circumstances the ratio in the case will not be applicable to the facts of the present case.

(15) Mr Awasthy has also argued that it is incumbent on the assessee-firm to file returns within time prescribed by section 139 of the Act. He further submits that the scheme of the Act shows that in case the firm fails to do so, it is not entitled to registration. In the present case, he urges, the return was filed by the respondent late and, therefore, was also not entitled to registration.

(16) We regret, we are unable to accept this contention of the learned counsel as well. Section 139 has no connection with sections 184 and 185. There is no reference of the earlier section in the latter sections. It is true that the firms are required to file returns within a period prescribed by section 139. However, if a firm fails to do so, the Income-tax Officer is authorised to take action against the firm under section 271 of the Act. He has no right to refuse registration on this ground. We, consequently, reject this contention of Mr. Awasthy.

(17) For the reasons recorded above, we answer the question in the affirmative, i.e., in favour of the assessee.

No order as to costs.

J. V. Gupta, J.—I agree.

N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., S. C. Mital, Bhopinder Singh Dhillon, A. S. Bains and Harbans Lal, JJ.

COURT ON ITS OWN MOTION—*Petitioner.*

versus

KASTURI LAL AND OTHERS—*Respondents.*

Criminal Original No. 19/CRL. of 1978.

May 25, 1979.

Contempt of Courts Act (LXX of 1971)—Sections 14, 15, 17, 18 and 22—Contempt of Court (Punjab and Haryana) Rules 1974—Rule 6(1)—Constitution of India 1950—Articles 215 and 225—Contempt jurisdiction—Nature and scope of—Single Judge of a High

Court—Whether can initiate proceedings for criminal contempt—Section 18—Whether an impediment in the exercise of such power—Words 'heard and determined' therein—Whether to be read conjointly as a phrase—Rule 6(1)—Whether invalid—Interpretation of the rule—Such rule—Whether applies to action by the Court on its own motion.

Held, that in the ultimate analysis, the power to punish for contempt is in the larger public interest of preventing any undue interference with the administration of justice and to uphold the dignity and the majesty of the law and not so much for the protection of individual Judges as such. So far as the superior Courts are concerned, the power to punish for contempt is inherent in them by the very nature of the Court itself. This has been epitomised in the adage that every Court of Record has inherent power to punish for its contempt and this has been consistently recognised to be so from times immemorial by the Common Law of England. The position in India is indeed no different. It is settled law that the contempt jurisdiction is not a creature of any statute, but is an inherent incident of every Court of Record. This was judicially held to be so without dissent and the legal position now stands both recognised and enshrined in the Constitution of India 1950 by virtue of Article 215. (Paras 6 & 8).

Held, that prior to the Contempt of Courts Act, 1971, a Single Judge of the High Court had the fullest jurisdiction to initiate proceedings for contempt against a contemner and issue notice therefor. Not only that, he was further entitled to adjudicate thereon and punish the contemner, if necessary. However, the Act has not placed any blanket bar on the exercise of the contempt jurisdiction by a Single Judge altogether. It is not as if hereafter the contempt jurisdiction of the High Court is to be exercised at all stages and in each and every case by a Bench of two or more Judges. A Single Judge has not only the power to initiate proceedings for civil contempt but also to adjudicate thereon and punish for the same. Again, a reference to Section 14 makes it plain that even as far as criminal contempt *in facie curiam* is concerned, the learned Single Judge is fully entitled not only to intiate the proceedings but under sub-section (1)(d) thereof, he can adjudicate and make such order for the punishment or discharge of such a person as may be just. It is evident that even under the 1971 Act also, a Single Judge is entitled to both initiate and adjudicate and punish for civil contempts of all kinds and also for criminal contempts committed *in facie curiam.* It therefore, follows that the present Act does not wholly bar the exercise of the contempt jurisdiction in general and of criminal contempt in particular by a Single Judge of the High Court.
(Paras 11 and 13).

Held, that reading the provisions of Sections 15, 17 and 18 together, it is apparent that both in consequence and in effect, the

provisions of Section 18 come into play only after the preliminaries of taking cognizance under Section 15 and if necessary, the initiation of proceedings and service of notice under section 17, etc. and the consequential procedural requirements spelt out therein have been complied with. It is in this particular context that the mandate is then laid down with regard to the final hearing and determination by a Bench of not less than two Judges. A mere cognizance of criminal contempt under section 15 and the initiation and notice to the contemner under section 17 are obviously different from and in essence distinct from the final hearing and determination which has been provided for under section 18. Whilst cognizance as per the modes prescribed by section 15, can atleast be allowed to be taken up by a learned Single Judge, so also the procedural formalities of the issuance and service of notice, etc. laid out in section 17. It is only when the stage is set for the final trial and the desks are cleared of all procedural formalities that the hearing and determination visualised by Section 18 would swing into play and not earlier. Section 15 whilst it must be read harmoniously with the other provisions, is not necessarily controlled or governed or subservient to the provisions of Section 18. Each of them must be construed individually and section 15 deals with the initial stage of taking cognizance in the modes prescribed and within it there is no limitation express or implied with regard to the exercise of this power by a Single Judge and consequently there is no warrant to import the provisions of Section 18 into Section 15 even at the very first stage of taking a mere cognizance of a motion for contempt. The words "heard and determined" as used in Section 18 are not to be read as individual isolated words but conjointly as a phrase. The phrase "to hear and determine" has come to occupy a technical meaning and when viewed in the aforesaid hue, the legal phrase "heard and determined" is not to be applied to any and every step taken in the contempt jurisdiction but has relevance only to the final trial and adjudication of criminal contempt. It would be manifest that this phrase would have little relevance to the preliminaries of procedure laid out in Sections 15 and 17. It is only when the contemner has appeared and a final adjudication of the matter is to be made then the provisions of Section 18 and the phrase "heard and determined" is attracted. It is at this stage only that the legislature in its wisdom has provided that the same should be heard and determined by a Bench of two or more Judges. Thus, it must be held that a Single Judge of the High Court is in no way barred from initiating proceedings for criminal contempt and section 18 of the Contempt of Courts Act presents no impediment to the exercise of this limited power.

(Paras 16, 19, 20 and 26)

Chander Kant v. *Tek Chand and others*, Crl. Original No. 79 of 1972 decided on 5th August, 1974. (F.B.)

