IN THE HIGH COURT OF JUDICATURE AT BOMBAY CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3533 OF 2017

Satish Mahadeorao Uke
adult, Indian Inhabitant,
residing at Parvati Nagar,
Nagpur – 440 027
(at present in Mumbai) } Petitioner

versus

1. The Hon' ble the Chief Justice,
High Court of Judicature at
Bombay, through its Registrar
General, High Court,
Mumbai – 400 032

2. The Union of India
represented by its Secretary in
the Department of Legal Affairs,
Ministry of Law and Justice,
Government of India,
New Delhi – 110 011

3. State of Maharashtra
Department of Law and Judiciary,
Mantralaya, Mumbai – 400 032

4. The Bar Council of India
21, Rouse Avenue, Institutional
Area, New Delhi – 110 002

5. The Editor, Times of India
Mumbai 400 001

6. The Editor, Indian Express
Mumbai

7. The Editor, Free Press Journal
Mumbai

8. The Editor, The Hindu
Mumbai

9. The Editor, Lokmat Marathi
Mumbai

Mr. Mathews Nedumpara with Mr. C. J. Joveson i/b. Mr. R. R. Nair for the petitioner.

Mr. Amit Borkar for respondent no. 1.

Mr. Dhanesh R. Shah with Mr. Sandesh Patil for respondent no. 2.

Ms. M. S. Bane – 'B' Panel Counsel for respondent no. 3.

CORAM : - S. C. DHARMADHIKARI & PRAKASH. D. NAIK, JJ.

DATED : - MAY 4, 2017

ORAL JUDGMENT :- (Per S. C. Dharmadhikari, J.)

1. By this writ petition under Article 226 of the Constitution of India, the petitioner claims the following three reliefs:-

> "(a) declare that Sections 2(c), 12, 14 and 15 of the Contempt of Courts Act, 1971 are unconstitutional and void inasmuch as the provisions contained therein are against Part III of the Constitution, for, they are against the first principle of natural justice, which stands enshrined in Articles 14, 20(3) and 21 of the Constitution, diabolic, arbitrary and unjust;
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> (b) declare that the entire proceedings in Criminal Contempt Petition No. 7 of 2016 and unnumbered Criminal Contempt Petition arising out of Order dated 22.02.2017 in Criminal Contempt Petition No. 7 of 2016 pending before the Nagpur Bench of this Hon'ble Court are unconstitutional and *void ab initio*;
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> (c) Issue a writ of mandamus or any other appropriate writ, order or direction directing the Hon'ble the Chief Justice of this Hon'ble Court to consider the petitioner's representations dated 29.08.2016 and 18.02.2017 (Exhibits "E" and "F" hereto) seeking transfer of Criminal Contempt Petition arising out of Order dated 22.02.2017 in Criminal Contempt Petition No. 7 of 2016 pending before

the Nagpur Bench of this Hon'ble Court to any other Bench at the Principal Seat of this Hon'ble Court at Mumbai;

(d) issue a writ in the nature of prohibition or injunction, restraining and prohibiting the Respondents from proceeding any further in furtherance of the orders dated 6.06.2016, 1.02.2017, 8.2.2017, 22.02.2017 and 23rd February, 2017 (Exhibits "A", "C", "D"-"G", "B" and "I" hereto)"

2. At the outset, the contesting respondents to this writ petition, namely, respondent nos. 2 and 3 raise a preliminary objection to the maintainability of this writ petition. Mr. Sandesh Patil appearing on behalf of the Union of India would submit that this writ petition essentially questions the legality, validity and propriety of the order passed against the petitioner by the Nagpur Bench of this court. Mr. Patil relies upon the order passed on 27/28th February, 2017, copy of which was tendered by him in court at a lengthy hearing held on 24th February, 2017. The Suo Moto Criminal Contempt Petition No. 7 of 2016 came to be decided on 27/28th February, 2017. Mr. Patil submits that an attempt is made to reopen the proceedings, which have been concluded by a Bench of this court at Nagpur. Such a writ petition, therefore, cannot be entertained by this court. Mr. Patil has, in that regard, invited our attention to the fact that the present petition was filed on 24th February, 2017. According to him, a perusal of the prayers at page 16 of the paper book, reproduced above, would indicate that the petition is founded on

an understanding that the proceedings before the Nagpur Bench have not attained finality. However, the final judgment delivered on 27/28th February, 2017 would indicate that the proceedings have attained finality. In the judgment, the complete factual position is set out. Once the concluded proceedings have resulted in the delivery of a final judgment recording a conviction of the petitioner-contemnor and sentencing him as well, then, his remedy is to challenge that judgment and order in further appeal. In that regard, Mr.Patil would rely upon section 19 of the Contempt of Courts Act, 1971. He would submit that in the light of clause (b) of sub-section (1) of section 19, an appeal against this court's judgment would lie to the Hon'ble Supreme Court of India. In that, the petitioner can raise all contentions. However, the present proceedings to quash that judgment filed in the principal seat of this court would not be maintainable. Mr. Patil impressed upon us the position in law, namely, that a High Court may have a principal seat and Benches within a State. Nonetheless, it is a single High Court. The Benches of the Bombay High Court do not functions as distinct High Courts. Relying upon the language of Article 214 of the Constitution of India, Mr. Patil submits that for the benefit and convenience of litigants spread over a large area of the State, the Benches may be set up but it is not as if one Bench of the High Court is superior to the other or

