respect of contempt of courts subordinate to it as it has and exercises in respect of contempts of itself. The only limitation to the power is, as provided by Sub-section 2, that it shall not take cognizance of a contempt committed in respect of a court subordinate to it where such contempt is an offence punishable under the Penal Code. As explained in ***Sukhdev Singh Sodhi v. The Chief Justice and Judges of the Pepsu High Court*** [1954] 1SCR 454, Section 3 of the Act is similar to Section 2 of the 1926 Act, and "far from conferring a new jurisdiction, assumes, as did the Old Act, the existence of a right to punish for contempt in every High Court and further assumes the existence of a special practice and procedure, for it says that every High Court shall exercise the same jurisdiction, powers and authority "in accordance with the same procedure and practice...." In any case, so far as contempt of the High Court itself is concerned, as distinguished from that of a court subordinate to it, the Constitution vests these rights in every High Court, and so no

> Act of a legislature could take away that jurisdiction and confer it afresh by virtue of its own authority. No doubt, Section 5 of the Act states that a High Court shall have jurisdiction to inquire into and try a contempt of itself or of a court subordinate to it whether the alleged contempt is committed within or outside the local limits of its jurisdiction and whether the contemnor is within or outside such limits. The effect of Section 5 is only to widen the scope of the existing jurisdiction of a special kind and not conferring a new jurisdiction. It is true that under Section 4 of the Act the maximum sentence and fine which can be imposed is respectively simple imprisonment for six months and a fine of Rs. 2,000 or both. But that again is a restriction on an existing jurisdiction and not conferment of a new jurisdiction. That being the position, Section 25 in the General Clauses Act, 1897 cannot apply. The result is that Section 70 of the Penal Code is no impediment by way of limitation in the way of the recovery of the fine.
>
> 6. It is true that the deposit was made for a particular purpose, that is, to secure the presence of the appellant at the time of the hearing of the said contempt proceedings. But the High Court, as a court of record, being clothed with a special jurisdiction, has also all incidental and necessary powers to effectuate that jurisdiction. Consequently, it had the power to order satisfaction of fine imposed by it from out of an available fund deposited by or on behalf of or for the benefit of the appellant."

(iii) In **S.K. Sarkar v. Vinay Chandra Misra** reported in **AIR 1981 SC 723**, the Hon'ble Supreme Court having considered the scope of Articles 129 and 215 of the Constitution of India, in regard to the power of High

Court to punish for contempt of itself, at paragraphs 14, 15, 17, 18 and 19 held as under:

> 14. Articles 129 and 215 preserve all the powers of the Supreme Court and the High Court, respectively, as a Court of Record which includes the power to punish the contempt of itself. As pointed out by this Court in ***Mohd. Ikram Hussain v. The State of U.P.*** 1964 CriLJ 590, there are no curbs on the power of the High Court to punish for contempt of itself except those contained in the Contempt of Courts Act. Articles 129 and 215 do not define as to what constitutes contempt of court. Parliament has, by virtue of the aforesaid Entries in List I and List III of the Seventh Schedule, power to define and limit the powers of the courts in punishing contempt of court and to regulate their procedure in relation thereto. Indeed, this is what is stated in the Preamble of the Act of 1971.
>
> 15. Section 2(c) of the Act defines "criminal contempt". Section 9 emphasises that "nothing contained in this Act shall be construed as implying that any disobedience, breach, publication or other act is punishable as contempt of court which would not be so punishable apart from this Act". Section 10 runs as under:
>
> "Every High Court shall have and exercise the same jurisdiction, powers and authority, in accordance with the same procedure and practice, in respect of contempts of courts subordinate to it as it has and exercises in respect of contempts of itself."
>
> Then, there is a proviso which is not material for our purpose. The provision in Section 10 is but a replica of

Section 3 of the 1952 Act. The phrase "courts subordinate to it" used in Section 10 is wide enough to include all courts which are judicially subordinate to the High Court, even though administrative control over them under Article 235 of the Constitution does not vest in the High Court. Under Article 227 of the Constitution the High Court has the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction. The Court of Revenue Board, therefore, in the instant case, is a court "subordinate to the High Court" within the contemplation of Section 10 of the Act.