OVER-RULED

Held, that rule 6 of the Contempt of Courts (Punjab and Haryana) Rules, 1974 has been framed under section 23 of the Act and also under all other powers enabling the High Court in this behalf to regulate its proceedings under the said Act. This obviously equally included the constitutional sanction under Article 225. Now it is by its own volition that this High Court has laid down that all motions, petitions or references for taking cognizance of criminal contempt are to be laid for motion hearing before a Division Bench of atleast two Judges or if the Chief Justice so directs even before a larger Bench. It appears to be plain that the High Court is perfectly within its jurisdiction in regulating its procedure to prescribe—as to the number of Judges who will act in the case of particular proceedings, be it by a Single Judge or a Division Bench of two Judges or even a larger Bench. Whether such a rule regulating its own jurisdiction should be retained or altered is a matter entirely within the discretion and the rule making power of the High Court. Therefore, rule 6 being a valid exercise of such a power by the High Court both under section 23 of the Act and under the inherent power to regulate its own jurisdiction duly recognised by Article 225 of the Constitution, no question of any illegality or invalidity of this rule arises.

(Para 32)

Held, that rule 6(1) provides that every petition, motion or reference for taking cognizance of criminal contempt apparently under section 15 must be placed before a Division Bench of atleast two Judges. Section 15 envisages as many as five modes of taking cognizance of criminal contempt of the High Court itself and the courts subordinate thereto. One of these modes is on the High Court's own motion or what may be synonymously called as the *suo motu* action by one learned Judge constituting the High Court. In this peculiar context from the very nature of things, a Single Judge acts on his own motion or *suo motu* and obviously such an action cannot simultaneously be placed before a Division Bench as well. Therefore, *suo motu* action or action by the Court on its own motion appears as distinct and apart from the motions made by the Advocate General or a private person with the consent of the Advocate General as also a reference of motion made in connection with the criminal contempt of a subordinate court. In the context in which it is laid, it appears to be self evident that the word "Motion" used in rule 6 does not and cannot by the very nature of things, include within its ambit *suo motu* action by a learned Single Judge. It can only govern the motions apart from those made on the Court's own motion, and consequently he has the fullest jurisdiction to take cognizance and if necessary initiate proceedings for criminal contempt on his own motion even on the existing provisions of Rule 6(1).

(Para 33)

Case referred by Hon'ble Mr. Justice A. S. Bains, on 5th October, 1978, to a larger Bench for determination of the uestion of law

involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice Harbans Lal referred the same to a larger Bench for decision,—vide *orders dated 6th March,* 1979. *The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice A. S. Bains and Hon'ble Mr. Justice Harbans Lal, again referred the same question to a larger Bench for its decision,*—vide *orders dated 21st May,* 1979. *The larger Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice S. C. Mital, Hon'ble Mr. Justice Bhopinder Singh Dhillon, Hon'ble Mr. Justice A. S. Bains, and Hon'ble Mr. Justice Harbans Lal after deciding the question on 25th May,* 1979 *returned the case to the Division Bench for the final hearing and determination in accordance with section* 18 *and the rules framed by this Court:*—

> *"Whether a Single Judge of the High Court is barred from initiating proceedings for criminal contempt in view of the provisions of section* 18 *of the Contempt of Courts Act,* 1971 *?"*

Case taken up by the Court on its own motion under contempt of Court Act,—vide *orders dated 4th September,* 1978, *passed by Hon'ble Mr. Justice Ajit Singh Bains, against the respondents, in Criminal Writ Petition No.* 97 *of* 1978.

Harbhagwan Singh, Senior Advocate with S. K. Ahluwalia, Advocate, *for the Petitioner.*

I. S. Tiwana, Additional Advocate General for the State of Punjab.

S. C. Mohunta, Advocate General, Haryana, with Naubat Singh, Senior Deputy Advocate General.

G. S. Tir, Advocate and Giani Bachittar Singh, Advocate, *for Contemners.*

JUDGMENT

S. S. Sandhawalia,, C.J.

(1) Whether a Single Judge of the High Court is barred from initiating proceedings for criminal contempt in view of the provisions of Section 18 of the Contempt of Courts Act, is the question, which because of its significance and some intricacy has been formulated for determination by this larger Bench on a reference made by a Full Bench.

(2) It does appear a little surprising that despite the passage of well nigh nine years since the enactment of the Contempt of Courts Act, 1971 (hereinafter called the 1971 Act), the question aforesaid appears yet to have remained virtually *res integra* barring a judgement of this Court, the correctness of which has itself been put in issue. The matter, therefore, deserves to be considered with some degree of elaboration—both on principle and in the light of the relevant statutory provisions.

(3) In a matter so pristinely legal, the facts would obviously pale into relative insignificance. Nevertheless the matrix thereof giving rise to the salient question, and the mode and manner in which it has come before this Bench deserves to be recounted albeit briefly.

(4) One Hazi Phuman and others preferred a *habeas corpus* petition in this Court in which notice was issued to the respondents to produce the detenu and further a Warrant Officer was appointed to go and search for them in the premises of the police station Malerkotla where they were alleged to have been unlawfully detained. In the course of the proceedings the Warrent Officer appointed by the Court was obstructed in the performance of his duties lawfully enjoined upon him and when the matter came up before my learned brother Bains, J. sitting singly, he directed the issue of a notice of criminal contempt against the present respondents ASI Kasturi Lal, H.C. Daya Singh, H.C. Hartalab Singh, S.H.O. Gurnam Singh and A.S.I. Bachan Singh. On appearing before the Court, a preliminary objection atonce was raised on their behalf that this notice of contempt could not be issued by the learned Single Judge as the allegations therein were in the nature of criminal contempt and it was contended that because of the provisions of Section 18 of the Act even the initiation of proceedings could only be done by a Division Bench and not by a Single Bench. Pointedly noticing that in the case in hand, the notice for contempt had been issued by the Court *suo motu*, Bains, J. referred the matter for determination by a larger Bench *vide his* reference order dated October 5, 1978. The Division Bench before which the case came to be placed and to which I was party, however, felt that the meaningful issue raised in the case deserves an authoritative decision and accordingly the case was directed to be placed before a Full Bench by the reference order dated March 6, 1979. Thereby notices were also directed to be issued to the Attorney-General of India and also the Advocate-Generals of the two States.