the principal seat of the High Court exercises appellate or supervisory powers over the Benches. None is subordinate to the other and all of them together work as Judges of the High Court. Hence, it would be improper, illogical, inappropriate to understand the structure of the High Court in the manner projected by the petitioner. He is a dissatisfied and aggrieved litigant who is not happy with the manner in which he is convicted for criminal contempt by the Nagpur Bench of this High Court. Nevertheless, it is a judgment of the Bombay High Court. It must be impugned only in the higher court and not in this manner before this very High Court. By entertaining such petitions, the unity, functional integrity and homogeneity of this court will be destroyed. The whole institutional edifice will collapse. Mr. Patil submits that the Hon'ble Supreme Court has adequately clarified this legal position.

3. Mr. Patil would submit that even otherwise, this petition is an abuse of the process of this court. A litigant, who suppresses facts and misleads the court is not entitled to be heard on merits. In that regard, reliance is placed by Mr. Patil on a judgment of the Hon'ble Supreme Court of India in the case of *Dalip Singh vs. State of Uttar Pradesh and Ors.*[1]

1 **(2010) 2 SCC 114.**

4. Summarising his contentions on the preliminary objection, therefore, Mr. Patil would submit that we should not entertain this petition also because that would encourage forum shopping. He would submit that the backdrop in which this petition was presented before the principal seat should also be taken into consideration.

5. In meeting this preliminary objection, Mr. Nedumpara would submit that this writ petition cannot be considered to be in the nature of an appeal. He would submit that the writ petition seeks a declaration that sections 2(c), 12, 14 and 15 of the Contempt of Courts Act, 1971 are unconstitutional and void, inasmuch as they violate Part III of the Constitution of India and the principles of natural justice. These principles have been enshrined in Articles 14, 20(3) and 21 of the Constitution of India. Therefore, this petition cannot be construed as an attempt by the petitioner to overreach and get over a binding judgment of this court, which can be assailed and challenged only before the Hon'ble Supreme Court in appeal. There are more fundamental issues which are raised for consideration of this court. Therefore, the preliminary objection should not be upheld.

6. Mr. Nedumpara then submits that the Hon'ble Supreme Court itself has, on several occasions, clarified that if an order is ex-facie null and void, it can be declared as such in collateral proceedings. He would submit that the well settled principle, namely, a defence that a decree of a competent court is a nullity can be set up at any stage and even in collateral proceedings. Such a decree can be assailed even in execution proceedings. Further, if an order passed by this court violates the mandate of the Constitution of India or rights guaranteed to a citizen, particularly of life and liberty, vide Article 21, then, that judgment and order cannot be said to be final, conclusive and binding. He has relied upon the judgments of the Hon'ble Supreme Court of India in the case of *A. R. Antulay vs. R. S. Nayak and Anr.*[2], *Smt. Ujjam Bai vs. State of Uttar Pradesh*[3] and *Rupa Ashok Hurra vs. Ashok Hurra and Anr.*[4] Further, our attention is invited to the written submissions, which have been tendered.

7. In the first part of the written submissions, Mr. Nedumpara has summarised, according to the petitioner, the fundamental

2 **(1988) 2 SCC 602**

3 **AIR 1962 SC 1621**

4 **(2002) 4 SCC 388**

questions of law, which arise for consideration in this petition. He would submit that in Part II of his written submissions, tendered on 13th April, 2017, the petitioner has brought to our notice the draconian nature of the legislation, namely, the Contempt of Courts Act, 1971. He would submit that if the requirement of elementary principles of criminal jurisprudence are not read into the Contempt of Courts Act, 1971 and which ensure a fair trial, then, the Act itself is liable to be declared as unconstitutional, null and void. Therefore, in order to save the Act from the vice of unconstitutionality, according to Mr. Nedumpara, we must read in it the principles of criminal jurisprudence and Articles 13(2), 14, 19, 20(3) and 21 of the Constitution of India so also the provisions of the Code of Criminal Procedure and the Indian Evidence Act, 1872.

8. Then, the further arguments in writing, which are tendered, according to Mr. Nedumpara, would point out the serious flaws in the process of convicting and sentencing the petitioner for criminal contempt. Mr. Nedumpara would submit that the petitioner has been convicted under the Contempt of Courts Act, 1971 and sentenced to undergo simple imprisonment for a period of two months and to pay a fine of Rs.2,000/- and in default of payment of fine, he should undergo simple imprisonment for a

further period of fifteen days. The petitioner is restrained from instituting any proceedings in any court or tribunal for enforcement of his legal rights, wherein any kind of reference is made against the registry of this court, any lawyer, Government Pleader or any sitting judge of this court. Mr. Nedumpara would submit that these written submissions would demonstrate as to how the court has not adhered to the basic tenets of fairness, justice and equity. Merely because the petitioner proceeds to allege that some of the sitting judges of this court had not treated him fairly and properly during the course of the proceedings that does not mean that he is guilty of criminal contempt. The whole attempt is not allow him to raise any grievance, particularly on the conduct of these sitting judges. He would submit, therefore, that the proceedings culminating in the order passed by this court on 28th February, 2017 reflect clear abuse of power resulting in travesty of justice. For all these reasons, he would submit that the writ petition be allowed.