17. A comparison between the two sub-sections would show that whereas in Sub-section (1) one of the three alternative modes for taking cognizance, mentioned is "on its own motion", no such mode is expressly provided in Sub-section (2). The only two modes of taking cognizance by the High Court mentioned in Sub-section (2) are : (i) on a reference made to it by a subordinate court; or (ii) on a motion made by the Advocate-General, or in relation to a Union Territory by the notified Law Officer. Does the omission in Section 15(2) of the mode of taking suo motu cognizance indicate a legislative intention to debar the High Court from taking cognizance in that mode of any criminal contempt of a subordinate court? If this question is answered in the affirmative, then, such a construction of Sub-section (2) will be inconsistent with Section 10 which makes the powers of the High Court to punish for contempt of a subordinate court, coextensive and congruent with its power to punish for its own contempt, not only in regard to quantum or pre-requisites for punishment, but also in the matter of procedure and practice. Such a construction

which will bring Section 15(2) in conflict with Section 10, has to be avoided, and the other interpretation which will be in harmony with Section 10 is to be accepted. Harmoniously construed, Sub-section (2) of Section 15 does not deprive the High Court of the power of taking cognizance of criminal contempt of a subordinate court, on its own motion, also. If the intention of the Legislature was to take away the power of the High Court to take *suo motu* cognizance of such contempt, there was no difficulty in saying so in unequivocal language, or by wording the sub-section in a negative form. We have, therefore, no hesitation in holding in agreement with the High Court, that Sub-section (2) of Section 15, properly construed, does not restrict the power of the High Court to take cognizance of and punish contempt of a subordinate court, on its own motion.

18. It is, however, to be noted that Section 15 does not specify the basis or the source of information on which the High Court can act on its own motion. If the High Court acts on information derived from its own sources, such as from a perusal of the records of a subordinate court or on reading a report in a newspaper or hearing a public speech, without there being any reference from the subordinate court or the Advocate-General, it can be said to have taken cognizance on its own motion. But if the High Court is directly moved by a petition by a private person feeling aggrieved, not being the Advocate-General, can the High Court refuse to entertain the same on the ground that it has been made without the consent in writing of the Advocate-General? It appears to us that the High Court has, in such a situation, a discretion to refuse to

entertain the petition, or to take cognizance on its own motion on the basis of the information supplied to it in that petition. If the petitioner is a responsible member of the legal profession, it may act *suo motu*, more so, if the petitioner-advocate, as in the instant case, prays that the court should act *suo motu*. The whole object of prescribing these procedural modes of taking cognizance in Section 15 is to safeguard the valuable time of the High Court or the Supreme Court from being wasted by frivolous complaints of contempt of court. If the High Court is *prima facie* satisfied that the information received by it regarding the commission of contempt of a subordinate court is not frivolous, and the contempt alleged is not merely technical or trivial, it may, in its discretion, act *suo motu* and commence the proceedings against the contemnor. However, this mode of taking *suo motu* cognizance of contempt of a subordinate court, should be resorted to sparingly where the contempt concerned is of a grave and serious nature. Frequent use of this *suo motu* power on the information furnished by an incompetent petition, may render these procedural safeguards provided in Sub-section (2), otiose. In such cases, the High Court may be well advised to avail of the advice and assistance of the Advocate-General before initiating proceedings. The advice and opinion, in this connection, expressed by the Sanyal Committee is a pertinent reminder. "In the case of criminal contempt, not being contempt committed in the face of the court, we are of the opinion that it would lighten the burden of the court, without in any way interfering with the sanctity of the administration of justice, if action is taken on a motion by some other agency. Such a course of

> action would give considerable assurance to the individual charged and the public at large. Indeed, some High Courts have already made rules for the association of the Advocate-General in some categories of cases at least...the Advocate-General may, also, move the Court not only on his own motion but also at the instance of the court concerned."
>
> 19. In the peculiar circumstances of the instant case, we do not think that the High Court has acted improperly or illegally in taking *suo motu* cognizance, on the petition of the respondent-advocate."

