[2026] 10 S.C.R. 418 : 2026 INSC 1128

Sanjay Prasad
v.
Madhusudan Dwivedi & Ors.

(Civil Appeal No. 13745 of 2026)

14 October 2026

[Dipankar Datta* and Sheel Nagu, JJ.]

Issue for Consideration

When can an order passed by a Single Judge on an application for contempt be amenable to a challenge in an intra-court appeal; are all orders passed in contempt proceedings prior to the imposition of punishment, though essentially interlocutory in nature and capable of affecting the rights of the parties, to be regarded as having been passed in the exercise of criminal jurisdiction so as to attract the bar u/r.5, Allahabad High Court Rules, 1952 against maintainability of a Special Appeal.

Headnotes†

Reference to Larger Bench – *Ram Kishan Fauji v. State of Haryana* (3 Judge Bench decision) reported as [2017] 4 SCR 553, while considering the scope of the expression 'criminal jurisdiction' occurring in the applicable Letters Patent, proceeded on the basis that where the subject-matter of the writ proceeding had its genesis in criminal law, the jurisdiction exercised by the Single Judge u/Art.226 would be regarded as criminal jurisdiction, thereby attracting the exclusion of an intra-court appeal – Construction of 'criminal jurisdiction' in *Ram Kishan Fauji* cannot apply *ex proprio vigore* in contempt proceedings – Doubts as to whether it laid down correct law on the interpretation of the Letters Patent governing the relevant high courts, the text of Art.226, and settled judicial principles regarding the exercise of power thereunder – *Ram Kishan Fauji* referred for consideration by an appropriate Bench:

Held: A principle evolved in writ jurisdiction dealing with a criminal *lis* cannot be transplanted *en bloc* into the *sui generis* jurisdiction of contempt – To do so would be to let the origin of the dispute determine the nature of jurisdiction actually exercised –

* Author

Reasoning in paragraph 45 of *Ram Kishan Fauji* is confined to its own statutory context and is not of universal application – Under a Letters Patent which generally allows an appeal from the judgment of a Single Judge to a Division Bench and entails no exclusion in respect of an order passed in exercise of writ jurisdiction, merely because the subject-matter of the proceeding has its roots in criminal law, there is no warrant to read into that provision an exclusion which the Letters Patent itself does not contain – A broad-brush description of contempt as criminal, quasi-criminal, or possessing attributes of criminal proceedings cannot, *ipso facto*, attract exclusion against orders passed in the exercise of contempt jurisdiction – The determinative question is not whether contempt entails punitive consequences, but what jurisdiction the Court was actually exercising when it passed the order impugned – Nomenclature alone cannot answer that question – An unqualified extension of *Ram Kishan Fauji* to all proceedings for contempt cannot be acceded to – If mere possibility of punishment were sufficient to place contempt within the fold of 'criminal jurisdiction', the carefully sustained distinction between the *sui generis* contempt jurisdiction and the ordinary criminal jurisdiction would lose its meaning, and the principle recognised in *Chunilal Nanda* would be rendered precarious – Criminal jurisdiction is the authority of the court to entertain, try and decide that criminal proceeding arising out of the criminal matter – It is the power to adjudicate – It is conferred by the statute, *viz.* the Cr. PC/BNSS or special law in terms of territory, subject matter and hierarchy – The construction of 'criminal jurisdiction' in *Ram Kishan Fauji* cannot apply *ex proprio vigore* in contempt proceedings – Writ remedy u/Art.226, being a public law remedy, its invocation presupposes a public law element, *i.e.*, infringement of a legally protected right and failure of public duty – Existence of the jurisdiction does not depend on whether the factual matrix originates in civil or criminal law – What is relevant is the nature of the grievance: whether a legally protected right has been infringed and also as to whether the right claimed is capable of being judicially enforced through a writ – The subject matter of a writ petition, whether having its roots in contract, service, taxation or criminal complaint is not decisive of the nature of jurisdiction; what is decisive is the character of the *lis* and the nature of relief sought – Merely because the right asserted has its origin in a statute containing criminal elements cannot convert the special and exclusive constitutionally conferred 'writ jurisdiction' on the high

courts into ordinary 'criminal jurisdiction' to defeat an intra-court appeal under the Letters Patent – *Ram Kishan Fauji* conflates the high prerogative writ jurisdiction with the ordinary criminal jurisdiction, and creates an asymmetry: an intra-court appeal arising out of a writ petition, for instance, in a land acquisition matter or in a taxation matter, would be permitted, which might involve infringement of Art.300A or Art.265 of the Constitution, respectively, which are non-Fundamental Rights, but when it comes to loss of liberty of a citizen u/Art.21, he cannot – He would have, in such case, no other remedy but to approach this Court u/Art.136 – Not many people can afford to travel to Delhi to file a special leave petition – Long distance is not the only disabling factor; heavy expenses for boarding/lodging and for the proper presentation of a case and reasonable representation before this Court are also involved, notwithstanding what science and technology have helped the system to achieve – Access to justice is a facet of Arts.14 and 21 – The wide and expansive writ jurisdiction which could be exercised by a Division Bench (an appeal being a continuation of the *lis*) has been judicially restricted and curtailed in pursuance of an approach adopted in *Ram Kishan Fauji*, which tends to violate Arts.14 and 39A; resultantly, it is access to justice which is rendered a casualty – Matter referred for consideration by an appropriate Bench, subject to such order as the Chief Justice of India may issue on the administrative side – Terms of reference framed: Does the decision in *Ram Kishan Fauji v. State of Haryana* (2017) 5 SCC 533 correctly interpret the Letters Patent governing the various high courts on maintainability of intra-court appeals in the light of the nature of jurisdiction conferred by Art.226 of the Constitution; does the ratio not, effectively, negate proper access to justice at the intra-court appellate level, apart from creating a division in Art.226 not contemplated by the framers of the Letters Patent or the Constitution; should the decision in *Ram Kishan Fauji* be revisited in view of the discussions in paragraphs 49 to 51 of the present judgment. [Paras 41, 43, 45-52]

Allahabad High Court Rules, 1952 – Intra-court appeal – If maintainable, against the order of a Single Judge passed on an application for contempt (arising out of a writ petition) – Writ petition filed by respondents was allowed; direction issued for consideration of the candidature of the respondents for recruitment to the post of Assistant Prosecution Officers –

Appellant rejected respondents' candidature, compliance affidavit filed – Impugned order passed by Single Judge in contempt proceeding rejecting the affidavit, directing appearance of the Additional Chief Secretary in person for the purposes of proceeding further in the matter including framing of charges – Whether the law permits a Special Appeal to be presented by the appellant thereagainst:

Held: On facts and in the circumstances, the appellant could have presented a Special Appeal, and it is not correct to contend that such an appeal would not lie – Compliance affidavit containing the order of rejection passed in purported compliance with the order dtd.17.03.2026, has been rejected – Whether or not the Single Judge exceeded his jurisdiction in so rejecting is a matter that the appellant can urge the Bench having determination to hear Special Appeals to examine – Contentions raised by the appellant not examined on merits, left open to be urged in a Special Appeal, which the appellant may present within a fortnight from the date of this order if so advised – For a period of two months from the date of the present judgment, the contempt petition before the Single Judge shall remain stayed. [Paras 53, 54, 56]

Words and Phrases – Criminal matter; criminal proceeding and criminal jurisdiction – Distinction:

Held: Criminal matter, criminal proceeding and criminal jurisdiction though inter-related are conceptually distinct – A criminal matter is the genus – It denotes the subject matter which has a criminal flavour, where penal consequence is involved – A crime committed, an offence alleged punishable under the IPC/BNS, an FIR or a complaint requiring investigation/inquiry- all are criminal matters at large – When that criminal matter is brought before a court of law or a competent authority in the form prescribed by law- be it an FIR, a complaint u/s.200, Cr. PC/s.223, BNSS, a charge-sheet, a bail application, a revision, an appeal- the matter ripens and takes the form of a criminal proceeding – Every proceeding therefore is a matter, but every matter may not have yet become a proceeding – Criminal jurisdiction is the authority of the court to entertain, try and decide that criminal proceeding arising out of the criminal matter – It is the power to adjudicate – It is conferred by the statute, *viz.* the Cr. PC/BNSS or special law in terms of territory, subject matter and hierarchy – A criminal matter gives rise to a criminal proceeding, which in turn can only be decided by a

Court in exercise of its criminal jurisdiction – It is a progression: matter-> proceeding-> jurisdiction. [Para 47]

Intra-Court Appeal – When maintainable, against the order of a Single Judge:

Held: An intra-court appeal would lie, if permitted by the relevant Letters Patent or the relevant rules framed by a high court from the order of a Single Judge passed on an application for contempt (arising out of a writ petition) answering the tests of a 'judgment' as explained in clauses (i) to (iii) of paragraph 15 of *Chunilal Nanda* in cases/situations such as: (i) an order issuing direction to a party who was either not bound by the original/parent order, or, who was originally not a party to the writ proceedings, except where such party steps into the shoes of the original respondent and the obligation to secure compliance rests on him; (ii) an order requiring compliance with the original/parent order once again, upon examining the correctness of the purported order of compliance and rejecting such order; (iii) an order which travels beyond the original/parent order, of which contempt is alleged, and issues directions not present in the original/parent order; and (iv) an order deciding disputed questions of fact/law having the effect of finally determining rights of parties. [Para 33]

Allahabad High Court Rules, 1952 – r.5 – Are all orders passed in contempt proceedings prior to the imposition of punishment, though essentially interlocutory in nature and capable of affecting the rights of the parties, to be regarded as having been passed in the exercise of criminal jurisdiction so as to attract the bar u/r.5 against maintainability of a Special Appeal:

Held: No – If indeed that is regarded as the correct legal position, no interim order passed in the exercise of contempt jurisdiction can be the subject matter of challenge in a Special Appeal u/r.5 on its plain text, much less orders as are referred to in paragraph 69 of the decision in *Subhash Chandra* – In effect, no order other than an order of punishment imposed by a Single Judge would be amenable to an intra-court appeal except u/s.19(1) of the Contempt of Courts Act, 1971, and in every such case where the Judge seized of the contempt passes an order determining rights and liabilities, thereby meeting the test of a judgment as explained in *Chunilal Nanda*, the jurisdiction of this Court

u/Art.136 would seem to be the sole remedy – *Quasi* is the Latin for 'resembling, but not actually being' – In law, when it is said that a proceeding is quasi-judicial in nature, what is meant is that such proceeding has some attributes of a judicial proceeding but is not the latter in the strict sense and does not carry all the trappings thereof – In light of the said meaning, contempt being quasi-criminal in nature means that it resembles criminal law in its consequences of conviction and punishment, but is not actually criminal prosecution – The trial is neither for an offence punishable under the Indian Penal Code, 1860/Bharatiya Nyaya Sanhita, 2023/other penal laws nor is the guilt determined in terms of the procedure spelt out in the Code of Criminal Procedure, 1973/Bharatiya Nagarik Suraksha Sanhita, 2023/other procedural laws – Since proceedings for 'civil contempt' are not resolved in exercise of 'criminal jurisdiction', the precedents holding to the contrary may no longer be good law. [Paras 36-38]

Appeal – Right of appeal, not a matter of procedure but a substantive, vested and valuable right:

Held: A right of appeal, being a creature of a statute, is not a matter of procedure but a substantive, vested and valuable right – However, where the language conferring a right of appeal is ambiguous or admits of two constructions, the Court must lean in favour of an expansive interpretation, not a restrictive one – It is the construction which enlarges and sustains the right, thereby, advancing the remedy that must be preferred to a narrow and constricted view which impairs or defeats such right – This particular aspect missed the notice of this Court while deciding *Ram Kishan Fauji*. [Para 51]

Case Law Cited

Ram Kishan Fauji v. State of Haryana **[2017] 4 SCR 553 : (2017) 5 SCC 533 – doubted, referred for consideration by an appropriate Bench.**

Ajay Kumar Bhalla v. Prakash Kumar Dixit **[2024] 7 SCR 1044 : (2024) 12 SCC 159 – held not applicable.**

J.S. Parihar v. Ganpat Duggar **[1996] Supp. 6 SCR 110 : (1996) 6 SCC 291;** *Lalith Mathur v. L. Maheswara Rao* **(2000) 10 SCC 285;** *Niaz Mohd. v. State of Haryana* **[1994] Supp. 3 SCR 720 : (1994) 6 SCC 332;** *Kapildeo Prasad Sah v. State of Bihar* **[1999]**

Supp. 1 SCR 725 : (1999) 7 SCC 569; *Ashok Paper Kamgar Union v. Dharam Godha* **(2003) 11 SCC 1;** *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda* **[2006] Supp. 2 SCR 986 : (2006) 5 SCC 399;** *Commissioner of Income Tax, Bombay & Anr. v. Ishwarlal Bhagwandas* **[1966] 1 SCR 190 : AIR 1965 SC 1818;** *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.* **[2021] 14 SCR 204 : (2021) 6 SCC 258;** *U.N. Bora v. Assam Roller Flour Mills Assn.* **[2021] 10 SCR 484 : (2022) 1 SCC 101;** *High Court of Judicature at Allahabad v. Raj Kishore Yadav* **[1997] 2 SCR 429 : (1997) 3 SCC 11;** *Abhishek Gupta v. Dinesh Kumar* **[2025] 12 SCR 479 : 2025 SCC OnLine SC 2739;** *Tamilnad Mercantile Bank Shareholders Welfare Assn. v. S.C. Sekar* **[2008] 17 SCR 85 : (2009) 2 SCC 784;** *Sujitendra Nath Singh Roy v. State of West Bengal* **[2015] 3 SCR 535 : (2015) 12 SCC 514;** *ECL Finance Ltd. v. Harikrishan Shankarji Gudipati* **[2017] 11 SCR 1036 : (2018) 13 SCC 142;** *Vinita M. Khanolkar v. Pragna M. Pai* **[1997] Supp. 5 SCR 593 : (1998) 1 SCC 500;** *Pritam Singh v. State* **[1950] SCR 453 : AIR 1950 SC 169;** *Anita Kushwaha v. Pushap Sudan* **[2016] 9 SCR 560 : (2016) 8 SCC 509 – referred to.**

Subhash Chandra v. Srikant Goswami, **2024 SCC Online ALL 5435;** *Hub Lal Yadav v. Mahendra,* **2017 ADJ Online 0638;** *Jagdamba Prasad v. Balgovind,* **Neutral Citation No. - 2016 AHC 77023-DB;** *Sheet Gupta v. State of U.P.,* **AIR 2010 All 46 (FB) – referred to.**