9. We gave our anxious consideration to the rival contentions. The petition is by one Satish Mahadeo Uke, who is a resident of Nagpur. He has filed this petition at the principal seat. The averments are that he is practicing as an advocate before the Nagpur Bench of this court since his enrollment in 2007. The

petitioner has been proceeded against under the Contempt of Courts Act, 1971. The petitioner, after referring to certain provisions of the Act, points out that here was an order passed in Civil Revision Application No. 26 of 2016 on 6th June, 2016 by a learned Single Judge at Nagpur. Based on that order, Contempt Petition No. 7 of 2016 (Suo Moto Proceedings) was initiated against him. A copy of this order is annexed as Exhibit 'A' to the petition. This order was passed in an application seeking recusal by the Hon'ble Judge from hearing Civil Revision Application No. 26 of 2016. That application was instituted by the petitioner seeking true copies of certain documents, which were produced by the Government Pleader in Criminal Application No. 1081 of 2015. This was in an original matter seeking quashing of criminal proceedings against the present Chief Minister of Maharashtra. He sought quashing of the criminal complaint by instituting Criminal Application No. 824 of 2014. The Chief Minister, though a co-petitioner along with others, did not actually sign the application or the vakalatnama in favour of one advocate Mr. Parate. One Mr. Madanlal Parate acted as a proxy for the Chief Minister though he was not named as accused in the FIR lodged at Sitabuldi Police Station, Nagpur.

10. The petitioner had instituted Election Petition No. 1 of 2014

seeking a declaration that the election of Mr. Devendra Fadnavis to the State Assembly is null and void. The petitioner would submit that Criminal Application No. 824 of 2014 and other applications therein were heard by a Division Bench at Nagpur, which comprised of a Hon'ble sitting Judge, according to the petitioner, perceived to be close to Mr. Devendra Fadnavis. Therefore, the petitioner alleged that, that particular Hon'ble Judge should recuse himself from hearing the matter. The petitioner has fairly stated that this is what his perception is and the present petition does not contain the entire facts, but only the crux of his view. Then, the petitioner makes an allegation against the Hon'ble Judge, to whom the election petition was assigned. He says that this election petition and Civil Revision Application No. 26 of 2016 was assigned to a Hon'ble Judge whose family is close to the Hon'ble Chief Minister. That is how the petitioner felt it appropriate to seek recusal of the Hon'ble Judge. The Hon'ble Judge, therefore, was moved with an application for recusal and in writing. This application was placed before him. The Hon'ble Judge noticed that the same refers to certain documents and contains allegations, which amount to criminal contempt. The petitioner has set out, from para 9 onwards, as to how he had an occasion to question the allotment of certain plots of land and by filing a Public Interest Litigation. It is not necessary to refer to

the same, for the simple reason that the petitioner feels that one of the members of the Bench, to whom the matter was assigned, was not fit to take it up for the reasons set out by the petitioner. In Criminal Contempt Petition No. 7 of 2016 as well a recusal application was filed. The applications were rejected and the Bench was pleased to order initiation of fresh contempt proceedings.

11. The petitioner annexes a copy of the order dated 22nd February, 2017 in that regard. He would, therefore, submit that on the date of filing of this petition, the Hon'ble Judge, who was not fit to take up the matter, continued to hear the criminal contempt proceedings. Thus, this is a clear conflict of interest.

12. It is in these circumstances that the petitioner would submit that there was an order passed on 1st February, 2017, by which, the petitioner was restrained from instituting any proceedings in any court or tribunal for enforcement of his legal rights, wherein any kind of reference is made against the registry of this court, any lawyer, Government Pleader or any sitting judge of this court. There is another order passed on 8th February, 2017 directing the petitioner to surrender his passport and deposit a sum of Rs.2,00,000/- for security for his appearance.

13. It is in these circumstances that the petitioner states that he addressed various letters to the Hon'ble the Chief Justice seeking constitution of another Bench. The petitioner also sought leave to appeal against the orders passed in Criminal Application No. 5 of 2017 in Suo Moto Criminal Contempt Petition No. 7 of 2016. Even that leave was denied and the plea was rejected vide order dated 8th February, 2017. The petitioner was also not granted further time to file counter affidavit.

14. Once again when the matter was listed on 22nd February, 2017, the Bench rejected the petitioner's plea, particularly of recusal.

15. It is in these circumstances that the petitioner sought assistance of certain lawyers in Mumbai and engaged one of them so as to make applications before the Nagpur Bench for an adjournment of the case and seeking exemption from personal appearance. The petitioner was granted time till 27th February, 2017. The petitioner understands this opportunity as a liberty to institute a comprehensive writ petition so as to raise issues on the constitutional validity of the Contempt of Courts Act, 1971. However, the time granted for that purpose, according to him,

was not sufficient. The petitioner was further faced with an order of 23rd February, 2017.

