

## CRIMINAL MISCELLANEOUS

*Before Gosain and Grover, JJ.*SHRI RAM NARAIN MATHUR,—*Petitioner**versus*THE HON'BLE THE CHIEF JUSTICE AND THE HON'BLE  
JUDGES OF THE HIGH COURT AT CHANDIGARH,—*Respondents.*

Criminal Miscellaneous No. 365 of 1955

1958

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May, 2nd*Letters Patent—Clause 10—Appeal under—Whether  
lies against the judgment of a Single Judge holding the*

*appellant guilty of the contempt of the High Court—Contempt—Civil and Criminal—Distinction between—Power to punish for contempt—Whether inherent in the court of Record—Essentials for its exercise—Proceedings for contempt—Purpose of—Official Liquidator appointed under the Companies Act—Interference with his possession of the assets of the company in liquidation—Whether constitutes contempt.*

*Held*, that an appeal under clause 10 of the Letters Patent against the order of a Single Judge of the High Court holding the appellant guilty of contempt of the High Court is competent in the present case. Such an order is not made in the exercise of the criminal jurisdiction of the High Court. Even if a distinction between civil and criminal contempts is to be accepted, the order of the Single Judge in this case would still be appealable inasmuch as the punishment awarded by him is for disobedience of the orders of the High Court in civil proceedings which constitutes civil contempt.

*Held*, that where the power is invoked to enforce obedience to orders of the Court it would be regarded as a Civil contempt and where the act complained of tends to interfere with the course of justice it may constitute criminal contempt.

*Held*, that the power to punish for contempt is a special jurisdiction which is inherent in all courts of Record. The Code of Criminal Procedure does not apply in matters of contempt triable by a High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself.

*Held*, that the purpose of a proceeding for contempt is to maintain the authority of the Court. It is not for a defendant to flout processes of the Court according to his own conception of his rights. It is not for him to decide whether Court's order is valid or not. Law and order can be maintained only by obedience to the mandate of the Court. So long as a Court's order remains in force the defendant is bound to respect and obey it. Further Courts will not permit defendants to evade responsibility for violating an injunction by doing, through subterfuge, a thing

which is not in terms a violation, yet, produces the same effect by accomplishing substantially that which they were enjoined from doing.

Held, that the official liquidator appointed by the Court is an officer of the Court and holds possession of the entire assets of the company in liquidation. Any attempt to interfere with his possession would constitute contempt of authority of the court under which the company is being wound up.

Case law discussed.

*Appeal under Clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice D. Falshaw, dated 20th May, 1955, sentencing the petitioner to undergo one month's simple imprisonment for committing contempt of the authority of the High Court and further directing him to surrender to the Registrar of this Court to be committed to jail.*

S. N. BALI, for Petitioner.

L. D. KAUSHAL, DEPUTY ADVOCATE-GENERAL, for Respondents.

#### ORDER.

Grover, J.

GROVER, J.—This is an appeal under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court by which the appellant has been held guilty of a gross contempt of the authority of this Court and has been sentenced to one month's simple imprisonment.

It is necessary to state the facts. On the 27th of December, 1952, Sir Jai Lal, a retired Judge of the Lahore High Court, and others filed a petition for winding up of the Simla Banking and Industrial Company, Limited. On the 29th December, 1952, Falshaw, J., apart from ordering notice of the petition to the

Bank and citation in newspapers as to the appointment of provisional liquidator made an order thus:—

“Proceedings in all the suits listed in the application annexure ‘X’ will be stayed meanwhile.”

Shri Ram Narain  
Mathur,  
v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

Item No. 12 in the aforesaid annexure was “Shri Ram Narain Mathur v. The Simla Banking and Industrial Company, Limited (Case No. 1 of 1952) pending before the Tribunal Judge (Civil Judge) Benares, U.P., fixed for 2nd and 3rd January, 1953, under section 13 of Act LXX of 1951”. Before the order of Falshaw, J., reached the Tribunal at Benares, a decree was passed by the aforesaid Tribunal in the sum of Rs. 1,00,000 in favour of the appellant against the Bank. On the 6th January, 1953, the appellant filed an execution application before the Tribunal at Benares seeking to execute the decree in his favour. The Tribunal, however, stayed proceedings in view of the stay order made by this Court. On the 27th of January, 1953, Mr. Devi Dayal Dhawan was appointed provisional liquidator of the Bank. On the 28th of January, 1953, a petition was made on behalf of the Bank praying that further proceedings in the various suits as shown in annexure ‘A’ might be stayed till the final decision of the petition. Item No. 3 in annexure ‘A’ clearly referred to the execution application pending in the Court of Civil Judge, Benares, acting as the Tribunal, relating to the decree obtained by the appellant. On the 30th of January, 1953, Khosla, J., ordered ‘Protection order as prayed’. The appellant applied to this Court for vacation of the stay order on the ground that the proceedings pending before the Tribunal constituted under Act LXX of 1951, could not be stayed by this Court. This application, however, was rejected by Dulat, J., by an order dated the 20th March, 1953, and the prayer for the vacation of the stay order was declined. In the meantime the