(5) At the hearing before the Full Bench, there was an unusual unanimity on the crucial point in so far as both the learned Advocate General of Haryana and the learned Additional Advocate General, Punjab, took up the stand that the Single Judge of the High Court had full jurisdiction to atleast issue a notice of criminal contempt to the contemners *suo motu* and the provisions of the Act would not in any way impede the exercise of this power. Even the learned counsel for the respondents, Dr. Tir, as already noticed was rather luke warm in opposing this stand. However, a sizable hurdle in accepting the said views came to be noticed in the form of an unreported Full Bench Judgement of this Court in *Chander Kant* v. *Tek Chand and others,* (1), wherein, it had been held in unequivocal terms that a Single Judge of the High Court had no jurisdiction to go into the matter at any stage of the proceedings in view of the mandatory provisions of Section 18 of the 1971 Act. It was this factor which inevitably necessitated the constitution of the present Bench in order to test the correctness of the earlier view.

(6) Now, in approaching the significant question before us, one must at the very threshold bear in mind the true nature and scope of the contempt jurisdiction. In the ultimate analysis, the power to punish for contempt is in the larger public interest of preventing any undue interference with the administration of justice and to uphold the dignity and the majesty of the law and not so much for the protection of individual Judges as such. What, however, deserves highlighting is the fact that so far as the superior courts are concerned, the power to punish for contempt is inherent in them by the very nature of the Court itself. This has been epitomised in the adage that every Court of Record has inherent power to punish for its contempt. This has been consistently recognised to be so from times immemorial by the Common Law of England. The position of India is indeed no different. It is unnecessary to advert to precedent because practically every High Court in India has exercised this jurisdiction and whenever its authority has been challenged, each one has held that it has a power inherent in the Court of Record from the very nature of the Court itself. It may well be said that it is judicially accepted throughout India that this jurisdiction is a special one inherent in the very nature of a Court of Record. If authority was needed for so plain a proposition, then reference may instructively be made to the celebrated case on the contempt jurisdiction in

(1) Cr. O 79 of 1972.

Sukhdev Singh v. *Hon'ble C.J. S. Teja Singh and the Hon'ble Judge of Pepsu High Court at Patiala,* (2).

(7) Apart from judicial precedent, it is also necessary to mention that statutory recognition of this legal position is first evident from Section 220 of the Government of India Act, 1935, which in terms declared that every High Court shall be a Court of Record. If any doubt remains and in fact there is none—it stands dispelled by Article 215 of the Constitution of India which renders constitutional recognition to this position in the following words :—

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

Therefore, it deserves to be highlighted that the fountain head of the contempt jurisdiction springs not from any enactment as such nor from the provisions of the Contempt of Courts Act, 1971, but is a necessary incident of all the Courts of Record and this has been consistently so held by judicial precedent and recognized by statutory and costitutional provisions. Any doubt on this aspect is further resolved by reference to Section 22 of the 1971 Act which provides that the provisions thereof are in addition to and not in derogation of the provisions of any other law relating to contempt of courts. This again in a way postulates the recognition of the inherent power to punish for contempt by the Courts of Record.

(8) To sum up, on this aspect, therefore, it is settled law that the contempt jurisdiction is not a creature of any statute, but is an inherent incident of every Court of Record. This was judicially held to be so without dissent and this legal position now stands both recognised and enshrined in the Constitution of India by virtue of Article 215.

(9) Once that is so, what would remain to be determined is whether a power to initiate criminal contempt which is part of the larger contempt jurisdiction, can be exercised by a Single Judge of the High Court. Secondly, if this question can be answered in the affirmative, whether the provisions of the 1971 Act in general and Section 18 thereof, in particular, in any way impede or make any inroad into the exercise of such power.

(2) AIR 1954 S.C. 186.

(10) As regards the first limb of the question, the matter appears to me so squarely covered by precedent that it would obviously be wasteful to examine it elaboratory on principle. In *The State of Bombay* v. *"Mr. P."* (3), which is a judgement rendered under the preceding statute of the Contempt of Courts Act of 1952, this question was pointedly raised on behalf of the contemner. It was argued on his behalf that the contempt being of the High Court as such a Single Judge or a Division Bench for that matter could not hear the same and that all the Judges of the Court sitting together as a body alone can exercise that jurisdiction. Repelling this contention, Desai, J. speaking for the Bench first held as follows :—

> "The High Court immediately before the commencement of the Constitution exercised its inherent jurisdiction and power as a Court of Record to punish persons for contempt and that power has been exercised since the inception of this Court by Judges sitting singly or by Judges constituting a Division Bench. So far as we are aware there has not been a single case of all the Judges of the Court having sat together for the purpose of the exercise of this jurisdiction. The Constitution itself by Art. 215 provides that every High Court shall be a Court of Record and shall have all the power of such a Court including the power to punish for contempt of itself. *The powers which a Court of Record has in relation to contempt are powers exercisable by one or more Judges of the Court and not merely or only by all the Judges of the Court sitting together.* If the argument of the learned advocate for the respondent is right, if one Judge of the Court is not available either on account of illness or any other reason, the Court would be powerless to act."

Thereafter, the lerned judges adverted also to the provisions of the Letters Patent and the Rules of the Court to conclude in identical terms as follows :

> "In view of these provisions, a Judge of the High Court sitting singly is empowered and is entitled to exercise Original jurisdiction and so also a Division Bench of the Court. So far as the present Bench is concerned, it has

(3) AIR 1959 Bombay 182.

been constituted by the Honourable the Chief Justice in exercise of the powers vested in him under the provisions hereinbefore mentioned. In view of the provisions referred to above, even if there was any necessity to rely upon the provisions of the Letters Patent and the rules for the purpose of the exercise of jurisdiction in matters of contempt by a Single Judge or by a Division Bench of this Court, we find that there is ample authority for the same."

In arriving at the aforesaid conclusion, the learned judges of the Division Bench also placed reliance on the Full Bench judgment in re: *Murli Manohar Prasad* 3(a) wherein also a similar argument that all the judges as a body were required to sit together in the exercise of contempt jurisdiction, was authoritatively negatived.

(11) Before us, not a single authority contrary to the aforesaid view was cited nor the least argument challenging the correctness of the view expressed therein was raised. Agreeing with the same, I would hold that prior to the 1971 Act, a Single Judge of the High Court had the fullest jurisdiction to initiate proceedings for contempt against a contemner and issue notice therefor. Not only that, he was further entitled to adjudicate, thereafter and punish the contemner, if necessary.