16. It is in the above circumstances that the petitioner raises a further plea and particularly the grounds on which he seeks a declaration that the Contempt of Courts Act, 1971 is unconstitutional and to be declared as such.

17. Mr. Nedumpara has raised several contentions with regard to the constitutional validity of the Contempt of Courts Act, 1971. However, the challenge is raised essentially to impugn the proceedings resulting in the conviction and sentencing of the petitioner for criminal contempt. The backdrop in which this challenge is raised, therefore, cannot be lost sight of. The petitioner was fully aware that the proceedings for criminal contempt are initiated against him by a Bench of this court at Nagpur. The proceedings are before that Bench and that he would have to face the charge before that Bench itself. Once the petitioner was served with a notice in the Suo Moto Criminal Contempt proceedings, it was open for him to raise all the pleas, including that he cannot be proceeded against by invoking the law, which is ex-facie and patently unconstitutional. He does nothing of that kind. He awaits the ultimate outcome of the proceedings and when the final judgment and order was about to

be pronounced, he tries to pre-empt that by institution of this petition. This petition was moved before a Bench presided over by one of us (S. C. Dharmadhikari, J.) on 24th February, 2017. That was moved before us because the Bench presided over by the Hon'ble the Chief Justice was not available on that day. Ordinarily, all matters raising the issue of constitutional validity and vires of an Act of Parliament or of the State Legislature are to be heard by the First Court. However, neither the First Court nor the court presided over by the immediate senior judge was available. It was then stated that the two Hon'ble Judges, namely, Hon'ble Mr. Justice V. M. Kanade and Hon'ble Mr. Justice N. H. Patil have already directed that the matters, in which Mr. Nedumpara is appearing, may not be placed before them. Since these oral statements were made, we allowed the mater to be mentioned before the Bench presided over by one of us (S. C. Dharmadhikari, J.). Then, this court considered the issue of grant of any protection till the First Court is available. The power of transfer of any proceedings from the Benches of this court to the Principal Seat or vice versa are reserved in the Hon'ble the Chief Justice. It is only that authority which can exercise this power. Therefore, no relief of transfer of the sou moto criminal contempt proceedings from the Bagpur Bench to the prncial seat was granted and the matter was directed to be placed before an

appropriate Bench after verification by the Registry. Thereafter, it was informed that the matter has been assigned to the Bench presided over by one of us (S. C. Dharmadhikari, J.). That is how on 15th March, 2017 the matter was placed before the Bench presided over by one of us (S. C. Dharmadhikari, J.). We granted time so as to comply with the procedural rules and objections. Later on, when the assignment of judicial work was changed, on 7th April, 2017, this matter was placed before us and thereafter, we heard it extensively on 26th April, 2017. We have noticed from the averments in the writ petition as also the written arguments that the entire attempt is to question the legality and validity of the proceedings (Criminal Contempt Petition No. 7 of 2016) and its outcome by the judgment and order dated 27/28th February, 2017.

18. It is too well settled to require any reference to a precedent that legality and validity of an order passed by a Bench of this court cannot be considered by a coordinate Bench as it has no powers in the nature of an appeal. It cannot upset, overturn or set aside a judgment of a coordinate Bench of this court as if it is vested with the appellate powers. It is only a higher court and which can exercise such a power. In the instant case, we find that the petitioner was proceeded against on the ground that he has

committed criminal contempt. The term “criminal contempt” is defined in section 2(c) of the Contempt of Courts Act, 1971. The petitioner ought to be aware that this court is vested with a power to take cognizance of criminal contempt. In the case of a criminal contempt other than the contempt referred to in section 14, the Hon’ble Supreme Court or the High Court may take action on its own motion or on a motion made by the Advocate General or any other person with the consent in writing of the Advocate General or in relation to the High Court for the Union Territory of Delhi, such Law Officer as the Central Government may, by a notification in Official Gazette, specify in this behalf or any other person, with the consent in writing of such Law Officer. This is the mandate of sub-section (1) of section 15 and by sub-section (2) in the case of 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 the Union Territory as above. By sub-section (3), every motion or reference made under this sub-section shall specify the contempt of which the person charged is alleged to be guilty. Mr. Nedumpara has put in issue the manner in which the petitioner was proceeded against by the Nagpur Bench of this court. He would submit that sub-section (3) of section 15 has not been adhered to. The precise charge or the guilt was not made

known to the petitioner. Yet, the Division Bench proceeded. The petitioner is aware that by section 17 of the Contempt of Courts Act, 1971, the procedure after cognizance is set out. That stage has already reached. The matter reached up to the stage of not only a hearing in terms of section 18 of the Contempt of Courts Act, 1971, but up to the stage of delivery of final judgment. It is apparent from a reading of sub-sectiion (1) of section 18 that every case of criminal contempt shall be heard and determined by a Bench of not less than two Judges. Hence, the instant proceedings had to be heard and determined by a Division Bench of this court sitting at Nagpur as the cognisance of criminal contempt was taken at Nagpur. It is after completion and closure of the proceedings at Nagpur that a writ petition, as is filed before the principal seat, is placed before us for consideration. We are of the view that section 19 of the Contempt of Courts Act, 1971 provides for appeal. That provision reads as under:-

> "**19. Appeals. -** (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-
>
> (a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;
>
> (b) 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."