List of Acts

Contempt of Courts Act, 1971; Allahabad High Court Rules, 1952; Constitution of India; Penal Code, 1860; Bharatiya Nyaya Sanhita, 2023; Code of Criminal Procedure, 1973; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Intra-court appeal; Letters Patent; Rule 5, Allahabad High Court Rules, 1952; Intra-court appeal in contempt proceedings; Special Appeal; 'criminal jurisdiction'; *Ram Kishan Fauji* referred; *ex proprio vigore; sui generis* jurisdiction of contempt; Constitutionally conferred 'writ jurisdiction'; Ordinary 'criminal jurisdiction'; *sui generis* contempt jurisdiction; Intra-court appellate level; *Quasi;* Matter referred for consideration by appropriate Bench; Reference to Larger Bench; Access to justice; Articles 14 and 21 of the Constitution of India; Articles 14 and 39A of the Constitution of India.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 13745 of 2026

From the Judgment and Order dated 03.09.2026 of the High Court of Judicature at Allahabad, Lucknow Bench in CAC No. 2648 of 2026

Appearances for Parties

Advs. for the Appellant(s):
K.M. Nataraj, A.S.G., Sharan Dev Singh Thakur, Sr. A.A.G. Ms. Ruchira Goel, Ms. Indira Bhakar, Sharanya, Anuj Udupa, Ms. Rishika Rishabh.

Advs. for the Respondent(s):
Dr. Amrendra Nath Tripathi, Sr. Adv., Gunjan Kumar, Ankit Kumar, Kamal Singh Bisht.

Judgment / Order of the Supreme Court

Order

Dipankar Datta, J.

1. Although the issue under consideration has engaged the attention of this Court in the past and appears to be no longer *res integra*, it continues to arise with regularity and calls for further clarity and, if possible, a conclusive determination.

2. When can an order passed by a Single Judge on an application for contempt be amenable to a challenge in an intra-court appeal is the broad issue that has engaged our attention in the course of hearing of this appeal, which is directed against an interim order dated 3rd September, 2026[1] passed by a Single Judge of the High Court of Judicature at Allahabad, Lucknow Bench[2] in a pending application for contempt[3].

1 impugned order

2 High Court

3 Contempt Application (C) No. 2648 of 2026

3. The appeal is at the instance of the alleged contemnor before the High Court. He is aggrieved by the impugned order which, *inter alia*, records as follows:

> 7. The reasons indicated in the above referred paragraphs of order 02.09.2026 are not justified for rejecting the claim of the petitioner(s)-applicant(s). It is for the following reason(s): -
>
> (i) While passing the order dated 17.03.2026 the Writ Court considered the fact related to pendency of Special Appeal challenging the order dated 13.12.2019 passed in Writ Petition No.25178(SS) of 2018.
>
> (ii) The delay in filing the special Appeal (Defective) No.161/2021 till date has not been condoned and therefore, the Special Appeal cannot be treated as Special Appeal in the eyes of law.
>
> (iii) The order of Writ Court dated 13.12.2019 by which the Writ Court directed the side opposite to accommodate the petitioner(s)-applicant(s) on the vacant posts is still intact as the same is neither set aside, nor modified nor stayed.
>
> (iv) The authorities were under obligation to comply the order of the Writ Court and therefore as per order of the Writ Court dated 13.12.2019 inclusion of 19 posts in the requisition itself was bad in law.
>
> (v) From a conjoint reading of order(s) dated 17.03.2026 and 13.12.2019, which is intact till date, passed by the Writ Court it is crystal clear that the State is under obligation to appoint the petitioner(s)-applicant(s) on the posts of Assistant Prosecution Officer.
>
> 8. For the aforesaid reason(s), compliance affidavit is hereby rejected.
>
> 9. List this case on 17.09.2026.
>
> 10. In case the order of the Writ Court is not complied with, the officer concerned namely Sri …, Additional

> Chief Secretary, Department of Home, Govt. of U.P., Civil Secretariat, Lucknow shall appear in person for the purposes of proceeding further in the matter which includes framing of charges.
>
> 11. It is to be noted that Sri … and therefore notice need not to be issued.

4. Mr. Nataraj, learned Additional Solicitor General appearing for the appellant, invited our attention to the order dated 17th March, 2026 of the writ court allowing the writ petition[4] of the respondents, of which contempt has now been alleged. According to him, the writ court, after quashing the Office Memorandum dated 28th July, 2020 and a consequential communique dated 14th August, 2020, had directed consideration of the candidature of the respondents for recruitment to the post of Assistant Prosecution Officers. The said order was duly complied with by the appellant, who rejected the respondents' candidature *vide* order dated 2nd September, 2026; and such order was made part of the record by filing a compliance affidavit of even date.

5. Referring to ***J.S. Parihar v. Ganpat Duggar***[5], Mr. Nataraj contended that once an order had been passed in compliance with the order of the writ court, such order could not have been judicially reviewed in exercise of contempt jurisdiction; the resulting order could be right or wrong but a wrong order cannot by any stretch of imagination be held to amount to deliberate or wilful violation and, thus, civil contempt within the meaning of Section 2(b) of the Contempt of Courts Act, 1971[6].

6. Relying on ***Lalith Mathur v. L. Maheswara Rao***[7], Mr. Nataraj argued that a contempt court would exceed its jurisdiction if it were to examine the validity or correctness of the order purportedly passed in compliance with the court's order; the proper course, in such a situation, is to institute a fresh writ petition.

7. Mr. Nataraj finally contended that, irrespective of the above, it is well established that for a person to be held in contempt – or

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4 WRIT A No. 8997 of 2022

5 (1996) 6 SCC 291

6 1971 Act

7 (2000) 10 SCC 285

even for issuance of a notice of contempt – a clear case of wilful disobedience of an order passed by the court must be made out, i.e., a deliberate action to lower the prestige, dignity and majesty of the court. Reliance in this connection was placed on the decisions in ***Niaz Mohd. v. State of Haryana***[8], ***Kapildeo Prasad Sah v. State of Bihar***[9] and ***Ashok Paper Kamgar Union v. Dharam Godha***[10]. However, it was contended by him that by rejecting the compliance affidavit and, a *fortiori*, the order rejecting the candidature of the respondents, there is every likelihood of the Single Judge, in the present case, granting a substantive relief which the writ court did not even grant under threat of contempt proceedings.

8. Mr. Nataraj, therefore, sought quashing of the order under appeal, with liberty to the respondents to pursue legal remedy in accordance with law.

9. In course of hearing, we had queried Mr. Nataraj as to whether a Special Appeal under the Allahabad High Court Rules, 1952[11] framed by the High Court lies against the impugned order. He answered in the negative.

10. According to Mr. Nataraj, the impugned order is not one passed in exercise of the jurisdiction to punish for contempt; hence, an appeal under Section 19 of the 1971 Act would not be maintainable. Decisions have been cited in support of such a proposition, which we need not refer to in view of our agreement with the ratio laid down therein.

11. Mr. Nataraj has further referred to Rule 5 of Chapter VIII of the Rules framed by the High Court providing for a Special Appeal and contended that since jurisdiction to punish for contempt is essentially an exercise of criminal jurisdiction, no Special Appeal would lie from the impugned order.

12. Heavy reliance has been placed on paragraph 11(V) of the decision in ***Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda***[12] to

8 (1994) 6 SCC 332

9 (1999) 7 SCC 569

10 (2003) 11 SCC 1

11 Rules

12 (2006) 5 SCC 399

contend that an intra-court appeal would be available if the Rules of the High Court provide for the same. Rule 5, it was contended, does not provide for an appeal and hence, no Special Appeal would be maintainable before the Division Bench of the High Court.