(12) Once it is held as above, what remains for consideration is whether for the limited purpose of merely initiating proceedings for criminal contempt the provisions of Section 18 of the Act have in any way altered the previous legal position. Inevitably, the argument here must necessarily turn upon the relevant provisions of the Act and for facility of reference these may first be read.

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

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

(a) the Advocate-General, or

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

3(a) A.I.R. 1929 Patna 72.

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

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

Explanation.—In this section, the expression 'Advocate General' means :—

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

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

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

16. x x x x x

17. *Procedure after cognigance.*—(1) Notice of every proceeding under Section 15 shall be served personally on the person charged, unless the Court for reasons to be recorded directs otherwise.

(2) The notice shall be accompanied,—

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

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

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

(4) Every attachment under sub-section (3) shall be affected in the manner provided in the Code of Civil Procedure 1908 (5 of 1908), for the attachment of property in execution of a decree for payment of money, and if, after such attachment, the person charged appears and shows to the satisfaction of the Court that he did not abscond or keep out of the way to avoid service of the notice, the Court shall order the release of his property from attachment upon such terms as to costs or otherwise as it may think fit.

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

18. *Hearing of cases of criminal contempt to be by Benches.*—

(1) Every case of criminal contempt under Section 15 shall be heard and determined by a Bench of not less than two Judges.

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

(13) It appears to me that in approaching this question the salutory canon of construction that no provision of a statute should be construed in isolation but must be so done harmoniously and in the particular context in which it is set, must be prominently kept in mind. It appears to me as unnecessary to burden this judgement with the whole scheme of the 1971 Act. However, at the out set what deserves highlighting in this context is the fact that the Act has not placed any blanket bar on the exercise of the contempt jurisdiction by a Single Judge altogether. It is not as if hereafter the contempt jurisdiction of the High Court is to be exercised at all stages and in each and every case by a Bench of two or more Judges. It is admitted on all hands that as under the earlier statutes of 1926 and 1952, so under the present Act, a Single Judge has not only the power to initiate proceedings for civil contempt, but also to adjudicate thereon and punish for the same. Again a reference to Section 14 makes it plain that even as far as criminal contempt *in facie curiam* is concerned, the learned Single Judge is fully entitled not only to initiate the proceedings, but under sub-section (1)(d) thereof, he can

adjudicate and make such order for the punishment or discharge of such a person as may be just. To sum up, it is evident that even under the 1971 Act also a Single Judge is entitled to both initiate and adjudicate and punish for civil contempts of all kinds and also for criminal contempts committed *in facie curiam*. It, therefore, must be held that the present Act does not wholly bar the exercise of the contempt jurisdiction in general and of criminal contempt in particular by a Single Judge of the High Court.

(14) The learned Additional Advocate-General, Punjab, Mr. I. S. Tiwana contended and in my view rightly that the sequence in which Sections 14, 15, 17 and 18 are laid out in the 1971 Act is very significant and is a patent indicia of the intent of the Legislature in this regard. As already noticed criminal contempt *in facie curiam* is both cognizable and even ultimately punishable by a learned Judge sitting singly under Section 14. However, as regards the other kinds of criminal contempt, the manner of taking cognizance thereof has been prescribed and specified by Section 15 expressly. Excluding the cases of criminal contempt *in facie curiam*, this Section envisages three modes of taking cognizance of the criminal contempt of the High Court itself. These are,—either on its own motion; on a motion made by the Advocate-General; and, thirdly, on a motion by any other person with the consent, in writing, of the Advocate-General. So far as the criminal contempt of the subordinate courts is concerned, this very Section again provides two further modes of taking cognizance thereof namely ; by a reference made by the subordinate court or again on a motion to the same effect made by the Advocate-General. It seems to be plain that the prescription of these modes is to prevent the Courts from being plagued with too numerous petitions for contempt preferred by contankerous litigants seeking private vegeance. What, however, calls particular notice is the fact that mere cognizance under Section 15 and the prescription of modes therefor does not and may not, necessarily lead to the initiation of criminal contempt against the contemner at all. In fact, the learned Single Judge even at the very first step under Section 15 may, at that very stage, stay his hands and decline to issue notice. The proceedings would thus come to a close. There would not hence be even an initiation of any criminal contempt *strictu sensu qua* to contemner at all. Therefore, it appears to be plain that hardly any question of any hearing and determining arises at the very threshold under Section 15.

(15) Now the procedure, after taking cognizance under Section 15, when a *prima facie* case has been made out, warranting the issue of notice, is spelt out by Section 17 of the Act and as its heading indicates, this provides the procedure after cognizance has been taken and proceedings initiated. Sub-section (1) lays down that notice of proceedings under Section 15 shall be served personally on the person charged and in detail lays down as to what shall be contained therein and the statutory annexures thereto. Sub-section (5) then provides that any person charged with contempt under Section 15 may file an affidavit in support of his defence, whilist the proceedings under sub-section (3) and (4) spell out the coercive process to compel attendance by way of attachment of property etc. Now the significant thing therein is that neither in Section 15 nor in Section 17 is there the least hint of any bar or limitation to the effect that a single Judge would not be entitled to exercise jurisdiction under either one of those Sections.

(16) Thereafter comes the material and crucial Section 18 laying down that every case of criminal contempt under section 15 shall be heard and determined by a Bench of not less than two Judges and obviously in view of the procedural difficulties. It is specified that this rule would not apply to the Court of a Judicial Commissioner. Now reading the provisions together, it is apparent that both in consequence and in effect, the provisions of Section 18 come into play only after the preliminaries of taking cognizance under Section 15, and if necessary, the initiation of proceedings and service of notice under Section 17 etc. and the consequential procedural requirements spelt out therein have been complied with. It is in this particular context that the mandate is then laid down with regard to the final hearing and determination by a Bench of not less than two Judges. It is against the background of the aforesaid Sections and the peculiar context in which they are laid, that Mr. Tiwana had raised the meaningful argument that a mere cognizance of criminal contempt under Section 15 and the initiation and notice to the contemner under Section 17 are obviously different from and in essence distinct from the final hearing and determination, which has been provided for under Section 18. On the larger spectrum of the statutory provisions, it was rightly and forcefully contended that whilist cognizance as per the modes prescribed by Section 15 can at least be allowed to be taken up by a learned Single Judge, so also the procedural formalities of the issuance and service of notice etc. laid out in Section 17 It is only when the stage is set for the final trial and the desks are cleared of all procedural formalities that the hearing and determination visualised by Section 18 would swing into play and not earlier.