19. A bare perusal of this provision would indicate as to how, where the order or decision is that of a single Judge, the appeal shall be heard and determined by a Bench of not less than two Judges and where the order or decision is that of a Bench the appeal lies to the Hon'ble Supreme Court of India. The petitioner has this remedy available to him, in which he can not only raise the issue of alleged procedural irregularity, but the alleged illegality, which vitiates the entire proceedings including the final judgment and order in Suo Moto Criminal Contempt Petition No. 7

of 2016. It is open to him to raise appropriate pleas and grounds as to how he was dealt with right from inception of these proceedings. He can always point out that the procedure, as demanded by the statute or by the principles of natural justice, has not been followed. That there is a serious miscarriage of justice is also a plea which he can raise for consideration of the higher court. When all such pleas are available and to be raised before the higher court in a fullfledged appeal, then, all the more we are disinclined to entertain this petition.

20. The petitioner has raised the grounds in the petition, which are akin to an appeal. As we have already adverted to and indicated with sufficient clarity that we are not a court of appeal. We are not a superior or higher court. We are but a coordinate Bench of the same court. The principal seat of this court cannot be said to be an appellate court and which can set aside a judgment of the Division Bench of this court rendered at Nagpur. Similarly, it has no powers by which it can issue binding directions to its own Benches or overturn or reverse their orders and judgments. If there is any defect or lacuna of such serious nature as is projected in this petition, it was open for the petitioner to have brought it to the notice of the very Bench. Even if that plea was of recusal, on rejection thereof, it was open

for him to complain to the higher court. It was also open to him at that stage to request for transfer of the proceedings from Nagpur to the principal seat. That the petitioner awaits, till the final judgment is delivered, for such a plea to be raised, is undisputed. We are called upon and engaged in deciding the correctness and propriety, legality and validity of a final judgment of the coordinate Bench and which, the petitioner knows, binds him. We agree with Mr. Patil that if we follow the course suggested by the petitioner, it would set a very bad precedent. Then every litigant being aggrieved and dissatisfied with the orders and judgments delivered at Nagpur, Aurangabad and Goa (for which State this is a common High Court) would rush to this court's principal seat at Bombay and challenge it. The rule of law would be subverted if routinely such challenges are entertained at the principal seat. Then, nobody would resort to appellate remedies available in law and approach the Hon'ble Supreme Court as is the position before us. Apart from violating judicial discipline, such challenges, if entertained, would mean no order or judgment is final and binding within this court. The successful adversary or litigants like the petitioner would be harassed and vexed repeatedly. There would be no certainty and no finality to any proceedings and orders. Apart therefrom, there will be disharmony and discontent amongst the Judges of this court. No Bench will

respect and have due regard to final orders and judgments of another Bench or the principal seat and vice-versa. Fraternity amongst the judges and real brotherhood would have to be preserved and protected at all costs. Disenchantment and disharmony within the judges of this court cannot be allowed and encouraging it would not be conducive to smooth and efficient administration of justice. That will be a casualty and irrespective of where the cause of action arises every litigant will institute proceedings wherever he finds it convenient and comfortable. Lawyers and litigants will take their chances and even if the Hon'ble Chief Justice does not exercise his/her power of transfer the proceedings can sometimes go on in a parallel manner before the Benches and the principal seat. The warning sounded by the learned counsel, therefore, ought to be take in the right spirit.

21. We do not think that any of the judgments relied upon by Mr. Nedumpara would assist him, but rather support our conclusion.

22. In the case of *A. R. Antulay's* (supra), the issue raised before the Hon'ble Supreme Court was whether its earlier direction issued on 16th February, 1984 was legal and valid. The next question was whether the commencement of the trial pursuant to this direction is legal and valid. The consequential question is can

and should the Hon'ble Supreme Court recall, withdraw, revoke or set aside the same in the manner sought for by Mr. A. R. Antulay.

23. The facts are pointed out from para 2 onwards. What led to the proceedings before the Hon'ble Supreme Court was the allegation against Mr. A. R. Antulay, the then Chief Minister that being a Chief Minister of Maharashtra, he has indulged in acts of omission and commission, which amount to offences punishable under sections 384, 420 read with 109 and 20(b) of the Indian Penal Code, 1860 so also the then Prevention of Corruption Act, 1947. The respondent before the Hon'ble Supreme Court applied to the Governor of Maharashtra for sanction under section under section 197 of the Code of Criminal Procedure, 1973 and section 6 of the Prevention of Corruption Act, 1947. That matter of sanction apart, a complaint was filed before the Additional Metropolitan Magistrate, Mumbai alleging these offences, but the learned Magistrate refused to take cognizance without sanction for prosecution. Thereafter, a Criminal Revision Application No. 1742 was filed in the High Court by the first respondent against this order of the learned Magistrate. Though the Chief Minister then resigned, a Division Bench of this Court held that sanction was necessary for prosecution of the appellant-Mr. A. R. Antulay and the High Court rejected the request of the complainant-R. S.