Shri Ram Narain Provisional Liquidator under directions of the Liqui-  
 Mathur, dation Judge went up in appeal against the decree of  
 v. the Benares Tribunal to the Allahabad High Court.  
 The Hon'ble the Chief Justice In that appeal the present appellant applied for issue  
 and the Hon'ble Judges of the of an injunction to the Provisional Liquidator and the  
 High Court Directors of the Bank restraining them from paying  
 at Chandigarh any sums of money to the creditors without safe-  
 Grover, J. guarding his interest. On 17th November, 1953, a  
 Bench of the Allahabad High Court directed the  
 appellant to move this Court within a month for neces-  
 sary directions. Before this order was made by the  
 Allahabad High Court the Bank had been ordered to be  
 wound up on 25th of September, 1953. On  
 the 24th of October, 1953, the Indian  
 Banking Companies (Amendment) Ordinance  
 came into force which was followed by  
 the Indian Banking Companies (Amendment) Act  
 which became law on 30th December, 1953. On 17th  
 February, 1954, the appellant made an application to  
 the Tribunal at Benares in which he stated that  
 according to the provisions of Part III and section 45A  
 of the Ordinance, section 171 of the Indian Companies  
 Act had been overridden and varied by section 45C of  
 the Ordinance in respect of stay of proceedings pend-  
 ing against the Banking Company which was being  
 wound up. It was asserted that suits and proceedings  
 against the Banking Company pending only in a Court  
 and not in a Tribunal were liable to be stayed. In  
 paragraph 5 the position taken up was that neither  
 the order dated 29th December, 1952, of this Court  
 under section 169 nor the letter dated the 13th of March,  
 1953, by the Provisional Liquidator under section 171  
 of the Companies Act could have been served on the  
 Tribunal except through the Allahabad High Court.  
 Consequently, the execution proceedings could not be  
 deemed to have been stayed. Paragraph 6 deserves to  
 be set out in its entirety. It was as follows:—

“That in order to safeguard the payment of the  
 decretal amount to the applicant-decree-

holder the Hon'ble High Court at Allahabad has been pleased to issue a prohibitory injunction (certified copy enclosed) to the Liquidator and the Directors of the respondent-Banking Company which continues in force."

Shri Ram Narain  
Mathur,  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

It would be proper to state at this stage that in the records of the Tribunal which were sent for by this Court no such copy is to be found. Learned counsel for the appellant showed us a certified copy of an order of the Allahabad High Court dated 17th November, 1953, but that order, as has already been stated before, directed that the appellant should move this Court and, therefore, no prohibitory injunction had been issued by that order as has been stated in paragraph 6 of this application of the appellant. Finally, the prayer was made that a precept under section 46 of the Code of Civil Procedure and a transfer certificate of the decree might be issued to the executing Court at Bombay for attachment of the shares and securities in the judgment-debtor's account in the Central Bank of India, Bombay, to the extent of the decretal amount and also a transfer certificate to this Court for attachment of the judgment-debtor's funds in the Grindlay's Bank, Simla, be issued. On the 26th February, 1954, the appellant made another application to the Tribunal at Benares in which it was stated in paragraph 3 that on 27th November, 1953, the Tribunal and on 6th August, 1953, the Allahabad High Court had issued a prohibitory order to the Directors and the Liquidator of the Bank not to make any further payments to its creditors. Paragraph 12 of this petition was as follows:—

"That no order has been received by this Tribunal from the Punjab High Court under section 45C(3) of the Banking Companies (Amendment) Ordinance

Shri Ram Narain  
Mathur.

v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

No. IV of 1953, which was promulgated on 24th October, 1953, and in the absence of any such order, the provisions of section 45 C must be deemed to be inapplicable to the execution proceedings pending in the Tribunal, and even if the proceedings were considered to be pending in a Court, such proceedings shall be continued under section 45C(4) of the said Act, which overrides section 171 of the Companies Act under which the proceedings were stayed: *vide* section 45A of the other Act."

The prayers were—

- (a) to issue precept in execution to the executing Court at Bombay, as already prayed, or in the alternative;
- (b) to issue an interim injunction to the Official Liquidator of the Bank restraining him from alienating, etc., the shares and securities held in credit account in the Central Bank, Bombay, and the Grindlay's Bank, Simla.

