
(1959) 10 BOM CK 0006

In the Bombay High Court

Case No : Criminal Revision Application No. 227 of 1959

Danyando Sambhiji Warhade and Another

APPELLANT

Vs

Shankarappa Ummappa Banagire

RESPONDENT

Date of Decision : 22-10-1959

Acts Referred:

Central Provinces and Berar Industrial Disputes Settlement Act, 1947 — Section 41, 47, 57

Criminal Procedure Code, 1898 (CrPC) — Section 5(2)

Citation : (1960) 62 BOMLR 178

Hon'ble Judges : Kotval, J

Bench : Single Bench

Advocate : N.L. Abhyankar, Spl. Govt. Pleader, V.R. Manohar, for the Appellant; S.G. Kukdey, for the Respondent

Judgement

(1) This is an application for revision by two persons who are undergoing trial in the Court of the Magistrate, First Class, Buldana, for having committed an offence under S. 47 of the C. P. and Berar Industrial Disputes Settlement Act, 1947. The first applicant is the Managing Director of a private limited company known as the Deccan Motor Service Private Limited, Chikhali, and the second applicant was at all material times the Secretary of the Company. In consequence of certain labour disputes arising in the Company, an agreement was reached on 3-12-1957 between the Labour Officer appointed under the said Act and the two applicant as representing the Company. It is to be noticed that under the definition in S. 2(24) of the Act, the Labour Officer was acting as a representative of the employees in that dispute. The settlement was in regard to an individual worker, the complainant Shankarappa Umappa Bhanagire who was a motor stand manager. In consequence of the retrenchment of the post, the complainant was claiming certain statutory amount payable to him as also his arrears of salary. The agreement which was reached was to the effect that a payment of Rs. 167/- was to be made by the Company as statutory retrenchment compensation and a further sum of Rs. 1,901/- as arrears of salary due to the complainant. According

to the complainant this amount was not paid and therefore he prosecuted the applicants who are the principal officers of the Company for having committed offences under S. 47 of the Act. The complainant's case was that the non-payment in accordance with the agreement reached amounted to an illegal change within the meaning of S. 51 read with S. 51 read with S. 47 of the Act.

(2) At the inception of the trial, a preliminary objection was raised on behalf of the applicants that the criminal Court had no jurisdiction to entertain a complaint of that type for the reason that the question as to what constitutes an illegal change is a question which under the Act is exclusively relegated to the jurisdiction of the Industrial Court, and unless that Court in the first instance decides what an illegal change is, the criminal Court cannot convict the applicants of an offence under S. 47 of the Act.

(3) Now, "illegal change" is nowhere in terms defined in the Act. Though S. 51 refers to "illegal change" there is no definition attempted there. What is defined in the Act is a change and the definition is contained in sub-section (6) of S. 2 as follows: "'change means a change in any industrial matter." "Industrial matter" is defined in sub-section (13) of S. 2 as follows:

"'industrial matter" means an matter relating to work, pay, wages, reward, hours, privileges, rights or duties of employers or employees, or the mode, terms and conditions of employment or refusal to employ and includes questions pertaining to-

(a) the relationship between employer and employee, or to the dismissal or non-employment of any person.

(b) the demarcation of function of any employee or class of employees.

(c) any right or claim under or in respect of or concerning an agreement, submission or award made under this Act, and

(d) what is fair and right in relation to any industrial matter having regard to the interest of the person immediately concerned and of society as a whole".

It was disputed on behalf of the applicants whether the non-payment under the agreement constituted an illegal change; but the magistrate who decided the preliminary objection gave no finding upon it. When the matter came up before the Additional Sessions Judge, he has decided the matter and in paragraph 6 and 7 of his order held that the non-payment by the applicants under the agreement constituted an illegal change.

(4) On behalf of the applicants it was pointed out that this was not one of the points raised in the preliminary objection nor was a matter which the Additional Sessions Judge ought to have decided under the circumstances of the case. On the other hand, it was contended that the only question which fell for determination at the hands of the Sessions Court was, assuming that an illegal change had taken place, whether the magistrate had jurisdiction to try the

alleged offence without a prior determination of the question as to whether it was an illegal change. In short, what was contended was that the Criminal court had no jurisdiction at all to determine. It was therefore contended that the Additional Sessions Judge has in the first instance assumed the very jurisdiction which was being questioned before him.

(5) This contention, in my opinion, is sound. It was also not disputed on behalf of the complainant or the State that that was not a matter which the Additional Sessions Judge was called upon to decide. Indeed, the question would have fallen for determination by the Additional Sessions Judge only if he had first determined the question of jurisdiction and determined it in favour of the criminal Court having jurisdiction. But, as I have said, the question was not all raised and ought not to have been considered. In the result, both the parties before me, as also the Special Government Pleader have agreed that I should order that the findings of the Additional Sessions Judge in paragraphs 6 and 7 of his judgment shall have no effect and that the Magistrate may at the trial come to his own determination of the question.