13. Reference was further made by Mr. Nataraj to a 3-Judge Bench decision of this Court in ***Ajay Kumar Bhalla v. Prakash Kumar Dixit***[13], in support of the contention that it is only the jurisdiction under Article 136 of the Constitution of India, 1950[14] that is open to be availed of by the appellant against the impugned order.

14. A recent decision of the Division Bench of the High Court in ***Subhash Chandra v. Srikant Goswami***[15] has also been referred to us by Mr. Nataraj, which, according to him, has considered multiple precedents laid down by this Court and the High Court. He has submitted that in view thereof, the jurisdiction of this Court under Article 136 is the only available remedy.

15. ***Subhash Chandra*** (supra), however, held that a Special Appeal would lie from the order or judgment of a Single Judge in contempt cases where the court, seized of the allegation of contempt, oversteps its jurisdiction by addressing the merits of the original dispute, ensuring that the substantive rights of the parties are protected in the gamut of the extant rules framed by the relevant high court *qua* availability of intra-court appeals.

16. Since we propose not to examine the impugned order on its own merits but confine our consideration only to the question as to whether the law permits a Special Appeal to be presented by the appellant against it, learned counsel for the respondents was not called upon to answer.

17. On facts and in the circumstances, we are of the considered opinion that the appellant could have presented a Special Appeal, and it is not quite correct to contend that such an appeal would not lie.

18. Certain basic principles need reiteration. The power to punish for contempt flows from Article 215 of the Constitution. Jurisdiction under Article 215 is *sui generis,* and proceedings for civil contempt, as

13 (2024) 12 SCC 159

14 Constitution

15 2024 SCC Online ALL 5435

defined in Section 2(b) of the 1971 Act, are generally in the nature of a 'Special Civil Jurisdiction'. The 1971 Act merely provides the procedure to be followed as part of due process, which a Judge of a high court must follow while initiating proceedings for contempt. Once information is laid before the court that the contemnors, allegedly, are in contempt of its order leading to issuance of notice, followed by consideration of the defence raised and thereafter a finding as regards guilt is returned upon abidance by the laid down procedure, Section 12 of the 1971 Act while providing for punishment specifies the limits of imprisonment that can be ordered together with the quantum of fine. What 'civil contempt' is, has been explained in a catena of decisions including ***Dharam Godha*** (supra); however, since we are not concerned with criminal contempt, we need not explore what this Court has said would amount to such contempt.

19. What does the phrase 'civil proceeding' cover? A Constitution Bench in ***S.A.L. Narayan Row v. Ishwarlal Bhagwandas***[16] considered this precise question. The Constitution Bench, while holding that proceedings arising from the imposition of tax fall within the expression 'civil proceeding' occurring in Article 133 of the Constitution, had the occasion to observe as follows:

> **8.** … The expression "civil proceeding" is not defined in the Constitution, nor in the General Clauses Act. The expression in our judgment covers all proceedings in which a party asserts the existence of a civil right conferred by the civil law or by statute, and claims relief for breach thereof. A criminal proceeding on the other hand is ordinarily one in which if carried to its conclusion it may result in the imposition of sentences such as death, imprisonment, fine or forfeiture of property. It also includes proceedings in which in the larger interest of the State, orders to prevent apprehended breach of the peace, orders to bind down persons who are a danger to the maintenance of peace and order, or orders aimed at preventing vagrancy are contemplated to be passed. But the whole area of proceedings, which reach the High Courts is not exhausted by classifying the proceedings

16 AIR 1965 SC 1818

> as civil and criminal. There are certain proceedings which may be regarded as neither civil nor criminal. For instance, proceeding for contempt of court, and for exercise of disciplinary jurisdiction against lawyers or other professionals, such as Chartered Accountants may not fall within the classification of proceedings, civil or criminal. … .
>
> (emphasis ours)

20. Not too long back, a 3-Judge Bench in ***P. Mohanraj v. Shah Bros. Ispat (P) Ltd.***[17], upon a survey of various precedents, held as follows:

> **83.** What is clear from the aforesaid is that though there may not be any watertight distinction between civil and criminal contempt, yet, an analysis of the aforesaid authorities would make it clear that civil contempt is essentially an action which is moved by the party in whose interest an order was made with a view to enforce its personal right, where contumacious disregard for such order results in punishment of the offender in public interest, whereas a criminal contempt is, in essence, a proceeding which relates to the public interest in seeing that the administration of justice remains unpolluted. What is of importance is to note that even in cases of civil contempt, fine or imprisonment or both may be imposed. The mere fact that punishments that are awardable relate to Section 53 IPC would not, therefore, render a civil contempt proceeding a criminal proceeding. There is a great deal of wisdom in the finding of the Sanyal Committee Report that the question whether a contempt is civil or criminal is not to be judged with reference to the penalty which may be inflicted but with reference to the cause for which the penalty has been inflicted.
>
> (emphasis ours)

21. A profitable reference may also be made to the decision in ***U.N. Bora v. Assam Roller Flour Mills Assn.***[18]. There, this Court held:

17 (2021) 6 SCC 258

18 (2022) 1 SCC 101

> **8.** We are dealing with a civil contempt. The Contempt of Courts Act, 1971 explains a civil contempt to mean a wilful disobedience of a decision of the Court. Therefore, what is relevant is the "wilful" disobedience. Knowledge acquires substantial importance qua a contempt order. Merely because a subordinate official acted in disregard of an order passed by the Court, a liability cannot be fastened on a higher official in the absence of knowledge. When two views are possible, the element of wilfulness vanishes as it involves a mental element. It is a deliberate, conscious and intentional act. What is required is a proof beyond reasonable doubt since the proceedings are quasi-criminal in nature. Similarly, when a distinct mechanism is provided and that too, in the same judgment alleged to have been violated, a party has to exhaust the same before approaching the court in exercise of its jurisdiction under the Contempt of Courts Act, 1971. It is well open to the said party to contend that the benefit of the order passed has not been actually given, through separate proceedings while seeking appropriate relief but certainly not by way of a contempt proceeding. While dealing with a contempt petition, the Court is not expected to conduct a roving inquiry and go beyond the very judgment which was allegedly violated. The said principle has to be applied with more vigour when disputed questions of facts are involved and they were raised earlier but consciously not dealt with by creating a specific forum to decide the original proceedings.

22. One need not also strain too hard to look for authorities holding that contempt jurisdiction is an independent jurisdiction of original nature. If any authority is required, one may refer to the 3-Judge Bench decision in ***High Court of Judicature at Allahabad v. Raj Kishore Yadav***[19].

23. Let us now take a look at the Rules framed by the High Court to ascertain the cases/situations where a Special Appeal would lie. The relevant rule reads thus:

19 (1997) 3 SCC 11

Chapter VIII

5. Special appeal:- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction) in respect of a decree or order made by a Court subject to the superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its power of superintendence or in the exercise of criminal jurisdiction or in the exercise of the jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award –

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

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

24. The scheme of Rule 5 was considered by a Full Bench of the High Court in ***Sheet Gupta v. State of U.P.*** [20]. It has been held there, and we too agree that Rule 5 bars a Special Appeal against (i) a judgment/decree or order passed in the exercise of appellate jurisdiction by a court subject to the superintendence of the High Court; (ii) against a judgment/order passed in the exercise of civil revisional jurisdiction; (iii) against a judgment/order passed in the exercise of criminal jurisdiction; (iv) against a judgment/order passed in the exercise of power of superintendence under Article 227 of the Constitution; and (v) against a judgment/order passed in the exercise of jurisdiction under Article 226 of the Constitution by a tribunal, court or statutory arbitrator mentioned in clause (a) and the Government, officer or authority mentioned in clause (b) thereof.