It is significant that even in this application no mention is made of the order of the Allahabad High Court dated 17th November, 1953, which must be within the knowledge of the appellant by which he had been directed to move this Court for any injunction of the nature prayed, and it is noteworthy that the appellant kept on referring to some earlier interim order made on 6th August, 1953, by the Allahabad High Court (No copy of that order is traceable on the record). The Tribunal made an order requiring the Liquidator to appear and show cause on 24th April, 1954. As soon as this notice was served on the Liquidator, he made an application here on 19th March, 1954, stating that the aforesaid notice had been received from the Tribunal and submitting that immediate orders be made

for transfer of the execution case pending before the Tribunal together with the applications of the appellant mentioned before. In exercise of the powers conferred by section 45C of the Banking Companies Act, as amended, on the 22nd March, 1954, Falshaw, J., passed an order issuing notice to the appellant for 2nd April, 1954. On 2nd April, 1954, it was ordered that a fresh notice be issued for 23rd April, 1954, as the notice had been returned unserved for want of proper address. On 7th May, 1954, the respondent was still unserved. Fresh notice was ordered to be issued for 11th June, 1954. In the meantime, however, the appellant after obtaining an order on 24th April, 1954 of grant of a transfer certificate from the Benares Tribunal filed an application for execution on 4th June, 1954, in the High Court at Bombay. In column 'B' where the name of the party was to be stated in the application the Bank was not shown as being in liquidation. Similarly, in column 'I', where the name of the person against whom enforcement of the decree or order was to be stated, there was no mention whatsoever, of the Bank being in liquidation. On the 11th June, 1954, however, Mr. M. L. Sethi, Advocate, put in appearance on behalf of the appellant before, Falshaw, J., and it seems that he prayed for adjournment, and the order made on that day was—

Shri Ram Narain  
Mathur.

v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

\_\_\_\_\_  
Grover, J.

“Adjourned to 25th June, 1954.”

Attachment of the property sought to be attached was ordered by the Bombay High Court on or about 18th June, 1954. On the 25th June, 1954, the counsel for the Bank and Mr. Sethi, Advocate, appeared. The following order was made by Falshaw, J.

“Mr. M. L. Sethi for the respondent states that he has no instructions and is permitted to withdraw from the case. I, accordingly,

Shri Ram Narain  
Mathur,

v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

order the transfer to this Court of the proceedings pending in the Court of the Tribunal at Benares and the execution application recently filed in the High Court at Bombay.”

On the 25th June, 1954, the Official Liquidator of the Bank moved this Court for taking proceedings for contempt of Court against the appellant. It appears that the Tribunal on receipt of the order of this Court passed on 25th June, 1954, sent an intimation here on 14th July, 1954, that the execution proceedings had already been transferred to the High Court of Bombay. Thereafter the Liquidator applied on 28th October, 1954 to this Court for setting aside the order of the Bombay High Court, dated 18th June, 1954, directing attachment of the shares and securities belonging to the Bank in the possession of the Central Bank of India Ltd., Bombay. This application was resisted by the appellant but it was held by this Court that the order of transfer made on 25th June, 1954, was perfectly valid and that the order of attachment obtained by the appellant from the Bombay High Court was void. The appellant appealed to their Lordships of the Supreme Court for which special leave was granted and the decision of their Lordships of the Supreme Court is reported in *Shri Ram Narain v. The Simla Banking and Industrial, Co., Ltd.*, (1), The Supreme Court decided that the proceedings relating to execution of the decree obtained by the appellant from the Tribunal against the Bank and all other incidental matters arising therefrom fell within the exclusive jurisdiction of the Punjab High Court subject to the provisions of section 45C of the Banking Companies Act. As regards pending matters their Lordships considered that the order of transfer made by this Court on 25th June, 1954, was perfectly valid. The appeal was, therefore, dismissed.

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(1) A.I.R. 1956 S.C. 614

It has now to be determined whether any appeal under clause 10 of the Letters Patent lies against the order of Falshaw, J., which is the subject matter of the present appeal. Mr. Lachhman Das, Kaushal who has appeared on behalf of the State contends that the order in question is one which has been made in the exercise of criminal jurisdiction of a learned Single Judge of this Court, and, therefore, no appeal is competent under clause 10 of the Letters Patent of this Court. Reliance for this purpose has been placed on *Narayan-rao Vithal Sayanna v. Solomon Moses and others* (1), where it was held that comments upon a pending trial by persons, some of whom were parties to the suit constituted contempt of a criminal nature and an appeal was precluded by the words of the relevant clause of the Letters Patent against an order passed in such a matter. A distinction was made in that case between what may be called "civil contempt" and "criminal contempt". Disobedience to an order made in a civil suit constitutes contempt of a civil nature but where the alleged contempt consists in interfering with the due trial of a civil suit, that contempt is of a criminal nature. This difference between civil and criminal contempt was referred to by the learned Advocate-General who appeared in the Bombay case and in support of his contention he relied on the discussion in Halsbury's laws of England, Volume 7, at page 280 and certain English authorities. Beaumont, C.J., and Blackwell, J., accepted the point made by the Advocate-General and held that no appeal was competent. In *Kapildev Nalayiya and others v. Chief Justice and Judges of the High Court, Allahabad* (2), an Advocate, an Editor and a Printer and Publisher of a newspaper had been sentenced for contempt of Court to certain amount of fine. The offence was found to have been committed on account of publication of an article headed "A scandalous