(iv) In **Pritam Pal v. High Court of Madhya Pradesh, Jabalpur** reported in AIR 1992 SC 904, the Hon'ble Supreme Court considered a question regarding the power of the Supreme Court and High Courts to punish for contempt under Articles 129 and 215 of the Constitution of India, and held that the power is not restricted or trammeled by ordinary legislations and the inherent power conferred on the Supreme Court and the High Courts is elastic, unfettered, and not subject to any limit; the power has to be used sparingly. At paragraphs, 13, 14 and 24, it was observed thus:

> "13. As rightly pointed out by the High Court, these contentions in our opinion do not merit any consideration since every High Court which is a Court of Record is vested with 'all powers' of such Court including the power to punish for contempt of itself and has inherent jurisdiction and inalienable right to uphold its dignity and authority.
>
> 14. Whilst Article 129 deals with the power of the Supreme Court as Court of Record, Article 215 which is analogous

> to Article 129 speaks of the power of the High Court in - that respect.
>
> xx xxx xxxx
>
> 24. From the above judicial pronouncements of this Court, it is manifestly clear that the power of the Supreme Court and the High Court being the Courts of Record as embodied under Articles 129 and 215 respectively cannot be restricted and trammelled by any ordinary legislation including the provisions of the Contempt of Courts Act and their inherent power is elastic, unfettered and not subjected to any limit. It would be appropriate, in this connection, to refer certain English authorities dealing with the power of the superior Courts as Courts of Record."

(v) In **In re: Vinay Chandra Mishra** reported in AIR 1995 SC 2348, the Hon'ble Supreme Court had occasion to consider its power under Article 129 of the Constitution of India in regard to contempt of High Court and, at paragraph 7, held thus:

> "7. We may first deal with the preliminary objection raised by the Contemnor and the State Bar Council, viz., that the Court cannot take cognizance of the contempt of the High Courts. The contention is based on two grounds. The first is that Article 129 vests this Court with the power to punish only for the contempt of itself and not of the High Courts. Secondly, the High Court is also another court of record vested with identical and independent power of punishing for contempt of itself.
>
> The contention ignores that the Supreme Court is not only the highest Court of record, but under various provisions

> of the Constitution, is also charged with the duties and responsibilities of correcting the lower courts and tribunals and of protecting them from those whose misconduct tends to prevent the due performance of their duties. The latter functions and powers of this Court are independent of Article 129 of the Constitution. When, therefore, Article 129 vest this Court with the powers of the court of record including the power to punish for contempt of itself, it vests such powers in this Court in its capacity as the highest court of record and also as a court charged with the appellate and superintending powers over the lower courts and tribunals as detailed in the Constitution. To discharge its obligations as the custodian of the administrations of justice in the country and as the highest court imbued with supervisory and appellate jurisdiction over all the lower courts and tribunals, it is inherently deemed to have been entrusted with the power to see that the stream of justice in the country remains pure, that its course is not hindered or obstructed in any manner, that justice is delivered without fear or favour and for that purpose all the courts and tribunals are protected while discharging their legitimate duties. To discharge this obligation, this Court has to take cognizance of the deviation from the path of justice in the tribunals of the land, and also of attempts to cause such deviations and obstruct the course of justice. To hold otherwise would mean that although this Court is charged with the duties and responsibilities enumerated in the Constitution, it is not equipped with the power to discharge them."