20 AIR 2010 All 46 (FB)

This Court in ***Abhishek Gupta v. Dinesh Kumar***[21], while approving ***Sheet Gupta*** (supra), has held that a Special Appeal would also lie at the instance of a non-party to the writ proceedings wherein any order as is mentioned in clause (b) is under challenge, subject to obtaining leave of the appellate court.

25. Having noted what Rule 5 ordains, we would now consider the decisions cited by Mr Nataraj.

26. ***Chunilal Nanda*** (supra) is a decision of a coordinate Bench of this Court. It considered, at length, the question of the appealability of orders passed in contempt cases. Upon a Bank employee challenging an enquiry initiated against him in a writ petition, a Single Judge of the Calcutta High Court, while allowing the same, directed that the enquiry should be concluded within the period stipulated in the order. The Bank did not complete the enquiry, leading to the filing of an application for contempt alleging a violation of the order. The Single Judge issued notice to the respondents (the officers of the Bank), seeking an explanation as to why they should not be held guilty of contempt. Various directions were passed for replacing the earlier appointed Enquiry Officer and directing that the Bank employee be allowed to resume work and be paid salary and allowances. An appeal to the Division Bench, presented by the officers of the Bank, came to be dismissed, whereupon this Court's jurisdiction under Article 136 was invoked. Two out of the three issues that arose for decision before this Court read:

> (1) 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 Section 19 of the Contempt of Courts Act, 1971? If not, what is the remedy for the person aggrieved?
>
> (2) Where such a decision on merits is rendered by an interlocutory order by a learned Single Judge, whether an intra-court appeal is available under clause (c)(xv) of the Letters Patent?

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27. Noticing the precedents available in the field as well as on consideration of the provisions of the 1971 Act, the Court summed up the position, insofar as the first issue is concerned, as follows:

> **11.** The position emerging from these decisions, in regard to appeals against orders in contempt proceedings may be summarised thus:
>
> *I*. An appeal under Section 19 is maintainable only against an order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt, that is, an order imposing punishment for contempt.
>
> *II*. Neither an order declining to initiate proceedings for contempt, nor an order initiating proceedings for contempt nor an order dropping the proceedings for contempt nor an order acquitting or exonerating the contemnor, is appealable under Section 19 of the CC Act. In special circumstances, they may be open to challenge under Article 136 of the Constitution.
>
> *III*. In a proceeding for contempt, the High Court can decide whether any contempt of court has been committed, and if so, what should be the punishment and matters incidental thereto. In such a proceeding, it is not appropriate to adjudicate or decide any issue relating to the merits of the dispute between the parties.
>
> *IV*. Any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of 'jurisdiction to punish for contempt' and, therefore, not appealable under Section 19 of the CC Act. The only exception is where such direction or decision is incidental to or inextricably connected with the order punishing for contempt, in which event the appeal under Section 19 of the Act, can also encompass the incidental or inextricably connected directions.
>
> *V*. If the High Court, for whatsoever reason, decides an issue or makes any direction, relating to the merits of the dispute between the parties, in a contempt proceedings, the aggrieved person is not without remedy. Such an

> order is open to challenge in an intra-court appeal (if the order was of a learned Single Judge and there is a provision for an intra-court appeal), or by seeking special leave to appeal under Article 136 of the Constitution of India (in other cases).
>
> The first point is answered accordingly.
>
> (emphasis ours)

28. Regarding the second issue, it was held thus:

> **15.** Interim orders/interlocutory orders passed during the pendency of a case, fall under one or the other of the following categories:
>
> (*i*) Orders which finally decide a question or issue in controversy in the main case.
>
> (*ii*) Orders which finally decide an issue which materially and directly affects the final decision in the main case.
>
> (*iii*) Orders which finally decide a collateral issue or question which is not the subject-matter of the main case.
>
> (*iv*) Routine orders which are passed to facilitate the progress of the case till its culmination in the final judgment.
>
> (*v*) Orders which may cause some inconvenience or some prejudice to a party, but which do not finally determine the rights and obligations of the parties.
>
> **16.** The term 'judgment' occurring in clause 15 of the Letters Patent will take into its fold not only the judgments as defined in Section 2(9) CPC and orders enumerated in Order 43 Rule 1 CPC, but also other orders which, though may not finally and conclusively determine the rights of parties with regard to all or any matters in controversy, may have finality in regard to some collateral matter, which will affect the vital and valuable rights and obligations of the parties. Interlocutory orders which fall under categories (*i*) to (*iii*) above, are, therefore, 'judgments' for the purpose of filing appeals under the Letters Patent. On the other hand, orders falling under

categories (*iv*) and (*v*) are not 'judgments' for the purpose of filing appeals provided under the Letters Patent.

29. The decision in ***Chunilal Nanda*** (supra) has guided subsequent coordinate Benches of this Court in deciding the point of maintainability of appeals from orders passed on applications for contempt, viz. ***Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar***[22], ***Sujitendra Nath Singh Roy, v. State of West Bengal***[23] and ***ECL Finance Ltd. v. Harikrishan Shankarji Gudipati***[24], as well as a Bench of three Judges in ***Ajay Kumar Bhalla*** (supra). In the latter decision, the law laid down in ***Chunilal Nanda*** (supra), as regards maintainability of an intra-court appeal against an order on a contempt petition other than an order of punishment, subject to the rules framed by each high court, stands approved.

30. In ***Ajay Kumar Bhalla*** (supra), the respondent was removed from service. The said order of removal was successfully challenged before the writ court. A Division Bench set aside the order of removal from service and observed that the minor penalty proposed by the Disciplinary Authority would be the penalty in the case. While directing his reinstatement with all consequential benefits, but without any back wages, it was also directed that the date of reinstatement will relate to the date of his original removal from service for the purposes of pay fixation, seniority, and all other consequential benefits, including promotions. The order was required to be implemented not later than 8 weeks from the date. Upon an application for contempt being moved by the respondent, a Single Judge held that the contemnors were in contempt of the order insofar as it related to pay fixation, seniority and all other consequential benefits, including promotion. Opportunity was granted to the contemnors to issue a fresh order granting promotion to the respondent in the manner as directed. It was observed that if the contemnors did not issue appropriate orders granting the respondent promotion within the time granted, the case would be heard for sentencing on the next date of hearing. A letters patent appeal was filed against the order of the Single Judge, whereupon the Division Bench rejected the said appeal as not being

22 (2009) 2 SCC 784

23 (2015) 12 SCC 514

24 (2018) 13 SCC 142

maintainable on the ground that an appeal under Section 19 of the 1971 Act would not be maintainable since the Single Judge had imposed no punishment and the observations made by the Single Judge were not to be construed as crystallising any right in favour of the respondent. The order of dismissal was carried in appeal before this Court. In the circumstances, the narrow issue which fell for consideration was whether the letters patent appeal against the order of the Single Judge was maintainable.