I find patent force in this argument, which, in my view deserves acceptance.

(17) Before proceeding further, it is perhaps apt to notice a distinction pointed out by the counsel between cognizance as spelt out in Section 15 of the Act and the initiation of proceedings by the issuance of a notice to the contemner. Herein I deem it inapt to advert to the morass of case law which has developed on the use of the word 'cognizance' in the numerous Sections of the Code of Criminal Procedure. Suffice it to mention that herein the term cognizance is being construed strictly for the purposes of this Act and as used in the headings of Section 15 and 17 thereof. Now Section 15, as yet only talks of taking cognizance of criminal contempt in the manner prescribed therein. As already noticed, the proceedings may prove to be still-born and the Court may not even deem it necessary to proceed further and direct the issuance of any notice. However, the initiation of criminal contempt and the issuance of notice under Section 17 is obviously a stage subsequent to taking cognizance under Section 15 which arises only when the Court is satisfied that a *prima facie* case for the issuance of notice is made out and further deems it expedient to do so. Consequently, the cognizance under Section 15 and the issuance of notice under section 17 which may be deemed as the necessary initiation of criminal contempt, are things distinct and separate. Reference, in this connection may be made to Section 20 of the Act, which advisedly uses the word 'initiate' and also provides the limitation of one year from the date on which the contempt is alleged to have been committed. What, however, deserves highlighting is that both of them are nevertheless divided by a sharp-line from the ultimate hearing and determination which is visualised by Section 18 of 1971 Act.

(18) Again the matter may perhaps be viewed from another equally plausible and colourful angle. Reference in detail would follow hereinafter to two recent Supreme Court decisions reiterating the settled position that criminal contempt strictly is a matter between the Court and the contemner. The complainant or those similarly situated merely help bring to the notice of the Court the incident of contempt and are not in strictness parties to the proceedings, who may as of right claim committal or punishment against the contemner. To borrow the language of the performing arts, the main actors in the drama of the contempt jurisdiction inevitably are the Court and the contemner only. Therefore, it was submitted that the

hearing and determination visualised by Section 18 arises only when the contemner appears on the scene and then the curtain rises for the final adjudication by the Court. In fact, the provisions of Section 18 would swing into play only with the appearance of the contemner after service of notice and the earlier proceedings under Sections 15 and 17 are merely procedural or to revert again to picturesque language — are mere prologues to the drama. Therefore, it is plausibly submitted that Section 18 has no bearing or relevance to either the taking of cognizance under Section 15 or to the initiation of proceedings and issuance of notice under Section 17.

(19) In the same vein, it was plausibly submitted by Mr. Harbhagwan Singh on behalf of the complainant that Section 15 whilst it must be read harmoniously with the other provisions, is not necessarily controlled or governed or subservient to the provisions of Section 18. Each of them must be construed individually and it was highlighted that this Section deals with the initial stage of taking cognizance in the modes prescribed and within it there is no limitation express or implied with regard to the exercise of this power by a Single Judge. Consequently, it was argued forcefully that there is no warrant to import the provisions of Section 18 into Section 15 even at the very first stage of taking a mere cognizance of a motion for contempt. Counsel submitted that barring *suo motu* action the cognizance under Section 15 may not necessarily lead to the initiation of the proceedings at all and the Court may reject the motion forthwith. On these premises also, it was rightly contended that at this initial stage under Section 15 where the Court has obvious discretion even to refuse to initiate proceedings, the provisions of Section 18 cannot even remotely be attracted. Counsel was right in contending that they can come into play only when the matter is ripe for trial after the precedural preliminaries of Sections 15 and 17 have been traversed.

(20) Equally I find plausibilty in the submission made before us that the words "heard and determined" as used in Section 18 are not to be read as individual isolated words, but conjointly as a phrase. It deserves recalling that the word 'Hear' has, over the passage of years come to have a legal connotation as a term of art when used in statutes or judicial proceedings. Reference in this connection may first be made to Stroud's Judicial Dictionary wherein, it is stated as:—

> HEAR: HEARING. (1) To "hear" a cause or matter means to hear and determine it. And "unless there be something

which by natural intendment, or otherwise, would cut down the meaning, I apprenhend there can be no doubt that the legislature, when they direct a particular cause to be heard in a particular court, mean that it is to be heard and finally disposed of there. And further, when they say that it is to be heard (meaning, heard and finally disposed of) in a particular court, they mean unless there is something in the context which either by natural interpretation or by necessary implication would cut it down, that in all matters which are not provided for that court is to follow its ordinary procedure" (per Lord Blackburn, Re. Green, 51 L.J.Q.B. 44); or, as Selborne C., put it in the same case, "hearing" includes not only its necessary antecedents, but also its necessary or proper consequences (ibid., 40; nom, Green *v.* Penzance, 6 App. Cas 657). See further R. V. Canterbury (Archbishop), 28, L.J.Q.B. 154

(2) * * * *

(3) * * * *

(4) When power is given " to hear and determine" an offence, the condition is implied that the accused be first cited by summons, and have an opportunity of defence (Dwar. 671, 672).

(5) When two or more are to "hear and determine", they must sit together, not separately (Burn's Justice, Introd. xxiv, cited Dwar. 670)."

It is evident from the above that apart from the legal connotation of the word "hear" the phrase "to hear and determine" has also come to occupy a technical meaning. When viewed in the aforesaid hue, the legal phrase "heard and determined" is not to be applied to any and every step taken in the contempt jurisdiction, but has obvious relevance only to the final trial and adjudication of criminal contempt. It would be manifest that this phrase would have little relevance to the preliminaries of procedure laid out in Sections 15 and 17. It is only when the contemner has appeared and a final adjudication of the matter is to be made then the provisions of Section 18 and the

phrase "heard and determined" is attracted. It is at this stage only that the Legislature in its wisdom has provided that the same should be heard and determined by a Bench of two or more Judges. The preliminary steps envisaged by Sections 15 and 17, which set the stage for the final adjudication would not, in my view, require the necessity of a Division Bench or a larger Bench and would, therefore, be well within the jurisdiction of a Single Judge of the High Court.