Shri Ram Narain  
Mathur  
v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

(1) A.I.R. 1933 Bom. 108

(2) A.I.R. 1935 All. 811

Shri Ram Narain  
Mathur,  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh  
Grover, J.

citation." A petition was made for leave to appeal to the Privy Council under the provisions of sections 109 and 110 of the Code of Civil Procedure. It was observed by Sulaiman, C.J., that the proceedings were in the exercise of the inherent jurisdiction of the High Court and were of criminal nature. According to the learned Chief Justice the conviction and the fine imposed were themselves sufficient to show at least that the proceeding was not of a civil nature. As in this view of the matter the case did not fall within the provisions of section 110, leave was refused. In *re S. Govind Swaminathan* (1), a Bench of the Madras High Court laid down that no appeal lay under clause 15 of the Letters Patent of that Court against an order of a Single Judge, while presiding over the Criminal Sessions of the High Court finding a person guilty of 'ex facie' contempt and sentencing him to fine. The reason given was that such an order would be one passed in the exercise of criminal jurisdiction within the meaning of clause 15 which is same as clause 10 of our Court. According to the observations made by the Bench, a contempt of Court—other than mere disobedience to orders of Court, which have been regarded as civil in English law as followed in India—is "criminal" in its essence and the jurisdiction exercised when a contemner is punished is similarly "criminal" and the source of the jurisdiction of the High Court—whether it is part of the inherent power of the Court or is incidental to its superior Court of Record—does not affect its nature or character. After considering a good deal of English and Indian case law, the Madras Bench made the following observations:—

"It is only necessary to add one observation, if only to obviate misunderstanding. Contempts have been classified into two categories which might broadly be designated

(1) A.I.R. 1955 Mad. 121

civil and criminal contempts the former comprising those cases where the power of the Court is invoked and exercised to enforce obedience to orders of Courts and the latter where the act of the contemnor is calculated to interfere with the course of justice including libels or insults to Judges and publications prejudicing the fair conduct of proceedings in Court. In regard to 'civil' contempts courts have held that being civil in their nature appeals lie from orders passed in such cases and the decision of this Court reported in—'*Venkatalingum v. Mrutyanjayudu*' (1), is an instance in point.—(Vide also (2). We are not here concerned with a 'contempt', of this category but of the other variety which has always been treated as criminal in its essence."

Shri Ram Narain  
Mathur.  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh  
Grover, J.

Finally, Mr. Lachhman Das Kaushal has relied largely on a decision of the Patna High Court in *N. Baksi v. O. K. Ghosh*, (3), The Patna Bench while considering the nature of civil and criminal contempts has taken the view that though there is, as is well known, some point of difference between a criminal and a civil contempt but that difference does not touch the matter of the execution by attachment and committal in the case of a civil contempt in contrast to the process of attachment and committal as followed in a criminal contempt. The difference, if any, between a criminal and a civil contempt lies essentially in the nature of the conduct that gives rise to the one or the other. Referring to the observations of Mookerjee, J., in *Moti Lal Ghosh, In re* (3), the learned Judges proceeded to point out that refusal to

- (1) A.I.R. 1943 Mad. 541  
(2) A.I.R. 1938 P.C. 295  
(3) A.I.R. 1957 Pat. 528  
(4) I.L.R. 45 Cal. 169

Shri Ram Narain  
Mathur  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh  
  
Grover, J.

obey the order of the Court may render, it necessary for the Court to adopt punitive measures against the person who has defied its authority; at that stage, at least, the proceedings may assume a criminal character. In this manner, the dividing line between acts which constitute criminal, and others which constitute civil, contempts may become indistinct in those cases where the two gradually merge into each other.