Nayak to transfer the case from the Additional Chief Metropolitan Magistrate to itself. Thereafter, the Governor of Maharashtra granted the sanction. A fresh complaint was filed based on this sanction and the same was registered as a Special Case No. 24 of 1982. It was submitted that there was no necessity of any sanction with regard to those allegations or those offences, for which the Governor expressly refused sanction, as by that time, Mr. A. R. Antulay ceased to be the Chief Minister of the State. There was a process issued without relying on the sanction order, to which, an objection was raised by Mr. Antulay. That objection was to the jurisdiction to take cognizance of the complaint and to issue process in the absence of a notification under section 7(2) of the Criminal Law Amendment Act, 1952 specifying which of the three Special Judges of the area should try such cases. Thereafter, a Government notification was issued notifying the appointment of Mr. R. B. Sule as the Special Judge to try the offences specified under section 6(1) of the 1952 Act. There was an application for discharge, which was allowed holding that the member of Legislative Assembly is a public servant and there was no valid sanction for prosecuting him. On 16th February, 1984, in an appeal filed by complainant-Mr. Nayak, directly under Article 136 of the Constitution of India, the Constitution Bench of the Hon'ble Supreme Court held that a member of the Legislative

Assembly is not a public servant and set aside the order of the Special Judge. Instead of remanding the case to him for disposal in accordance with law, the Hon'ble Supreme Court suo moto withdrew the Special Case Nos. 24 of 1982 and 3 of 1983 pending on the file of the Special Court, Greater Mumbai and transferred the same to the Bombay High Court with a request to the learned Chief Justice to assign these two cases to a sitting Judge of the High Court for holding a trial day to day. It is in the light of these directions that Mr. Antulay raised a plea that they take away his fundamental as also his legal rights to question the conviction, if any, which ordinarily would have been awarded by the Special Judge, by filing a appeal to the higher court. That legal right of a regular criminal appeal to the High Court is taken away by this somewhat unusual direction.

24. That is how the Hon'ble Supreme Court once again considered the issue and the only question was whether the case, which is triable under the 1952 Act by a Special Judge appointed under section 6 of that Act, could be transferred to the High Court by itself or by the Hon'ble Supreme Court to the High Court for trial by it. The contentions were noted and it is in this context that the observations in the paragraphs relied upon by Mr. Nedumpara were made. Those observations were that the

directions issued by the Hon'ble Supreme Court were given oblivious of the relevant provisions of law and the decision in *Anwar Ali Sarkar's case*. That is how the doctrine of per-incuriam was applied. The Hon'ble Supreme Court rendered a specific finding and opinion that in view of the clear provisions of section 7(2) of the Criminal Law Amendment Act, 1952 and Articles 14 and 21 of the Constitution of India, these directions were legally wrong.

25. Before us, the situation is not the same. Before us, the argument centers around the manner in which the Division Bench proceeded to take cognizance of the criminal contempt alleged against the petitioner and thereafter issued notice to him, summoned him to appear and answer the allegations. The argument is, before doing all this, there ought to have been a clear and precise notice containing the charge and an opportunity to answer it. The petitioner, therefore, complains that there is no reasonable opportunity to defend in the absence of a clear notice and charge. This is not akin to what the Hon'ble Supreme Court had to decide in Mr. Antulay's case. The petitioner would definitely have such an opportunity if he challenges the final judgment in the Hon'ble Supreme Court in terms of section 19(1) of the Contempt of Courts Act, 1971. We cannot entertain a

petition like this merely because it contains a prayer that the Contempt of Courts Act, 1971 itself is unconstitutional. In the garb of considering the constitutional challenge, we cannot go behind the final and binding judgment of this court. Mr. Nedumpara was at pains to point out that the judgment is neither final nor binding and the principle of res-judicata has no application for the petitioner had never been treated fairly and all proceedings in the criminal contempt petition are null and void ab-initio. We are unable to agree with him for more than one reason. Firstly, the judgment of this court and a lengthy and reasoned one recites as to how the proceedings came to be initiated, how the petitioner was noticed and how he was informed about the clear and precise allegation and the charge against him. In what circumstances the court was compelled to proceed against him has also been indicated in the judgment. If every factual statement therein is to be assailed before us, then, we would be contravening the judicial discipline as indicated above. We have also noticed that when the present petition was filed, the petitioner contended that the criminal contempt petition was still being heard. That was not correct in the sense the judgment itself indicates as to how the Nagpur Bench proceeded to deliver the final verdict in the matter. In these circumstances, we cannot, in the garb of entertaining the challenge to the