(21) Once the phrase "heard and determined" is given the aforesaid meaning, it appears to be plain that the proceedings envisaged under Section 15 and the preliminary procedure laid out in Section 17, in fact decide nothing. This aspect again necessitates recalling the basic concept that the contempt jurisdiction is essentially between the Court and the contemner and not a *lis* between the contending parties. When the Single Judge under Section 15, after taking cognizance of the matter, in any of the modes prescribed thereby chooses not to issue notice, it cannot be remotely said that he has determined any *lis* between the parties. In fact, thereby he merely declines to exercise the contempt jurisdiction inherently vested in the High Court. Even where a Single Judge under Section 15 may be satisfied that a *prima facie* case of contempt is made and issues notice, such an order again is not a determination of any matter but is as yet only an initiation of the proceedings. The charge is to be heard and determined later after service to the contemner. Even issuance of the notice and the service thereof on the contemner up to that stage under Section 17 involves no final legal determination of any matter. It may, therefore, be meaningfully concluded that the proceedings under Section 15 involves no determination as such nor do the proceedings under Section 17 decide anything till the contemner appears and makes his defence.

(22) It was noticed at the very out set that the issue before the Bench was *res integra* barring an unreported Full Bench judgment of this Court to which detailed reference follows. Nevertheless, by way of anology some tacit support for the view, I am inclined to take, appears first from the two recent decisions of Their Lordships of the Supreme Court. In *Baradakanta Mishra* v. *Mr. Justice Gatikrushna Misra, C.J. of the Orissa H. C.* (4), a Full Bench of the Orissa High Court declined to initiate any proceedings at the instance of one Baradakanta Mishra apparently under Section 15 of the Act. Against the said refusal the issue was sought to be carried to the Supreme

(4) A.I.R. 1974 S. C. 2255.

Court on a purported right of an appeal under Section 19 of the Act. A preliminary objection was raised that since refusal to initiate proceedings determined nothing, no appeal was competent under Section 19. Upholding the preliminary objection, Bhagwati, J. speaking for the Court observed as follows:—

> "*Where the Court initiates a proceeding for contempt* suo motu, *it assumes jurisdiction to punish for contempt and takes the first step in exercise of it. But what happens when a motion is made by the Advocate General or any other person with the consent in writing of the Advocate General or a reference is made by a subordinate court. Does the Court enter upon the jurisdiction to punish for contempt and act in exercise of it when it considers such motion or reference for the purpose of deciding whether it should initiate a proceeding for contempt ? We do not think so.* The motion or reference is only for the purpose drawing the attention of the Court to the contempt alleged to have been committed and it is for the Court, on a consideration of such motion or reference, to decide in exercise of its discretion, whether or not to initiate a proceeding for contempt. The court may decline to take cognizance and to initiate a proceeding for contempt either because in its opinion no contempt *prima facie* appears to have been committed or because, even if there is *prima facie* contempt, it is not a fit case in which action should be taken against the alleged contemner. The exercise of contempt jurisdiction being a matter entirely between the Court and the alleged contemner, the Court though moved by motion or reference, may in its discretion, decline to exercise its jurisdiction for contempt. It is only when the Court decides to take action and initiates a proceeding for contempt and it assumes jurisdiction to punish for contempt. *The exercise of the jurisdiction to punish for contempt commences with the initiation of a proceeding for contempt, whether* suo motu *or on a motion or a reference. That is why the terminous a quo for the period of limitation provided in Section* 20 *is the date when a proceeding for contempt is initiated by the Court.* Where the Court rejects motion or a reference and declines to initiate a proceeding for contempt, it refuses to assume or exercise jurisdiction to punish for contempt and such a decision

cannot be regarded as a decision in the exercise of its jurisdiction to punish for contempt. Such a decision would not, therefore, fall within the opening words of Section 19, sub-section (1) and no appeal would lie against it as of right under that provision."

It appears to be plain from the aforesaid observations as also the final decision of the Court that it is now authoritatively settled that a mere refusal to initiate proceedings under Section 15 determines nothing and is not the decision of the High Court in exercise of its jurisdiction to punish for contempt and, therefore, it is not appealable. This ratio would lend obvious support to the view that there is no hearing or determination of the nature referred to in Section 18 involved in proceedings under Section 15.

(23) A recent decision of Their Lordships which arises from this Court reported in *Purshotam Dass Goel* v. *Hon'ble Mr. Justice B. S. Dhillon and others,* (5), is even a stronger pointer towards the aforesaid view. Herein, an appeal was sought to be carried to the Supreme Court against the order of the High Court issuing notice to the contemner under Section 17 to show cause why he should not be proceeded against for committing contempt. Again, a preliminary objection was taken that no appeal under Section 19 of the Act was competent. Upholding the preliminary objection, it was observed as follows:—

"*The proceeding is initiated under Section* 17 *by issuance of a notice.* Thereafter, there may be many interlocutory orders passed in the said proceeding by the High Court. It could not be the intention of the legislature to provide for an appeal to this Court as a matter of right from each and every such order made by the High Court. The order or the decision must be such that it decides some bone of contention raised before the High Court affecting the right of the party aggrieved. *Mere initiation of a proceeding for contempt by the issuance of the notice on the prima facie view that the case is a fit one for drawing up the proceeding, does not decide any question—*

* * * *

* * * *

In our considered judgment, an order merely initiating the proceeding without anything further, does not decide anything against the alleged

(5) 1978 S.C. 1014.

contemner and cannot be appealed against as a matter of right under Section 19."

It necessarily follows from the above that even where the Court directs issue of notice and the same is served under Section 17. Their Lordships have opined that there is as yet no hearing or determination of any matter which would attract the right of appeal.