(vi) In **Ram Niranjan Roy v. State of Bihar and Ors.** reported in (2014) 12 SCC 11, the issue considered was with respect to the power of the Hon'ble Supreme Court and High Courts under Articles 129 and 215 of the

Constitution of India and in unequivocal terms, the Hon'ble Apex Court observed that such Courts being Court of Record, its power to deal with contempt of itself is an inherent power; not derived from any Statute, and cannot be abridged, abrogated or cut down by legislation, including Contempt of Courts Act. At paragraph 12 of the said decision, the Hon'ble Apex Court held thus:

> "12. The Appellant's contention that no opportunity was given to him to make his defence must be rejected. In ***Pritam Pal v. High Court of Madhya Pradesh, Jabalpur, through Registrar*** [1993 Supp (1) SCC 529], while dealing with the nature and scope of power conferred upon this Court and the High Court, being courts of record under Articles 129 and 215 of the Constitution of India respectively, this Court observed that the said power is an inherent power under which the Supreme Court and the High Court can deal with contempt of itself. The jurisdiction vested is a special one not derived from any other statute but derived only from Articles 129 and 215. This Court further clarified that the constitutionally vested right cannot be either abridged, abrogated or cut down by legislation including the Contempt of Courts Act."

39. Having read together the Constitutional provisions, provisions of the Kerala High Court Act, 1958, and the Contempt of Courts Act, 1971, we have no hesitation to hold that Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971, takes away the power of a learned Single Judge to consider a contempt petition on its merit.

40. In the light of the proposition of law laid down by the Hon'ble Supreme Court, it is clear that irrespective of the provisions of the rules and statutes, a learned Single Judge is vested with ample powers under Article 215 of the Constitution of India to hear and pass orders in a contempt petition, which is an original petition.

41. On a reading of Section 19 of Act, 1971, it is clear that the Act intended a learned Single Judge to exercise power in a contempt petition in its absolute terms and find as to whether, the contemnor has committed contempt of the judgment/order of the learned Single Judge. In effect, the said power is taken away by Rule 6 of the Rules, 1988, by stipulating that if and when, a *prima facie* case is found out, the contempt petition has to be referred to a Bench of two Judges.

42. Yet another aspect to be considered is that the rules framed cannot overreach the statutory provisions. Rule 6 of the Rules, 1988 is a classic example to show that the rule made under the Rules, 1988 has overreached the powers conferred on a learned Single Judge under Article 215 of the constitution of India, the Kerala High Court Act, 1958 and the Contempt of Courts Act, 1971. Therefore, in all respects, we find material force in the reference order of the learned Single Judge in Cont. Case (C) No.1073 of 2014 dated 09.01.2015 and the law laid down in the decision in ***Jyothilal*** *(cited supra)* is not correct, and not in accordance with law, especially due to the fact that the Hon'ble Division Bench has failed to take

note of the constitutional and statutory powers conferred on a learned Single Judge, as discussed above.

43. Let us also consider a few decisions on the rule overreaching the purpose of the Act as hereunder:

(i) In **Sukhdev Singh v. Bhagat Ram** reported in AIR 1975 SC 1331, a Constitution Bench of the Hon'ble Supreme Court held that the statutory bodies cannot use the power to make rules and Regulations to enlarge the powers beyond the scope intended by the legislature. Rules and Regulations made by reason of the specific power conferred by the statute to make rules and Regulations establish the pattern of conduct to be followed.

(ii) In **State of Karnataka and Anr. v. H. Ganesh Kamath etc.** reported in AIR 1983 SC 550, the Hon'ble Supreme Court held that it is a well settled principle of interpretation of statutes that the conferment of rule making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

(iii) In **Addl. District Magistrate (Rev.) Delhi Admn. v. Siri Ram** [(2000) 5 SCC 451], the Hon'ble Supreme Court observed thus:

> "17. It is well recognised principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P. 5, the rule making authority have exceeded the power conferred on it by the Land Reforms Act."

(iv) In **St. Johns Teachers Training Institute v. Regional Director** reported in AIR 2003 SC 1533, the Hon'ble Apex Court observed that a Regulation is a rule or order prescribed by a superior for the management of some business and implies a rule for general course of action. Rules and Regulations are all comprised in delegated legislation. The power to make subordinate legislation is derived from the enabling Act and it is fundamental that the delegate on whom such a power is conferred has to act within the limit of authority conferred by the Act. Rules cannot be made to supplant the provisions of the enabling Act but to supplement it. What is permitted is the delegation of ancillary or subordinate legislative functions, or, what is fictionally called, a power to fill up details.