All the above rulings which have been cited by Mr. Kaushal are distinguishable on the facts but even from them the principle deducible seems to be this: where the power is invoked to enforce obedience to orders of the Court it would be regarded as a civil contempts and where the act complained of tends to interfere with the course of justice it may constitute criminal contempt. It would be useful at this stage to refer to certain other cases which deal with so-called civil contempts. In *Gundu Venkatalingam v. Gundu Mrutyajayadu* (1), the appellant had given an undertaking that he would not alienate his property which was the subject matter of the appeal. This he had done in order to avoid an order for security being passed against him. In breach of the undertaking he sold his interest in one property. The Court ordered that he be sent to prison for a period of six months for having committed contempt. An appeal under clause 15 of the Letters Patent was filed and an objection was raised that the order complained of was passed in a quasi-criminal matter and, therefore, no appeal was competent. It was held that the order under appeal was not one made in the exercise of criminal jurisdiction and an appeal was competent, Leach, C.J., and Shahabuddin, J., relied on a decision of their Lordships of the Privy Council in *S. N. Bannerjee v. Kuchwar Lime and Stone, Co., Ltd.*, (2). In that case the High Court had held that two leases in dispute had not been validly forfeited and ordered

(1) A.I.R. 1943 Mal. 541

(2) I.L.R. 17 Pat. 770

that there should be an injunction restraining the defendant and his servants from interfering with the leases. An appeal against the judgment of the High Court to the Privy Council was also dismissed. The Kalyanpur Company, however, committed a breach of the injunction. Two persons who constituted the executive authority of the Company were held guilty of contempt. An appeal was sought to be filed to the Privy Council and at the hearing an objection was taken that the contempt was of a criminal nature. At pages 778-779, their Lordships observed—

Shri Ram Narain  
Mathur.  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh  
Grover, J.

“The objection is purely technical and so far as the Secretary of State is concerned, their Lordships think it now sufficiently established that a committal for a finding of contempt for breach of an injunction is not criminal in its nature and is properly dealt with under the Civil Procedure Code : see *Scott v. Scott* (1),”

Their Lordships of the Privy Council thus derived assistance from the law as laid down in England particularly with reference to the provisions of section 47 of the Judicature Act, 1873. In *Scott's case* (1), the House of Lords laid down that, upon a motion by the respondent to commit for contempt of Court the petitioner and her solicitor for publishing copies of a transcript, in contravention of the order directing that the cause should be heard in camera, the order holding the petitioner and her solicitor guilty of contempt was made without jurisdiction and that the aforesaid order was not a judgment in a “criminal cause or matter” within section 47 of the Judicature Act, 1873. Lord Atkinson made the following observations at page 456:—

“It was contended that these cases shew that the disobedience of an order of Court con-

(1) (1913) A.C. 417 at P. 456

Shri Ram Narain  
Mathur  
v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

stitutes in itself a crime, a criminal contempt of Court. Unfortunately for this contention, however, they do something more than that; they shew I think, conclusively, that if a person be expressly enjoined by injunction, a most solemn and authoritative form of order, from doing a particular thing, and he deliberately, in breach of that injunction, does that thing, he is not guilty of any crime whatever, but only of a civil contempt of Court."

Although this point was not directly considered by their Lordships of the Supreme Court in *Sukhdev Singh v. Teja Singh*, C. J. (1), but the observations made in that case show that the view which commended itself to their Lordships was that the power to punish for contempt is a special jurisdiction which is inherent in all Courts of Record. The Code of Criminal Procedure does not apply in matters of contempt triable by a High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemner is made aware of the charge against him and given a fair and reasonable opportunity to defend himself. It would be quite plausible to argue that the words occurring in clause 10 of the Letters Patent, namely "or in the exercise of criminal jurisdiction" cannot possibly have reference to the exercise of such an inherent jurisdiction as the one to punish for contempt which inheres in all Courts of Record. According to their Lordships of the Supreme Courts so far as contempt of the High Court itself is concerned, as distinct from a subordinate Court, the Constitution vests these rights in every High Court. So no Act of legislature could take away that jurisdiction and confer it a fresh by virtue of its own

(1) A.I.R. 1954 S.C. 186

authority. "Contempt" in the opinion of their Lordships is a special subject and the jurisdiction is conferred by a special set of laws peculiar to Courts of Record. The language of clause 10 of the Letters Patent is such that it gives a right of appeal except in the following cases:—

Shri Ram Narain  
Mathur  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

(a) not being an order made in the exercise of revisional jurisdiction;

Grover, J.

(b) not being a sentence or order passed or made in the exercise of the power of superintendence under the provisions of section 107 of the Government of India Act (which has become redundant now);

(c) or in the exercise of criminal jurisdiction.