(24) To the same effect and perhaps going a step further are the observations of the Division Bench in *Narendrabhai Sarabhai Hatheesing and others* v. *Chinubhai Manibhai Seth,* 5(a) which have been approvingly referred to in *Baradakanta Mishara* v. *Mr. Justice Gatikrushna Misra, C.J. of the Orissa H.C.,* (supra). Therein an appeal under Clause 15 of the Letters Patent was sought to be preferred against the order made by a Single Judge refusing on a notice of motion to commit the defendant for breach of an undertaking given to the Court. Upholding a preliminary objection, that such an order was not a judgment and did not in any way affect the merits of the question between the parties by determining any right or liability, it was held by the Division Bench that no appeal lay against such an order under the Letters Patent. Rangnekar, J. whilst agreeing with Beaumont, C.J. observed as follows:—

"Proceedings for contempt are matters entirely between the Court and the person alleged to have been guilty of contempt. No party has any statutory right to say that he is entitled as a matter of course to an order for committal because his opponent is guilty of contempt. All that he can do is to come to the Court and complain that the authority of the Court has been flouted, and if the Court thinks that it was so then the Court in its discretion takes action to vindicate its authority. It is, therefore, difficult to see how an application for contempt raises any question between the parties, so that any order made on such an application by which the Court in its discretion refuses to take any action against the party alleged to be in the wrong can be said to raise any question between the parties. Sir Jamshed Kanga, however, relies upon the case in 25 Cal. 236 (3) where three Judges of the Calcutta High Court were of the opinion that an order like the one we have in this appeal was appealable. No reasons,

5(a) A.I.R. 1936 Bombay 314.

however, seem to have been given for this opinion and with all respect to the learned Judges, I am unable to agree that an order refusing to commit the party alleged to have committed a breach of the order of the Court is a judgment within the meaning of Cl. 15, Letters Patent. In these circumstances, I think the preliminary objection must be upheld and the appeal must be dismissed with costs."

The aforesaid observations are thus patent authority for the proposition that even a refusal to commit for contempt involves no determination of any *lis* between the parties, and is not a judgment.

(25) Some support for the view that a Single Judge can initiate proceedings appears in the Judgment of the Single Judge in *Suneel Keerthi* v. *The Union of India and others* (6). Therein Rule 7 which is in the following terms was challenged on the ground of the same being violative of Sections 18 and 19(1) of the Act:—

"7. Initiation of proceedings. Any petition, information or reference for action being taken under the Act, shall, in the first instance, be placed before the Chief Justice on the Administrative side.

The Chief Justice or such other Judge or Judges as may be designated by him for the purpose shall determine the expediency or propriety of taking action under the Act."

An analysis of the judgment would show that though the question was not squarely and well posed and consequently the reasoning is relatively obscure, the ratio thereof is a warrant for holding that the initiation of proceedings by the Chief Justice alone or by Single Judge authorised to do so under Rule 7, was patently valid and in no way contrary to Sections 18 or 19 of the Act.

(26) In the light of the foregoing discussion, it appears that on principle, the provisions of the statute as also by way of anology from authoritative precedents it must be held that a single judge of the High Court is in no way barred from initiating proceedings for criminal contempt and Section 18 of the Contempt of Courts Act

(6) A.I.R. 1975, Karnataka 224.

presents no impediment to the exercise of this limited power. The answer to the question before the Full Bench is, therefore, rendered in the negative.

(27) Now, inevitably I must advert to the earlier Full Bench Judgment of this Court in *Chander Kant* v. *Tek Chand and others,* (7). There is no gain saying the fact that the question before us was squarely raised and noticed by the Bench in the following terms:—

> "Does Section 18(1) of the Contempt of Courts Act of 1971 preclude a Bench of less than two Judges from issuing notice of the reference aforesaid?".

Nor can it be disputed that the Bench returned an answer thereto in unequivocal terms to the effect that a Single Judge of the High Court had no jurisdiction to go into the matter at any stage of the proceedings in view of the mandatory provisions of Section 18 and the proceedings for criminal contempt at all stages have to be heard by a Bench of not less than two Judges.

(28) However, an analysis of the judgment on this specific point would plainly indicate that counsel for the parties were rather remiss in not presenting the matter in its correct perspective. I have the privilege of having my learned brothers S. C. Mital and Dhillon JJ. on this Bench as well who were members of the said Full Bench (the judgment of the Bench having been recorded by Dhillon, J. himslef) and they endorse the fact that the case was not presented before them in all its ..... ramifications which have been noticed in the earlier part of this judgment. Therefore, there appears to be little discussion of the matter both on principle as also with regard to the other statutory provisions of the Act and the whole question was disposed of barely in a page or two of the judgment. No reference appears therein either to the true nature of the contempt jurisdiction vested in the High Court, nor to its origin or the legislative history preceding the present 1971 Act. Equally, the meaningful sequence of sections 14, 15, 17 and 18 missed notice as also the true concept of the cognizance and initiation of contempt proceedings as distinct from its final hearing and determination. Nor was the connotation of the words "heard and determined" in Section 18 at all adverted to. This apart, it appears that no judgment

(8) Cr. 79 of 1972 decides on 5th August, 1974.

on the point was either cited by the learned counsel for the parties and in any case there is not the least reference thereto by the Full Bench. However, the basic error in the judgment on this point is the presumption that the very jurisdiction to punish for criminal contempt was vested in the High Court by section 18 of the Act whose provisions were opined to be mandatory. It appears that from this erroneous premise, the argument went off at a tangent to arrive at the conclusion noticed above. As stands pointedly noticed in the very opening paragraphs of this judgment, the power to punish for contempt is inherent in every High Court being a Court of Record and this has received statutory and constitutional recognition. It is, therefore, erroneous to presume that the 1971 Act or for that matter any other statute has conferred or vested the jurisdiction for criminal contempt on the High Court. I would deem it unnecessary to refute the observations of the Full Bench in *Chander Kant's case* in still greater detail because my two learned brothers, who were parties to the same (the other member of the Bench Narula, C.J. having by now retired), are now themselves of the view that it does not lay down the law correctly. I would, accordingly over-rule *Chander Kant* v. *Tek Chand and others,* (supra), on this specific point.

(29) Before parting with this judgment, however, I deem it necessary to notice that even after having crossed the stone-wall purportedly projected by Section 18 of the Act, a minor hurdle nevertheless was sought to be raised in the way by Rule 6 of the Contempt of Court (Punjab and Haryana) Rules, 1974 framed by the Court itself under Section 23 of the Contempt of Courts Act, 1971. The relevant parts of Rule 6 are in the following terms:—

> "6. (1) Every petition, motion or reference in relation to criminal contempt shall, unless the Chief Justice directs it to be heard by a larger Bench, be laid for motion hearing before a Division Bench of atleast two Judges.
>
> (2) Every petition, motion or reference in relation to civil contempt shall unless directed otherwise by the Chief Justice, be laid before a Single Bench.
>
> (3) Every notice issued by the High Court shall be in the form appended to these rules and shall be accompained by a copy of the motion, petition or reference as the case may be, together with the copies of the affidavits, if any."