31. We may profitably quote the relevant passage from the said decision hereunder:

> **17.** The judgment of the Division Bench lost sight of the fact that whether the appeal was maintainable would have to be construed on a plain reading of the judgment of the Single Judge. Two aspects were covered by the judgment of the Single Judge:
>
> (*i*) Firstly, a finding that the appellants were guilty of contempt of the order dated 24-12-2019; and
>
> (*ii*) Secondly, that the respondent was entitled to promotion to the rank of IG.
>
> The first aspect is not amenable to an appeal under Section 19 at the present stage. The finding that the respondent was entitled to promotion to the rank of IG would be amenable to an appeal in terms of the law laid down by this Court in *Midnapore Peoples' Coop. Bank*, more particularly in para 11(V) which has been extracted above.

32. The decision in ***Ajay Kumar Bhalla*** (supra), therefore, does not advance the cause of the appellant.

33. Without attempting to give an exhaustive list, we think that an intra-court appeal would lie, if permitted by the relevant Letters Patent or the relevant rules framed by a high court from the order of a Single Judge passed on an application for contempt (arising out of a writ petition) answering the tests of a 'judgment' as explained in clauses (i) to (iii) of paragraph 15 of ***Chunilal Nanda*** (supra) in cases/situations such as: (i) an order issuing direction to a party who was either not bound by the original/parent order, or, who was originally not a party to the writ proceedings, except where such party steps

into the shoes of the original respondent and the obligation to secure compliance rests on him; (ii) an order requiring compliance with the original/parent order once again, upon examining the correctness of the purported order of compliance and rejecting such order; (iii) an order which travels beyond the original/parent order, of which contempt is alleged, and issues directions not present in the original/parent order; and (iv) an order deciding disputed questions of fact/law having the effect of finally determining rights of parties.

34. At this stage, it needs no emphasis that no appeal under Section 19(1) of the 1971 Act would be maintainable unless an order is passed by a Single Bench punishing a contemnor in the exercise of its jurisdiction to punish for contempt.

35. Though the matter could have rested here, for further clarity and possible conclusive determination, we need to delve deeper into a question arising from the text of Rule 5. Rule 5 bars a Special Appeal from an order passed in criminal jurisdiction and we have noticed decisions of the High Court, referred to in ***Subhash Chandra*** (supra), that contempt proceedings being *quasi*-criminal in nature, it is essentially exercise of criminal jurisdiction by the Court[25]; also that, since an appeal under Section 19(1) of the 1971 Act has been provided against an order passed in the jurisdiction to punish for contempt, no other appeal will lie[26].

36. We, thus, move on to the next question for answering it. Are all orders passed in contempt proceedings prior to the imposition of punishment, though essentially interlocutory in nature and capable of affecting the rights of the parties, to be regarded as having been passed in the exercise of criminal jurisdiction so as to attract the bar under Rule 5 against maintainability of a Special Appeal? We think not! If indeed that is regarded as the correct legal position, no interim order passed in the exercise of contempt jurisdiction can be the subject matter of challenge in a Special Appeal under Rule 5 on its plain text, much less orders as are referred to in paragraph 69 of the decision in ***Subhash Chandra*** (supra). In effect, no order other than an order of punishment imposed by a Single Judge would be amenable to an intra-court appeal except under Section 19(1)

25 Hub Lal Yadav v. Mahendra, 2017 ADJ Online 0638

26 Jagdamba Prasad v. Balgovind, Neutral Citation No. - 2016 : AHC : 77023-DB

of the 1971 Act, and in every such case where the Judge seized of the contempt passes an order determining rights and liabilities, thereby meeting the test of a judgment as explained in ***Chunilal Nanda*** (supra), the jurisdiction of this Court under Article 136 would seem to be the sole remedy.

37. No doubt, decisions are legion holding that proceedings for contempt are *quasi*-criminal in nature; however, it has to be borne in mind that *quasi* is the Latin for 'resembling, but not actually being'. In law, when it is said that a proceeding is *quasi*-judicial in nature, what is meant is that such proceeding has some attributes of a judicial proceeding but is not the latter in the strict sense and does not carry all the trappings thereof. In light of the above meaning, contempt being *quasi*-criminal in nature means that it resembles criminal law in its consequences of conviction and punishment, but is not actually criminal prosecution. The trial is neither for an offence punishable under the Indian Penal Code, 1860[27]/Bharatiya Nyaya Sanhita, 2023[28]/other penal laws nor is the guilt determined in terms of the procedure spelt out in the Code of Criminal Procedure, 1973[29]/ Bharatiya Nagarik Suraksha Sanhita, 2023[30]/other procedural laws.

38. However, in the light of the decisions in ***S.A.L. Narayan Row*** (supra) and ***P. Mohanraj*** (supra), we hold that since proceedings for 'civil contempt' are not resolved in exercise of 'criminal jurisdiction', the precedents holding to the contrary may no longer be good law.

39. Having said that, one important aspect bears consideration, *albeit* from a different standpoint. We are alive to the law laid down by a 3-judge Bench in ***Ram Kishan Fauji v. State of Haryana***[31], which arose in the context of the maintainability of an intra-court appeal against an order of a Single Judge rendered in proceedings under Article 226 of the Constitution. The writ proceedings in that case had their genesis in allegations of criminal misconduct and culminated in a challenge to proceedings arising therefrom. The question before the Court was whether, notwithstanding the exercise of the

27 IPC

28 BNS

29 Cr. PC

30 BNSS

31 (2017) 5 SCC 533

extraordinary jurisdiction under Article 226, the Single Judge could be said to have exercised 'criminal jurisdiction' within the meaning of the applicable Letters Patent so as to attract the exclusion of an intra-court appeal, the ratio of which appears to have weighed heavily in the minds of the Judges of the Division bench deciding ***Subhash Chandra*** (supra).

40. ***Ram Kishan Fauji*** (supra), though held that a high court exercising writ jurisdiction under Article 226 of the Constitution in respect of matters having originated from criminal laws exercises a 'criminal jurisdiction', is not an authority for the question arising for decision before us. We could have skirted a discussion on the said decision. Nevertheless, maintainability of intra-court appeals being the major point of debate before us though in contempt cases, we feel the need to reflect on it.

41. The decision in ***Ram Kishan Fauji*** (supra), properly construed, pertained to the maintainability of an intra-court appeal from an order passed by a Single Judge of the high court in a writ petition, where the *lis* itself had its genesis in the criminal law. Thus, this Court, while construing the expression 'criminal jurisdiction' occurring in the relevant Letters Patent, held that the nature of the subject-matter of the proceeding, and not merely the constitutional source of the power invoked, would be germane. Thus understood, ***Ram Kishan Fauji*** (supra) undoubtedly constitutes a key authority in the jurisprudential canvas wrapped around the scope of the expression 'criminal jurisdiction' in the context of a writ petition seeking adjudication upon a controversy emanating from the criminal substratum. That much of the decision is neither capable of being overlooked nor lightly distinguished. But a principle evolved in writ jurisdiction dealing with a criminal *lis* cannot be transplanted *en bloc* into the *sui generis* jurisdiction of contempt. To do so would be to let the origin of the dispute determine the nature of jurisdiction actually exercised.