In other words, if an order does not fall in any one of these categories, then it is appealable under the clause, and the only question to be seen is whether the order made by Falshaw, J., has been made in the exercise of criminal jurisdiction. In view of what has been stated above it must be held that such an order has not been made in the exercise of criminal jurisdiction of this Court. Even if the view of those Courts which make a distinction between civil and criminal contempts is to be accepted as correct, the order of Falshaw, J. would still be appealable inasmuch as the punishment awarded by him is for disobedience of the orders of this Court made in civil proceedings. It would, therefore, constitute civil contempt, if any such distinction can be made even after the decision of their Lordships of the Supreme Court referred to before. It has been contended on behalf of the appellant that there was no order of this Court of which any contempt could be said to have been committed when attachment proceedings were taken out at Bombay. It is pointed out that the order of 29th December, 1952, of Falshaw, J., stayed proceedings in

Shri Ram Narain  
Mathur,  
v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

all the suits listed in the application and that the Tribunal had granted a decree before this order reached the Tribunal and this order could not be said to cover execution proceedings. It is, further, pointed out that the application, dated 28th January, 1953, filed on behalf of the Bank asked for further proceedings to be stayed till a final decision of the petition for winding up and that the protection order granted by Khosla, J., on 30th January, 1953, covered only such proceedings till the winding up had been ordered. According to the argument of the learned counsel for the appellant as soon as the winding up order was made on 25th September, 1953, these orders exhausted themselves and became ineffective. This contention was advanced before the learned Single Judge and he was of the view that the winding up order must be deemed to have had the effect, even in the absence of any formal order, of automatically confirming the interim stay order. The argument raised is altogether fallacious. Section 171 of the Indian Companies Act, 1913, which was applicable at the relevant time is to the following effect:—

“When a winding up order has been made or a provisional liquidator has been appointed no suit or other legal proceeding shall be proceeded with or commenced against the Company except by leave of the Court and subject to such terms as the Court may impose.”

The learned single Judge was perfectly justified in considering it to be an elementary proposition of law that no proceedings could be instituted or continued against a company in liquidation without the leave of the Court which was seized of the winding up proceedings and that the said elementary proposition would apply with particular force to execution of decrees. In the appellant's own case which went up to

the Supreme Court the following observations were made by their Lordships:—

Shri Ram Narain  
Mathur,  
v.

“On the other side it has been suggested that neither section 171 nor section 232 of the Indian Companies Act, is applicable to these proceedings in view of the Banking Companies Act, as amended in 1953. This suggestion proceeds on a misconception and ignores section 2 of the Banking Companies Act, which specifically provides that the provisions of the Act shall be in addition to and not in derogation of the Indian Companies Act, expressly provided.”

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

It is next contended on behalf of the appellant that according to subsection (2) of section 45C of the Banking Companies (Amendment) Ordinance, 1953, which came into force on 24th October, 1953, the official liquidator was bound within three months from the date of the winding up order or the commencement of the Ordinance, whichever was later, to submit a report to the High Court containing a list of all pending proceedings together with particulars thereof. The object of putting in such a list is given in subsection (3) and subsection (4) of section 45C, which are as follows:—

“(3) On receipt of a report under subsection (2), the High Court, may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.

Shri Ram Narain  
Mathur,  
v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

(4) If any proceeding pending in a Court is not so transferred to the High Court under subsection (3), such proceeding shall be continued in the Court in which the proceeding was pending."

It is pointed out that in the present case a list was filed on 23rd November, 1953, but there was no mention of the decree awarded by the Tribunal against the Bank in favour of the appellant and, therefore, it was perfectly legitimate for the appellant to take it for granted in view of the provisions of subsection (4) above that the proceedings shall be continued in the Court in which they were pending. In other words, there was no question of the proceedings pending at Benares being transferred to this Court owing to the omission in the list of any mention of those proceedings. This argument is further sought to be re-inforced by the contention that the law was not clear at that time and it was doubtful before the pronouncement of their Lordships of the Supreme Court in the appellant's own case whether sections 45A and 45B of the Banking Companies Act as amended were wide and comprehensive enough to cover proceedings which were being held in execution of a decree made by a Tribunal under the Displaced Persons (Debts Adjustment) Act. It may be stated here that their Lordships of the Supreme Court held in the appellant's case that section 45C applied to a proceeding pending before the Tribunal. All these points are being stressed on behalf of the appellant to show that he was only acting *bona fide* and was under a mistaken belief as to his legal rights. Falshaw, J., had occasion to deal with this aspect of the matter and found it difficult to accept the arguments of the learned counsel for the appellant on his own plea contained in the written statement submitted by him on 21st April, 1955. The learned single Judge was firmly of the view that the whole object of the appellant's manoeuvres was to place himself in the position

of a privileged creditor regardless of the claims of the other creditors. According to the learned Judge the appellant was fully aware both of the pendency of the winding up petition and of the passing of the winding up order and that he had been directed by the Allahabad High Court to approach this Court for directions regarding the execution of his decree some months before he resumed the execution proceedings before the Tribunal at Benares. From the facts which have already been stated before there can be little doubt on the following matters:—