constitutional validity of an Act, set at naught the proceedings before the Division Bench. In these circumstances, we cannot accept the argument of the Petitioner based on the case of *Ujjam Bai* (supra). That case had a distinct issue before the Hon'ble Supreme Court for consideration. The plea raised on behalf of Ujjam Bai was that an order of assessment made by the authority under a taxing statute, which is intra vires and in the undoubted exercise of its jurisdiction cannot be challenged on the sole ground that it is based on a misconstruction of a provision of the Act or of a notification issued thereunder. Nor can the validity of such an order be questioned in a petition under Article 32 of the Constitution of India. In dealing with such a controversy, the Hon'ble Supreme Court, relying upon well settled principles, made observations in para 15. Mr. Nedumpara would invite our attention to the observations in the judgment of His Lordship S. K. Das, J. in para 15. These observations pertain to the concept of jurisdiction. If there is an authority to decide and whenever a judicial or quasi judicial tribunal is empowered or required to inquire into a question of law or fact for the purpose of giving a decision on it, its findings thereon cannot be impeached collaterally or on an application for certiorari but are binding until reversed in appeal. Where a quasi judicial authority has jurisdiction to decide a matter, it does not lose its jurisdiction by

coming to a wrong conclusion, whether it is wrong in law or in fact. It is this solitary principle, which is reiterated and precisely following it that we have arrived at a conclusion that the present petition cannot be entertained. We do not think that the judgment in the case of *Ujjam Bai* (supra), therefore, carries the matter any further.

26. As far as the judgment delivered by the Five Judge Bench in the case of *Rupa Ashok Hurra* (supra), that is a reference made to the Constitution Bench by a three Judge Bench and the issue was whether an aggrieved person is entitled to any relief against a final judgment/order of the Supreme Court, after dismissal of review petition, either under Article 32 of the Constitution of India or otherwise. In answering that, the Hon'ble Supreme Court held as under:-

> "7. Having carefully examined the historical background and the very nature of writ jurisdiction, which is a supervisory jurisdiction over inferior Courts/Tribunals, in our view, on principle a writ of certiorari cannot be issued to co-ordinate courts and a fortiori to superior courts. Thus, it follows that a High Court cannot issue a writ to another High Court; nor can one Bench of a High Court issue a writ to a different Bench of the same High Court; much less can writ jurisdiction of a High Court be invoked to seek issuance of a writ of certiorari to the Supreme Court. Though, the judgments/orders of High Courts are liable to be corrected by the Supreme Court in its appellate jurisdiction under Articles 132, 133 and 134 as well as under Article 136 of the Constitution, the High Courts are not constituted as inferior courts in our constitutional scheme. Therefore, the Supreme Court would not issue a writ under Article 32 to a High Court. Further, neither a smaller Bench nor a larger Bench of the Supreme Court

can issue a writ under Article 32. It is pointed out above that Article 32 can be invoked only for the purpose of enforcing the fundamental rights conferred in Part III and it is a settled position in law that no judicial order passed by any superior court in judicial proceedings can be said to violate any of the fundamental rights enshrined in Part III. It may further be noted that the superior courts of justice do not also fall within the ambit of State or other authorities under Article 12 of the Constitution.

8. In *Naresh Shridhar Mirajkar and Ors. vs. State of Maharashtra* AIR 1967 SC 1: 1966 (3) SCR 744, some journalists filed a Writ Petition in the Supreme Court under Article 32 of the Constitution challenging an oral order passed by the High Court of Bombay, on the Original Side, prohibiting publication of the statement of a witness given in open court, as being violative of Article 19(1)(a) of the Constitution of India. A Bench of nine learned Judges of this Court considered the question whether the impugned order violated fundamental rights of the petitioners under Article 19(1)(a) and if so whether a writ under Article 32 of the Constitution would issue to the High Court. The Bench was unanimous on the point that an order passed by this Court was not amenable to the writ jurisdiction of this Court under Article 32 of the Constitution. Eight of the learned Judges took the view that a judicial order cannot be said to contravene fundamental rights of the petitioners. Sarkar, J. was of the view that the Constitution does not contemplate the High Courts to be inferior courts so their decisions would not be liable to be quashed by a writ of certiorari issued by the Supreme Court and held that this Court had no power to issue a writ of certiorari to the High Court. To the same effect are the views expressed by Shah and Bachawat, JJ. Though, in his dissenting judgment Hidayatullah,J. (as he then was) held that a judicial order of the High Court, if erroneous, could be corrected in an appeal under Article 136 of the Constitution, he, nonetheless, opined that the impugned order of the High Court committed breach of the fundamental right of freedom of speech and expression of the petitioners and could be quashed under Article 32 of the Constitution by issuing a writ of certiorari to the High Court as subordination of the High Court under the scheme of the Constitution was not only evident but also logical. In regard to the apprehended consequences of his proposition, the learned Judge observed:

> "It was suggested that the High Courts might issue writs to this Court and to other High Courts and one Judge or Bench in the High

> Court and the Supreme Court might issue a writ to another Judge or Bench in the same Court. This is an erroneous assumption. To begin with the High Courts cannot issue a writ to the Supreme Court *because the writ goes down and not up. Similarly, a High Court cannot issue a writ to another High Court. The writ does not go to a court placed on an equal footing in the matter of jurisdiction*. Where the county court exercised the powers of the High Court, the writ was held to be wrongly issued to it (See : New Par Consols, Limited, In re]." (Emphasis supplied)"