(6) Then I turn to the Principal question raised in the case, and it was whether, having regard to the provisions of the Act, the question whether an illegal change has taken place or not falls solely within the jurisdiction of the Industrial Court appointed under the Act, or whether the criminal Courts trying offences under S. 47 of the Act can, either exclusively or in addition to the Industrial Courts, decide the question for themselves.

(7) The argument is founded upon the provisions of S. 41 of the Act which runs as follows:

"The State Industrial Court or a District Industrial Court shall, on a reference made by the State Government, and may, on an application by any employer or employee concerned or by a representative of the employees concerned or by the Labour Officer, decide whether any strike or lock-out or any change of which notice has been given or which has taken place is illegal".

Reference was also made to the provisions in the Act regarding the jurisdiction of the Industrial Courts in Ss. 22(13) and 23(8) of the Act read with rules 36 and 37 of the rules framed under S. 61 of the Act. Sections 22(13) and 23(8) to which I have referred above provide that no order of the State Industrial Court or of the District Industrial Court shall be called in question in any civil or criminal Court. The contention raised is that if such finality has been given to the orders of the two Industrial Courts that shows that they have exclusive jurisdiction in the matters entrusted to them, and one of the matters entrusted to them under the provisions of S. 41 is that they may, decide on an application by any employer or employee concerned or by a representative of the employees or the Labour Officer whether "any change of which notice has been given or which has taken place is illegal".

(8) A perusal of S. 41 shows a distinction between two independent powers

vested in the State Industrial Court or the District Industrial Court. Where a reference has been made to either of these Courts by the State Government, the section provides that the Courts "shall" decide whether any strike or lock-out or any change of which notice has been given or which has taken place is illegal. But where the matter comes before these Courts on an application by an employer or employee or by a Labour Officer, the section says that the State Industrial Court or the District Industrial court "may" decide whether the strike or lock-out or any change of which notice has been given or which has taken place is illegal. In the arguments on either side much emphasis was laid on this difference in phraseology.

(9) Now, this is not a case where the State Government has made a reference. Therefore, I need not concern myself with the first part of the section. The second part may be discretionary, but whether it is discretionary or not, it seems to me that it does not go to the extent of implying that where such an application is made, the State Industrial Court or the District Industrial Court are the only Courts which may try the question. Even accepting the principle that the word "may" in a case like this is used as a matter of courtesy to the Courts and really means "shall" still the effect of the section would be that the State Industrial Court or the District Industrial Court are bound to decide the question. Nonetheless, that cannot mean that because they are bound to decide the question their jurisdiction is an exclusive jurisdiction and no other Court has a similar jurisdiction. A provision of law that a court shall compulsorily exercise a jurisdiction does not necessarily imply that that Court alone has the jurisdiction to the exclusion of all other Courts.

(10) Nor does a consideration of the provisions of S. 22(13) or S. 23(8) advance the case further, because all that those sections provide is that the orders of the two Courts, if and when they decide the matter and pass orders, shall not be called in question in any civil or criminal Court. It may be that if either of the two Courts assumes jurisdiction and passes an order, the contention urged on behalf of the applicants may have a certain force. I do not hold that it necessarily will oust the jurisdiction of the ordinary Criminal Courts. But in the present case, no such order has been passed by either of the two Courts and I am not considering whether any order passed by any Industrial Court has finality and whether the Magistrate is bound by it. The facts here are that no application was ever made to any Industrial Court; no order has been passed; but the question of jurisdiction comes up for decision only in a criminal complaint simpliciter. In such a case, it seems to me that neither of the two provisions of law referred to above will assist the applicants.

(11) This is a criminal case in which the applicants are charged with an offence under S. 47 of the Act. Section 5 of the Cr. P. C. and especially sub-section (2) thereof given plenary jurisdiction to the ordinary Criminal Courts in the matter of the trial of these offences. Section 5(2) of the Code is nothing more than a statutory recognition of a cardinal rule of construction of statutes that the Courts

vested with general jurisdiction to try all offences cannot have their jurisdiction ousted except by the most clear and unambiguous words or by necessary implication. In England the rule is confined in its applicability to the superior Courts of law, but in India S. 5 applies the rule to all Criminal Courts. Where however a statute creates a new offence, and simultaneously a special jurisdiction out of the ordinary course is conferred upon special Courts or Tribunals then it follows by implication that those are the only Courts or Tribunals which may try the offence. But in such cases there is really no ouster of the jurisdiction of the ordinary Courts for they never had any.