Shri Ram Narain  
Mathur.

v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

- (a) The winding up order had been made on 25th September, 1953, which was fully within the knowledge of the appellant as also the previous interim orders before he made his application to the Tribunal on 17th February, 1954, for proceeding with the execution.
- (b) Before the application, dated 17th February, 1954, the matter had been hotly contested before a Bench of the Allahabad High Court with regard to issuing a prohibitory injunction to the provisional liquidator, etc., and that Court had made an unequivocal direction that the appellant should move this Court for the necessary directions.
- (c) In the application made to the Tribunal at Benares on 26th February, 1954, the appellant had stated that the Allahabad High Court had issued some prohibitory order on 6th August, 1953. The mention of the order of the Allahabad High Court, dated 17th November, 1953, had been suppressed.

Shri Ram Narain  
Mathur.

v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.

(d) On the 19th March, 1954, the official liquidator had applied to this Court for transfer of the execution case pending before the Tribunal at Benares. Several notices were issued but were not served on the appellant. An examination of the postal documents reveals that all these notices were sent at a particular address which seemed to be the permanent address of the appellant. This address was c/o Mr. G. D. Mathur, Executive Engineer, P.W.D., Sarsayya Ghat, Kanpur. On 21st April, 1954, it was reported that the appellant was out of station. The acknowledgment receipt, dated 28th April, 1954, was signed by G.D. Mathur, for Ram Narain on 6th May, 1954. This acknowledgment had not obviously reached this Court on 7th May, 1954, when an order was made that fresh notice be issued for 11th June, 1954.

According to the report which was made on the registered letter which was sent for appearance on 11th June, 1954, the appellant was stated to have left for some place, the address of which was not known. In spite of this, a power of attorney in favour of Mr. M. L. Sethi, dated 8th June, 1954, was put in on behalf of the appellant and Mr. Sethi actually appeared on the 11th June, 1954, and asked for an adjournment and the matter was adjourned to 25th June, 1954.

(e) In the meantime while the appellant had instructed Mr. Sethi to ask for an adjournment, the application which the appellant had filed in the Bombay High

Court for execution was proceeded with Shri Ram Narain Mathur,  
and on the 18th June, 1954, the attachment v.  
orders were obtained from that Court. The Hon'ble the Chief Justice and the Hon'ble Judges of the High Court at Chandigarh

- (f) Strangely enough on 25th June, 1954, The Hon'ble the Chief Justice and the Hon'ble Judges of the High Court at Chandigarh  
Mr. Sethi, had to state that he had no in-  
structions and asked for permission to  
withdraw from the case. Grover, J.

All the above facts are tell-tale and there can be no doubt whatsoever that the appellant was deliberately trying to execute the decree at Bombay irrespective of what was happening in this Court and what the orders of this Court were. It is impossible to accept the suggestion made on behalf of the appellant that he was not aware of the proceedings that were being taken in this Court. The least that can be said is that the appellant was not acting in the *bona fide* belief of his alleged legal rights but was deliberately trying to over-reach the process of this Court and interfere with the property of the Bank in liquidation in the hands of the liquidator. The purpose of a proceeding for contempt is to maintain the authority of the Court. It is not for a defendant to flout process of the Court according to his own conception of his rights. It is not for him to decide whether the Court's order is valid or not. Law and order can be maintained only by obedience to the mandate of the Court. So long as a Court's order remains in force the defendant is bound to respect and obey it (*vide* contempt by E. M. Dangel, p. 122). Further, Courts will not permit defendants to evade responsibility for violating an injunction by doing, through subterfuge, a thing which is not in terms a violation, yet, produces the same effect by accomplishing substantially that which they were enjoined from doing; *Stodder v. Rosen Talking Machine, Co.*, (1), *In All India Sugar Mills, Ltd., v. Sardar Sunder*

Shri Ram Narain Singh (1), Ameer Ali, J., made the following observations:—  
 Mathur

v.

The Hon'ble the  
 Chief Justice  
 and the Hon'ble  
 Judges of the  
 High Court  
 at Chandigarh

"I can find no authority for the proposition that because the defendant is advised or thinks that the order is wrong in law and that he is justified in disobeying it."

Grover, J.