9. In *A. R. Antulay vs. R. S. Nayak and Anr*. [1988 (2) SCC 602], the question debated before a seven-Judge Bench of this Court was whether the order dated February 16, 1984, passed by a Constitution Bench of this Court, withdrawing the cases pending against the appellant in the Court of Special Judge and transferring them to the High Court of Bombay with a request to the Chief Justice to assign them to a sitting Judge of the High Court for holding trial from day to day. [R. S. Nayak vs. A. R. Antulay (1984) 2 SCC 183], was a valid order. It is relevant to notice that in that case the said order was not brought under challenge in a petition under Article 32 of the Constitution. Indeed, the appellant's attempt to challenge the aforementioned order of the Constitution Bench before this Court under Article 32 of the Constitution, turned out to be abortive on the view that the writ petition under Article 32, challenging the validity of the order and judgment passed by the Supreme Court as nullity or otherwise incorrect, could not be entertained and that he might approach the court with appropriate review petition or any other application which he might be entitled to file in law. While so, in the course of the trial of those cases the appellant raised an objection in regard to the jurisdiction of the learned Judge of the High Court to try the cases against him. The learned Judge rejected the objection and framed charges against the appellant, which were challenged by him by filing a Special Leave Petition to appeal before this Court wherein the question of jurisdiction of the High Court to try the cases was also raised. It was numbered as Criminal Appeal No.468 of 1986 and was ultimately referred to a seven- Judge Bench. By majority of 5 : 2 the appeal was allowed and all proceedings in the cases against the appellant before the High Court pursuant to the said order of the Constitution Bench dated February 16, 1984, were set aside and

quashed. Mukharji, Oza and Natarajan, JJ. took the view that the earlier order of this Court dated February 16, 1984 which deprived the appellant of his constitutional rights, was contrary to the provisions of the Act of 1952 and was in violation of the principles of natural justice and in the background of the said Act was without any precedent and that the legal wrong should be corrected ex debito justitiae. Ranganath Misra, J., with whom Ray, J., agreed, while concurring with the majority, observed that it was a duty of the Court to rectify the mistake by exercising inherent powers. Ranganathan, J. expressed his agreement with the view of the majority that the order was bad being in violation of Articles 14 and 21 of the Constitution. However, he held that the said order was not one such order as to be recalled because it could not be said to be based on a view which was manifestly incorrect, palpably absurd or patently without jurisdiction. In that he agreed with Venkatachaliah,J. (as he then was) who gave a dissenting opinion. The learned Judge held that it would be wholly erroneous to characterise the directions issued by a five-Judge Bench as a nullity liable to be ignored and so declared in a collateral attack. However, five learned Judges were unanimous that the Court should act ex debito justitiae. On the question of power of the Supreme Court to review its earlier order under its inherent powers Mukharji, Oza and Natarajan,JJ. expressed the view that the Court could do so even in a petition under Articles 136 or 32 of the Constitution. Ranganath Misra, J. gave a dissenting opinion holding that the appeal could not be treated as a review petition. Venkatachaliah, J. (as he then was) also gave a dissenting opinion that inherent powers of the Court do not confer or constitute a source of jurisdiction and they are to be exercised in aid of a jurisdiction that is already invested for correcting the decision under Article 137 read with Order XL Rule 1 of the Supreme Court Rules and for that purpose the case must go before the same Judges as far as practicable.

10. On the question whether a writ of certiorari under Article 32 of the Constitution could be issued to correct an earlier order of this Court, Mukharji and Natarajan, JJ. concluded that the powers of review could be exercised under either Article 136 or Article 32 if there had been deprivation of fundamental rights. Ranganath Misra, J. (as he then was) opined that no writ of certiorari was permissible as the Benches of the Supreme Court are not subordinate to the larger Benches of this Court. To the same effect is the view expressed by Oza, Ray, Venkatachaliah and Ranganathan, JJ. Thus, in that case

> by majority of 5 : 2 it was held that an order of the Supreme Court was not amenable to correction by issuance of a writ of certiorari under Article 32 of the Constitution."

27. We think that this judgment and the principles laid down therein conclude the issue. We do not think that the judgment in the case of *Rupa Ashok Hurra* (supra) holds anything contrary to the conclusion reached by us.

28. As a result of the above discussion, we uphold the preliminary objection and dismiss this writ petition as not maintainable. We clarify that we have not touched the merits of the matter simply because the challenge itself was held to be not maintainable. Suffice it to note that in two judgments of the Hon'ble Supreme Court of India, in the case of *Arundhati Roy vs. …..*[5] and *C. K. Daphtary and Ors. vs. O. P. Gupta and Ors.*[6], referred and relied on by Mr. Patil, the Contempt of Courts Act, 1971 is held to be constitutionally valid, but it would still be open for the petitioner to raise that issue given the amendments brought to it and by substitution of section 13 and introduction of clauses (a) and (b) by the Amendment Act of 2006. We keep open that issue for decision in an appropriate case.

(PRAKASH.D.NAIK, J.) **(S.C.DHARMADHIKARI, J.)**

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5 **(2002) 3 SCC 343**
6 **1971 (1) SCC 626**