42. In this regard, it is important to bear in mind that the question whether an intra-court appeal lies is, in the first instance, governed by the Letters Patent or the rules applicable to each high court. In ***Ram Kishan Fauji*** (supra), while considering the scope of the expression 'criminal jurisdiction' occurring in the applicable Letters Patent, this Court, in paragraph 45, proceeded on the basis that where the subject-matter of the writ proceeding had its genesis in criminal

law, the jurisdiction exercised by the Single Judge under Article 226 would be regarded as criminal jurisdiction, thereby attracting the exclusion of an intra-court appeal. The relevant observations in paragraph 45 read as follows:

> **45.** The aforesaid argument suffers from a fundamental fallacy. It is because the submission is founded on the plinth of whether the writ jurisdiction has been exercised under Article 226 or 227 of the Constitution. It does not take note of the nature of jurisdiction and the relief sought. If the proceeding, nature and relief sought pertain to anything connected with criminal jurisdiction, intra-court appeal would not lie as the same is not provided in Clause 10 of the Letters Patent. Needless to emphasise, if an appeal in certain jurisdictions is not provided for, it cannot be conceived of. Therefore, the reliance placed upon the larger Bench authority in Hari Vishnu Kamath [Hari Vishnu Kamath v. Ahmad Ishaque, (1954) 2 SCC 881 : AIR 1955 SC 233] does not render any assistance to the argument advanced by the learned counsel for the respondent State.
>
> (emphasis ours)

43. With respect, the reasoning in paragraph 45 of ***Ram Kishan Fauji*** (supra) is confined to its own statutory context and is not of universal application. Under a Letters Patent which generally allows an appeal from the judgment of a Single Judge to a Division Bench and entails no exclusion in respect of an order passed in exercise of writ jurisdiction, merely because the subject-matter of the proceeding has its roots in criminal law, there is no warrant to read into that provision an exclusion which the Letters Patent itself does not contain. Indeed, though in a different context, the principle recognised by this Court in ***Vinita M. Khanolkar v. Pragna M. Pai***[32], is that an appeal under a Letters Patent would be maintainable unless it is excluded by statute. There, this Court, in the context of the Specific Relief Act, 1963, held:

> **3.** Now it is well settled that any statutory provision barring an appeal or revision cannot cut across the

32 (1998) 1 SCC 500

> constitutional power of a High Court. Even the power flowing from the paramount charter under which the High Court functions would not get excluded unless the statutory enactment concerned expressly excludes appeals under letters patent. No such bar is discernible from Section 6(3) of the Act. It could not be seriously contended by learned counsel for the respondents that if clause 15 of the Letters Patent is invoked then the order would be appealable. Consequently, in our view, on the clear language of clause 15 of the Letters Patent which is applicable to Bombay High Court, the said appeal was maintainable as the order under appeal was passed by learned Single Judge of the High Court exercising original jurisdiction of the court. Only on that short ground the appeal is required to be allowed.

44. The distinction is vital: an exclusion from the Letters Patent jurisdiction pertains to a legislative prescription and cannot be supplied merely by characterising the subject-matter of the *lis* as criminal. It assumes pronounced significance especially considering the facts borne out in the present case. In the conventional sense and as held in ***S.A.L. Narayan Row*** (supra) and ***P. Mohanraj*** (supra), contempt is neither strictly criminal nor strictly civil. In the case of civil contempt, the proceeding is geared essentially towards securing obedience to an order of the court rather than towards the punishment of an offence in the ordinary criminal-law sense. To transpose the ratio of ***Ram Kishan Fauji*** (supra) from its setting to the present milieu, merely because the contempt proceedings may, in a given case, culminate in punishment, including imprisonment or fine, cannot, by itself, transmute its jurisdictional character. Contempt jurisdiction being *sui generis*, in our considered view, any attempt to compartmentalise it into rigid procedural categories for the purpose of determining the availability of an intra-court appeal must be eschewed. To mechanically place contempt proceedings within a pre-defined category, and to make the maintainability of an appeal turn solely on such categorisation would be to disregard the distinctive nature of the jurisdiction itself.

45. In ***Chunilal Nanda*** (supra), this Court carved out a carefully delineated field where an order passed in contempt proceedings becomes amenable to an intra-court appeal, i.e., where the contempt

court travels beyond the precincts of contempt jurisdiction and decides the merits of the underlying *lis* or determines substantive rights. Such venturing into the merits was unequivocally held not to be an exercise of the '*jurisdiction to punish for contempt*' and, consequently, an intra-court appeal against the same would be maintainable, subject to the relevant rules of the high court permitting it. The later exposition in ***Ajay Kumar Bhalla*** (supra) reaffirms that distinction – between a finding of contempt on the one hand, and a direction adjudicating upon or affecting substantive rights flowing from the underlying *lis* on the other. These decisions make it clear that a broad-brush description of contempt as criminal, *quasi*-criminal, or possessing attributes of criminal proceedings cannot, *ipso facto*, attract exclusion against orders passed in the exercise of contempt jurisdiction. The determinative question is not whether contempt entails punitive consequences, but what jurisdiction the Court was actually exercising when it passed the order impugned. Nomenclature alone cannot answer that question!

46. It is in this narrow but important compass that we find ourselves unable to accede to an unqualified extension of ***Ram Kishan Fauji*** (supra) to all proceedings for contempt. If mere possibility of punishment were sufficient to place contempt within the fold of 'criminal jurisdiction', the carefully sustained distinction between the *sui generis* contempt jurisdiction and the ordinary criminal jurisdiction would lose its meaning, and the principle recognised in ***Chunilal Nanda*** (supra) would be rendered precarious. For the present discussion and subject to what we say hereafter, we would assume that ***Ram Kishan Fauji*** (supra) has legitimate, though limited, field of operation where the *lis* before the writ court is, in substance, criminal. But whether that principle can be pressed into service to oust an intra-court appeal in contempt proceedings, irrespective of the nature of the order and the jurisdiction actually exercised, is a question of some moment — more so, when several decisions of the High Court have proceeded on the premise that contempt jurisdiction, wearing the garb of a criminal proceeding, bars a Special Appeal.

47. It is trite that criminal matter, criminal proceeding and criminal jurisdiction though inter-related are conceptually distinct. A criminal matter is the genus. It denotes the subject matter which has a criminal flavour, where penal consequence is involved. A crime committed, an offence alleged punishable under the IPC/BNS, an FIR or a

complaint requiring investigation/inquiry – all are criminal matters at large. When that criminal matter is brought before a court of law or a competent authority in the form prescribed by law – be it an FIR, a complaint under Section 200, Cr. PC/Section 223, BNSS, a charge-sheet, a bail application, a revision, an appeal – the matter ripens and takes the form of a criminal proceeding. Every proceeding therefore is a matter, but every matter may not have yet become a proceeding. Criminal jurisdiction is the authority of the court to entertain, try and decide that criminal proceeding arising out of the criminal matter. It is the power to adjudicate. It is conferred by the statute, viz. the Cr. PC/BNSS or special law in terms of territory, subject matter and hierarchy. In short, a criminal matter gives rise to a criminal proceeding, which in turn can only be decided by a Court in exercise of its criminal jurisdiction. It is a progression: matter-> proceeding-> jurisdiction.

48. Having regard to our understanding of what 'criminal jurisdiction' is, the construction of 'criminal jurisdiction' in ***Ram Kishan Fauji*** (supra) cannot apply *ex proprio vigore* in contempt proceedings.