(v) In **Malaysian Airlines and Ors. v. The Union of India (UOI) and Ors.** reported in 2010 (6) Bom CR 53, the High Court of Bombay held thus:

> "48. The proper construction of legislative provisions as regards rules and regulations made under the Act fell for consideration in several English and Indian decisions. One of the leading judgment delivered by the Constitution Bench of the Hon'ble Supreme Court in case of **Chief Inspector of Minkes v. Karam Chand Thapar [AIR 1961 SC 838]** can conveniently be referred to repel the construction put on the statutory provision by the advocates appearing for the petitioners. In the said judgment, the Hon'ble Supreme Court has referred to an earlier decision in the case of **Institute of Patent Agents v. Lockwood** [1894 AC 347]; wherein similar question was considered. Hon'ble Supreme Court relied upon the observations of the Lord Chancellor while considering the question as to how far, if at all, the courts could consider

the question of validity of the rules running contrary to the provisions of the Act. The observations made are:

> "No doubt", said he, "there might be some conflict between a rule and a provision of the Act. Well, there is a conflict sometimes between two sections to be found in the same Act. You have to try and reconcile them as best as you may. If you cannot, you have to determine which is the leading provision and which is the subordinate provision, and which must give way to the other. That would be so with regard to enactments and with regard to rules which are to be treated as if within the enactment. In that case probably the enactment itself would be treated as the governing consideration and the rule as subordinate to it.
>
> (emphasis supplied)

50. Apart from the above judgment, the aforesaid principle is also recognized by the Hon'ble Supreme Court in **Union of India v. Somasundram Viswanath [(1989) 1 SCC 175,** wherein the Court ruled that the Act will prevail over the Rules. The rule which travels beyond the scope of Act cannot be given effect to. [also see *Bimal Chandra Banerjee v. State of Madhya Pradesh 81 ITR 105 (SC); Lohia Machines Ltd. v. Union of India 152 ITR 308 (SC); Chowgule & Co. v. C.I.T. 195 ITR 810 (Bom)*]"

(vi) In **Pratap Chandra Mehta v. State Bar Council of Madhya Pradesh and Ors.** [(2011) 9 SCC 573], while discussing about the conferment of extensive meaning, it has been opined that the Court would be justified in giving the provision a purposive construction to perpetuate the object of the Act while ensuring that such rules framed are within the field circumscribed by the parent Act. It is also clear that it may not always be absolutely necessary to spell out guidelines for delegated legislation when discretion is vested in such delegated bodies. In such cases, the language of the rule

framed as well as the purpose sought to be achieved would be the relevant factors to be considered by the Court.

(vii) In **Indian Young Lawyers Association and Ors. v. The State of Kerala and Ors.** [(2019) 11 SCC 1], the Hon'ble Supreme Court observed thus:

> "138. In **General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav** (AIR 1988 SC 876), the Court held that for a Rule to have the effect of a statutory provision, it must fulfill two conditions, firstly it must conform to the provisions of the statute under which it is framed and secondly, it must also come within the scope and purview of the Rule making power of the authority framing the Rule and if either of these two conditions is not fulfilled, the Rule so framed would be void. In **Kunj Behari Lal Butail and Ors. v. State of H.P. and Ors.** (AIR 2000 SC 1069), it has been laid down that for holding a Rule to be valid, it must first be determined as to what is the object of the enactment and then it has to be seen if the Rules framed satisfy the test of having been so framed as to fall within the scope of such general power conferred and if the Rule making power is not expressed in such a usual general form, then it shall have to be seen if the Rules made are protected by the limits prescribed by the parent act. Another authority which defines the limits and confines within which the rule-making authority shall exercise its delegating powers is **Global Energy Limited and Anr. v. Central Electricity Regulatory Commission** [(2009) 15 SCC 570], where the question before the Court was regarding the validity of Clauses (b) and (f) of Regulation 6-A of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for Grant

of Trading Licence and other Related Matters) Regulations, 2004. The Court gave the following opinion:

> "It is now a well-settled principle of law that the rule making power "for carrying out the purpose of the Act" is a general delegation. Such a general delegation may not be held to be laying down any guidelines. Thus, by reason of such a provision alone, the Regulation-making power cannot be exercised so as to bring into existence substantive rights or obligations or disabilities which are not contemplated in terms of the provisions of the said Act."