The mere fact, therefore, that the appellant was under the impression or had been advised that notwithstanding the provisions of section 171 of the Indian Companies Act of 1913, and the winding up order made by this Court, he was still entitled to execute the decree obtained from the Benares Tribunal can possibly afford no defence to the appellant. It is equally clear from the facts stated that the appellant was aware of the proceedings which were being taken in this Court for transfer of the proceedings relating to execution pending at Benares to this Court. The appellant was not only aware but had also been expressly directed by the Allahabad High Court on 17th November, 1953, that this Court was seized of the winding up proceedings and that the entire control and disposition of the property and assets of the Bank was subject to the jurisdiction of this Court. When the appellant gave a power of attorney in favour of Mr. M. L. Sethi, dated 8th June, 1954, and when Mr. Sethi actually appeared for him on 11th June, 1954, in this Court it must be apparent that the appellant had instructed him to ask for an adjournment only with the idea of getting the property of the Bank attached at Bombay in execution of his Benares decree before any orders were made by this Court relating to transfer of proceedings, and when Mr. Sethi stated on 25th June, 1954, that he had no instructions and that he be permitted to withdraw, it seems fairly obvious that by then the appellant felt no necessity of resisting any orders of transfer that might be made by this Court as his purpose

had already been achieved on the 18th June, 1954, at Bombay when he had been successful in obtaining attachment orders from the Bombay High Court. There was, therefore, a deliberate attempt to recover property under control of this Court which also constituted a direct contempt (see *Kneisel v. Ursus Motor Co.*, (1). The learned Single Judge has referred to the decision in *In re Henry Pound Son, and Hutchins* (2). There the question was whether the receiver appointed by the debenture-holders under their powers should be at liberty to take possession of the Company's assets notwithstanding an order for winding up of the company and appointment of an official liquidator. Although the Court of Appeal granted the request of the debenture-holders in the circumstances of that case but the following observations of Cotton, L.J., are noteworthy:—

Shri Ram Narain  
Mathur,  
v.  
The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh  
Grover, J.

“Certainly nothing has been said either by Mr. Rigby or by Mr. Renshaw to lead to the suggestion that they were applying with reference to that section; but it is this, that they would be guilty of contempt of Court, if a receiver had been appointed under this deed and if, after the appointment of the liquidator, and after the liquidator was in possession, he had taken possession of that which the liquidator, the officer of the Court, held. That is the reason why they must apply to the Court to enable them, notwithstanding the possession of the officer of the Court, to exercise the rights which they have under their own deed”

(1) 39 A.L.R. 1

(2) (1889) 42 Ch.D. 402

Shri Ram Narain Mathur. v. The Hon'ble the Chief Justice and the Hon'ble Judges of the High Court at Chandigarh  
 Grover, J.

These observations are quite apposite to the present case. The appellant could only apply to this Court, if he wanted to exercise any rights which he was claiming under the Benares decree. The liquidator as an officer of this Court was holding possession of the entire assets of the Bank. Any attempt to interfere with his possession would have clearly constituted contempt. In *Haji Ramzan Moosakhan and others v. Haji Abubucker and others* (1), an attempt had been made to levy execution which disturbed and interfered with the possession of the receiver, It was held that levying of such execution constituted contempt. *Kilachand Devchand and Co., v. Ajodhya-prasad Sukhanand and others* (2), and *Tridibosh Basu v. Jitendra Kumar Basu and another* (3), also relate to interference with the property in the hands of the receiver and it was held that such an interference amounted to contempt. The possession of a liquidator appointed by the Court under the provisions of the Indian Companies, Act, 1913, is somewhat stronger than that of a mere receiver and if the interference with the possession of the receiver constitutes contempt there is greater reason for holding that interference with the possession of the official liquidator would constitute contempt of the authority of the Court under which ~~he~~ the company is being wound up.

It was urged on behalf of the appellant that the learned Single Judge has relied on the fact that the appellant had obtained an attachment order from the High Court at Bombay by concealing the fact that the company against whose property he had obtained the order was being wound up. It is submitted that such a suppression may constitute contempt punishable by the Bombāy High Court but that it could not constitute contempt of this Court. This contention is based

(1) A.I.R. 1945 Sind 75  
 (2) A.I.R. 1934 Bom. 452  
 (3) A.I.R. 1940 Cal. 487

on a complete misapprehension with regard to the basis of the order of the learned Single Judge. It is only one of the relevant factors which has been taken into consideration in deciding whether the conduct of the appellant amounts to contempt of the authority of this Court or not. Lastly, it has been contended that no proper charges were framed against the appellant and, therefore, the order of the learned Single Judge should be set aside. This argument is wholly devoid of force as it is perfectly clear from the record that the appellant was fully aware of the case that he had to meet and had full opportunity for doing so. The learned counsel for the appellant has not been able to refer to any specific grounds in which this matter has been raised.

For all the reasons given above this appeal must fail and it is dismissed. The appellant is directed to surrender to the Registrar on 30th May, 1958.

GOSAIN, J.—I agree.

*B.R.T.*

Shri Ram Narain  
Mathur,  
v.

The Hon'ble the  
Chief Justice  
and the Hon'ble  
Judges of the  
High Court  
at Chandigarh

Grover, J.