49. Even otherwise, in the light of the foregoing discussion and for those to follow, we have our doubts as to whether ***Ram Kishan Fauji*** (supra) has laid down correct law on the interpretation of the Letters Patent governing the relevant high courts, the text of Article 226, and settled judicial principles regarding the exercise of power thereunder. The Constitution confers the power to issue prerogative writs under Article 226 on the high courts for the enforcement of any of the Fundamental Rights or for any other purpose. It is a high prerogative, extraordinary original 'Constitutional Writ Jurisdiction'. Writ remedy under Article 226, being a public law remedy, its invocation presupposes a public law element, i.e., infringement of a legally protected right and failure of public duty. Existence of the jurisdiction does not depend on whether the factual matrix originates in civil or criminal law. What is relevant is the nature of the grievance: whether a legally protected right has been infringed and also as to whether the right claimed is capable of being judicially enforced through a writ. The subject matter of a writ petition – whether having its roots in contract, service, taxation or criminal complaint – is not decisive of the nature of jurisdiction; what is decisive is the character of the *lis* and the nature of relief sought. Merely because the right asserted has its origin in a statute

containing criminal elements cannot convert the special and exclusive constitutionally conferred 'writ jurisdiction' on the high courts into ordinary 'criminal jurisdiction' to defeat an intra-court appeal under the Letters Patent.

50. Moving forward, the decision in ***Ram Kishan Fauji*** (supra), with respect, proceeds on the premise that Article 226 contains within it two jurisdictions – civil and criminal – and that the subject matter of the *lis* can determine the nature of the jurisdiction. Neither historical context nor the constitutional text nor the scheme of the Letters Patent nor settled judicial principle prior to such decision supports this division as well as the view that the writ court's dealing with a criminal matter would amount to the exercise of 'criminal jurisdiction', thereby barring an intra-court appeal. The ratio that a writ arising from a criminal substratum is 'criminal jurisdiction' for clause 10 or clause 15 of the Letters Patent, as the case may be, is a judicial invention which the framers of the Letters Patent did never visualise, for, in 1862 there was no Article 226, and writ jurisdiction after the advent of the Constitution was itself not contemplated as civil or criminal. Article 226, in plain terms, confers a single, original, special, and extraordinary constitutional jurisdiction. Such jurisdiction is also neither civil nor criminal, but *sui generis*. It is also instructive that the very description or allocation of writ petitions before a High Court or this Court as 'civil' or 'criminal' does not, *per se*, furnish a principled basis for ascertaining the nature of the jurisdiction exercised under Article 226. Such classification is, at best, a matter of administrative convenience, designed to facilitate the allocation and listing of cases on the administrative side, and cannot be elevated into a substantive division of the constitutional jurisdiction conferred by Article 226. The mere fact that a writ petition is placed or described under a 'criminal' category, for purposes of roster or administrative assignment, cannot convert the *sui generis* constitutional jurisdiction exercised therein into 'criminal jurisdiction'. The jurisdiction remains, as conferred by Article 226; what may vary from case to case is the nature of the *lis*, the right asserted, and the relief sought. By importing the test of nature of subject matter, the decision in ***Ram Kishan Fauji*** (supra) converts exercise of jurisdiction in every writ petition involving any criminal element, be it a challenge to an FIR, an arrest, a chargesheet, an externment, etc., into 'criminal jurisdiction'. The result is that an order refusing to quash an FIR, which determines criminal guilt of none and does not involve any punishment, is treated on a par with

a conviction and sentence, thereby barring an intra-court appeal. Thus, what ***Ram Kishan Fauji*** (supra) does is to conflate the high prerogative writ jurisdiction with the ordinary criminal jurisdiction, and creates an asymmetry: an intra-court appeal arising out of a writ petition, say, in a land acquisition matter or in a taxation matter, would be permitted, which might involve infringement of Article 300A or Article 265 of the Constitution, respectively, which are non-Fundamental Rights, but when it comes to loss of liberty of a citizen under Article 21, he cannot. He would have, in such case, no other remedy but to approach this Court under Article 136 which, *per* the parent decision of this Court in ***Pritam Singh v. State***[33] interpreting Article 136, is discretionary, and the power thereunder should be exercised only in special circumstances. Not many people can afford to travel to Delhi to file a special leave petition. Long distance is not the only disabling factor; heavy expenses for boarding/lodging and for the proper presentation of a case and reasonable representation before this Court are also involved, notwithstanding what science and technology have helped the system to achieve. The Constitution Bench in ***Anita Kushwaha v. Pushap Sudan***[34] has laid down the law that access to justice is a facet of Articles 14 and 21. The wide and expansive writ jurisdiction which could be exercised by a Division Bench (an appeal being a continuation of the *lis*), to our mind, has been judicially restricted and curtailed in pursuance of an approach adopted in ***Ram Kishan Fauji*** (supra), which tends to violate Articles 14 and 39A; resultantly, it is access to justice which is rendered a casualty.

51. That apart, one cannot overlook that a right of appeal, being a creature of a statute, is not a matter of procedure but a substantive, vested and valuable right. However, where the language conferring a right of appeal is ambiguous or admits of two constructions, the Court must lean in favour of an expansive interpretation, not a restrictive one. It is the construction which enlarges and sustains the right, thereby, advancing the remedy that must be preferred to a narrow and constricted view which impairs or defeats such right. This particular aspect missed the notice of this Court while deciding ***Ram Kishan Fauji*** (supra).

33 AIR 1950 SC 169

34 (2016) 8 SCC 509

52. We are conscious that the decision in ***Ram Kishan Fauji*** (supra) is a 3-Judge Bench decision, which would normally be binding on us. Nonetheless, for the reasons aforesaid, and more particularly the Constitution Bench decision in ***Anita Kushwaha*** (supra), we consider it proper to make a reference for consideration by an appropriate Bench, subject to such order as the Chief Justice of India may issue on the administrative side. The terms of reference are framed as follows:

    Does the decision in ***Ram Kishan Fauji v. State of Haryana,*** (2017) 5 SCC 533 correctly interpret the Letters Patent governing the various high courts on maintainability of intra-court appeals in the light of the nature of jurisdiction conferred by Article 226 of the Constitution, adverted to above? Does the ratio not, effectively, negate proper access to justice at the intra-court appellate level, apart from creating a division in Article 226 not contemplated by the framers of the Letters Patent or the Constitution? Should the decision in ***Ram Kishan Fauji*** (supra) be revisited in view of the discussions in paragraphs 49 to 51 of this opinion?

53. Reverting to the case at hand, the directions given in the impugned order by the High Court have been noted above. The compliance affidavit containing the order of rejection passed in purported compliance with the order dated 17th March, 2026, has been rejected. Whether or not the Single Judge exceeded his jurisdiction in so rejecting is a matter that the appellant can well urge the Bench having determination to hear Special Appeals to examine.

54. We, therefore, are not persuaded to entertain and examine the contentions raised by Mr. Nataraj on merits. The same are left open to be urged in a Special Appeal, which the appellant may present within a fortnight from the date of this order if so advised. If presented, the appeal may be decided on its own merits and in accordance with law by the appellate Bench.

55. The appeal stands disposed of in the aforesaid terms. The reference made herein shall, however, remain pending for consideration by the appropriate Bench.

56. For a period of two months from this date, the contempt petition before the Single Judge shall remain stayed.

57. For the reasons recorded in paragraphs 49 to 51 and the questions framed in paragraph 52 hereinabove and in view of our consequent

respectful disagreement with the enunciation of law in ***Ram Kishan Fauji*** (supra), this opinion may be placed by the Registry before the Chief Justice for appropriate orders on the administrative side.

Result of the case: Appeal disposed of; reference made to remain pending for consideration by the appropriate Bench.

†*Headnotes prepared by:* Divya Pandey