140. At this stage, we may also benefit from the observations made in **State of T.N. and Anr. v. P. Krishnamurthy and Ors.** [(2006) 4 SCC 517], wherein it was stated that where a Rule is directly inconsistent with a mandatory provision of the statute, then, of course, the task of the court is simple and easy. This implies that if a Rule is directly hit for being violative of the provisions of the enabling statute, then the Courts need not have to look in any other direction but declare the said Rule as invalid on the said ground alone."

44. On the aspect of rules not inconsistent with the provisions of the Act, we deem it fit to consider the decision in **Maharashtra State Board of Secondary and Higher Secondary Education and Ors. v. Paritosh Bhupeshkumar Sheth and Ors.**, (AIR 1984 SC 1543), the Hon'ble Supreme Court held thus:

> "18. In our opinion, the aforesaid approach made by the High Court is wholly incorrect and fallacious.
> The Court cannot sit in judgment over the wisdom of the policy evolved by the legislature and the subordinate regulation-

making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that, in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitations imposed by the Constitution.....

21. **In the light of what we have stated above, the constitutionality of the impugned regulations has to be adjudged only by a three-fold test, namely, (1) whether the provisions of such regulations fall within the scope and ambit of the power conferred by the statute on the delegate; (2) whether the rules/regulations framed by the delegate are to any extent inconsistent with the provisions of the parents enactment and lastly (3) whether they infringe any of the fundamental rights or other restrictions or limitations imposed by the Constitution**....." (emphasis supplied)

45. That apart, in **Assam Co. Ltd. and Another v. State of Assam and Others** [(2001) 4 SCC 202], the Hon'ble Supreme Court held thus:

> "10.....**It is an established principle that the power to make rules under an Act is deprived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any rule made in exercise or such delegated power has to be in consonance with the provisions of the Act, and if the rules goes beyond what the Act contemplates, the rule becomes in excess of the power delegated under the Act, and if it does any of the above, the rule become *ultra vires* of the Act**....." (emphasis supplied)

46. In this context, it is only apposite to say that similar is the situation with Rule 166 of the Rules of the High Court of Kerala, 1971, since it is also a composite provision to deal with other aspects in the Contempt of Courts Act, 1971. In effect, we hold that in a Civil Contempt, a learned Single Judge is vested with ample powers to proceed absolutely to its culmination in a contempt proceeding initiated under the Contempt of Courts Act, 1971, by virtue of constitutional and statutory powers conferred in the Kerala High Court Act, 1958 and the Act, 1971. Therefore, Rule 6 of the Contempt of Courts (High Court of Kerala) Rules under the Contempt of Courts Act, 1971, is struck down as *ultra vires* to the Constitution of India and Section 19(1) of the Contempt of Courts Act, 1971. The reference made doubting the decision in ***Jyothilal*** *(cited supra)* is answered accordingly.

47. In view of the above declaration, we hold that the references made so far, to the Division Bench by the learned Single Judges, have to go back to the respective learned Single Judges, for adjudication. Registry shall take steps to send back all the Civil Contempt cases pending in reference, to the learned Single Judges, as per the roster.

48. Cont. Case (C) Nos.1073 of 2014 & 1139 of 2016 shall also be sent to the learned Single Judge, as per the roster.

Before parting, we express our deep gratitude and appreciation to the learned Senior Counsel Dr. K.P. Satheesan, *Amicus Curiae*, for assisting the Court with all dedication and sincerity.

Sd/-
**S. MANIKUMAR**
**CHIEF JUSTICE**

Sd/-
**SHAJI P. CHALY**
**JUDGE**

krj

//TRUE COPY//

P.A. TO C.J.