We are directly concerned with sub-rule (1) aforesaid and at first flush it appeared that this provision is either a hurdle in the exercise of even *suo motu* initiation of contempt proceedings by a learned Single Judge or in the alternative, it might well be violative of the Act itself, and, therefore, *ultra vires* of the same. A closer analysis in depth, however, would indicate that neither of the two positions is true.

(30) That all the High Courts even prior to the promulgation of the Constitution had the power to regulate the exercise of their own jurisdiction by framing rules is indeed too axiomatic and, therefore, needs no great elaboration. Statutory recognition of this power seems to have been made as far back as in Section 108 of the Government of India Act, 1915, which is as follows:—

> "Each High Court by its own rules provide as it thinks fit for the exercise, by one or more Judges, or by division courts constituted by two or more Judges of the High Court, of the original and appellate jurisdiction vested in the Court."

(31) It seems unnecessary to notice anything further in this context than the fact that Article 225 of the Constitution has preserved this power along with others in the following terms:—

> "225. Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered, in any existing High Court and the respective powers of the Judges thereof in relation to the administration of Justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution."

The issue seems to be evident from the plain provisions of the statutes themselves, but if any authority were needed it is available in the binding precedent of *National Sewing Thread Co. Ltd., Chindambaram* v. *James Chadwick and Bros. Ltd.,* (8), wherein it has been observed as follows:—

> "This objection also in our opinion is not well founded as it overlooks the fact that the power that was conferred on

(9) A.I.R. 1953 S.C. 357.

the High Court by Section 108 still subsists, and it has not been affected in any manner whatever either by the Government of India Act, 1935 or by the new Constitution. On the other hand it has been kept alive and reaffirmed with great vigour by these statutes. The High Courts still enjoy the same unfettered power as they enjoyed under Section 108 of the Government of India Act, 1915 of making rules and providing whether an appeal has to be heard by one Judge or more Judges or by Division Courts consisting of two or more Judges of the High Court.

It is immaterial by what label or nomenclature that power is described in the different statutes or in the Letters Patent. The power is there and continues to be there and can be exercised in the same manner as it could be exercised when it was originally conferred. As a matter of history the power was not conferred for the first time by Section 103 Government of India Act, 1915. It had already been conferred by Section 13 Indian High Courts Act of 1861".

Again in *Farzand* v. *Mohan Singh and others,* (9), Satish Chandra, J. (as his Lordship then was) has opined further that apart from the judicial side, even on the administrative one also the High Court is equally entitled to regulate and determine whether certain matters are to be considered by the whole Court or by a Committee of Judges, or even by a Single Judge.

(32) Now Rule 6 aforesaid has been framed under Section 23 of the Contempt of Courts Act, 1971 and also under all other powers enabling the High Court in this behalf to regulate its proceedings under the said Act. This obviously equally included the constitutional sanction under Article 225. Now it is by its own volition that this High Court has laid down that all motions, petitions or references for taking cognizance of criminal contempt are to be laid for motion hearing before a Division Bench of atleast two Judges or if the Chief Justice so directs even before a larger Bench. It appears to be plain that the High Court is perfectly within its jurisdiction in regulating its procedure to prescribe—as to the number of Judges who will act in the case of particular proceeding, be it by a Single Judge or a Division Bench of two Judges or even a larger Bench. Whether such a rule regulating its own jurisdiction should be retained or altered,

(10) A.I.R. 1968 Allahabad 67.

is a matter entirely within the discretion and the rule-framing power of the High Court. Therefore, Rule 6, being a valid exercise of such a power by the High Court, both under section 23 of the Act and under the inherent power to regulate its own jurisdiction, duly recognised by Article 225 of the Constitution, it appears to me that no question of any illegality or invalidity of this Rule arises in the present case.

(33) However, a matter of interpretation with regard to the application of sub-rule (1) of Rule 6 nevertheless arises for consideration. It provides that every petition, motion or reference for taking cognizance of criminal contempt apparently under Section 15 must be placed before a Division Bench of atleast two Judges. As stands noticed eariler, Section 15 envisages as many as five modes of taking cognizance of criminal contempt of the High Court itself, and the courts subordinate thereto. One of these modes is on the High Court's own motion or what may be synonymously called as the *suo motu* action by one learned Judge constituting the High Court. In this peculiar context from the very nature of things, a Single Judge acts on his own motion or *suo motu* and obviously such an action cannot simultaneously be placed before a Division Bench as well. Therefore, *suo motu* action or to be exact and to use the terminology applied by the statute action by the Court on its own motion, appears to me as distinct and apart from motions made by the Advocate General or a private person with the consent of the Advocate General as also a reference of motion made in connection with the criminal contempt of a subordinate court. In the context in which it is laid, it appears to be self-evident that the word "Motion" used in Rule 6 does not and cannot by the very nature of things, include within its ambit *suo motu* action by a Single Judge. It can only govern the motions apart from those made on the Court's own motion. This construction, in my view is the only reasonable one which can be harmoneously placed on the provisions of Rule 6, (Clause-1) I find no anamoly in this interpretation and even if there were to be any, it is worth recalling that the salutary canon of interpretation in that, in case two constructions are possible, one in consonance with the legality and constitutionality of the provision, and the other against it, then the former should be preferred. I would, therefore, hold that Rule 6(1) is not at all attracted to a *suo motu* action by a learned Single Judge and consequently he has the fullest jurisdiction to take cognizance and if necessary, initiate proceedings for criminal

contempt on his own motion, even on the existing provisions of Rule 6(1).

(34) The significance legal question having been answered in the negative, as above, it follows as a necessary consequence that the notice of criminal contempt issued against the respondents by the High Court on its own motion is of perfect validity. The respondents having been duly served and having put in appearance, the matter is hereby directed to be placed for the final hearing and determination before a Division Bench of two Judges in accordance with Section 18 and the Rules framed by this Court.

S. C. Mital, J.—I agree.

Bhopinder Singh Dhillon, J.—I agree.

A. S. Bains, J.—I agree.

Harbans Lal, J.—I agree.

N.K.S.

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