(12) The rule of construction in matters of this kind has been recently stated by their Lordships of the Supreme Court of India in *Bhim Sen Vs. The State of U. P.*. In that case, the question was whether under S. 55 of the U. P. Panchayat Raj Act (26 of 1947) the jurisdiction of the ordinary criminal Courts was ousted, and the principle of construction which their Lordships laid down was as follows:

"Now, in these circumstances, it has to be considered whether the trial of this case by the ordinary criminal Court is barred. The bar of the jurisdiction of the ordinary criminal Court is brought about by S. 55 of the Act. But it requires to be noticed that the bar which is brought about by the section, is a bar which relates to the case as a whole". Because, in terms what it says is "no court shall take cognizance of "any case" which is cognizable under the Act by a Panchayat Adalat." Under S. 2(a) of the Act a case is defined as meaning "criminal proceeding in respect of an offence triable by a Panchayati Adalat".....

* * * * * That section (S. 5 Cr. P. C.) enjoins that all offences under the Penal Code shall be investigated, enquired into, tried and otherwise dealt with "according to the provisions hereinafter contained". To the extent that no valid machinery is set up under the U. P. Panchayat Raj Act for the trial of any particular case the jurisdiction of the ordinary criminal court under s. 5, Cr. P. C., cannot be held to have been excluded. Exclusion of jurisdiction of a court of general jurisdiction, can be brought about by the setting up of a court of limited jurisdiction, in respect of the limited field, only if the vesting and the exercise of that limited jurisdiction is clear and operative. Where, as in this case, there is no adequate machinery for the exercise of this jurisdiction in a specific case, we cannot hold that the exercise of jurisdiction in respect of such a case by the Court of general jurisdiction is illegal".

The case before their Lordships was a case which was much stronger than the present case, from the point of view of an ouster of jurisdiction of the ordinary Courts. There were, in that case, the provisions of S. 55 favouring ouster. Yet their Lordships held that since there was no adequate machinery set up for the exercise of the special jurisdiction, the jurisdiction of the ordinary Court was not ousted. Here there is no machinery set up to try the offences created by the Act and there is no provision like S. 55 either.

(13) In a similar case where the question arose whether under the provisions of

S. 141 of the then prevalent Companies Act, the jurisdiction of the ordinary Court was barred, it was held that unless a special procedure is created by the same Act which creates the special jurisdiction, the prosecutions not in accordance with that special procedure cannot be held as barred: see *Emperor v. Vishwanath* AIR 1942 Sind 9.

(14) I have already indicated that by the provisions of the Act all that has been enacted in S. 41 is that so far as the question whether an illegal change has taken place or not is concerned, the State Industrial Court or the District Industrial Court may try the question when an application is made before it. But so far as the provision of a penalty for making an illegal change is concerned, in S. 47 or in any other section defining or creating certain offences, there are no further provisions. There are no provisions indicating any special procedure or a special mode of trial, nor has any special tribunal been set up to try such offences. On the contrary, a reference to S. 57 of the Act would show that all such offences are expressly entrusted to the jurisdiction of a Magistrate First Class under the normal provisions of the Cr. P. c. Section 5(2) of the Cr. P. C. makes provision for the trial of offences against laws other than the Indian Penal Code and it provides that all offences under such laws shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, i.e. the provisions of the Code of Criminal Procedure. The provisions of the section are plenary and it seems to me that if any person accused of an offence intends to show that the Courts established under the Code have no jurisdiction, it is for him to establish that some other court specially empowered has jurisdiction. This cannot be established except by express words or necessary inference from the provisions of any other law. There is no such provision to be found in the Act with which I am concerned, but on the other hand, there is a clear express provision to the contrary in S. 57. I hold therefore that so far as the trial of the offences under S. 47 of the Act for making illegal changes is concerned, the jurisdiction of the ordinary criminal Courts has not been barred by anything contained in S. 41 of the Act where no decision under that section has been made by the State or District Industrial Court.

(15) In paragraph 10 of his judgment the Additional Sessions Judge also decided a further question, namely, whether the complainant in the instant case was an employee. That question was not relevant to a consideration of the question of jurisdiction with which I have dealt. It may be that some argument had been advanced before the Additional Sessions Judge on the interpretation of the word "employee" contained in S. 2(10) of the Act, but that argument could be considered only as an ancillary part of the main and only question which was before the Sessions court, namely, whether in the circumstances of the case the jurisdiction of the ordinary Courts was barred by virtue of S. 41 of the Act. In view of this, I must make it clear that the decision of the Additional Sessions Judge in paragraph 10 shall not be taken as a decision upon any matter which may arise at the trial and that the Magistrate should now consider all questions arising before him independently and without reference to any of the remarks

made or points decided by the Additional Sessions Judge in his order or in the above order.

(16) The application for revision is dismissed.

(17) Application dismissed.