

(2020) 10 BOM CK 0001
In the Bombay High Court
Case No : Criminal Revision No. 85 Of 2020

Father Jerome Gonsalves S J

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 01-10-2020

Acts Referred:

Maharashtra Recognition Of Trade Unions And Prevention Of Unfair Labour Practices Act, 1971 — Section 30, 39, 40, 48, 48(1)
Code Of Criminal Procedure, 1973 — Section 313, 397, 401

Citation : (2020) 10 BOM CK 0001

Hon'ble Judges : Vibha Kankanwadi, J

Bench : Single Bench

Advocate : V. N. Upadhye, S.B.Pulkundwar, P. V. Barde

Final Decision : Dismissed

Judgement

1. Present revision application has been filed by the original accused challenging his conviction for the offence punishable under Section 48 (1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as "MRTU and PULP Act" for the sake of brevity), by learned Labour Court, Ahmednagar, in Criminal Complaint ULP No.20 of 2018 dated 24-09-2015, which thereafter confirmed in appeal by learned Member, Industrial Court, Ahmednagar, in Appeal Criminal (ULP) No.04 of 2015 dated 08-11-2019.

2. Before considering the submissions, brief facts are required to be placed which are admitted : - Complainant i.e. present respondent No.2 was working with Social Centre which is a Trust. He was working as Field Assistant. He was orally terminated from service from 31-03-1995. He challenged the same in proceedings (ULP) No.50 of 1996 before 2nd Labour Court, Ahmednagar. That came to be decided on 02-01-2008. That complaint was allowed and the respondent therein i.e. Social Centre was directed to reinstate the complainant with continuity of service from 31-03-1995 with 25 % back wages. Thereafter,

both the parties had filed revisions against said Judgment bearing Revision ULP No.05 of 2008 and Revision ULP No.19 of 2008. Both the revisions came to be dismissed by common order dated 13-06-2012. Thereafter, Social Centre came before this Court in Writ Petition No.8627 of 2012 and the said writ petition was ultimately withdrawn on 07-08-2015.

3. With the above said background, further facts are that in the meantime, the present respondent No.2 filed Criminal Complaint ULP No.20 of 2008 under Section 48 (1) of the MRTU and PULP Act contending that the said order that was passed in complaint ULP No.50 of 1996 on 02-01-2008 is not implemented and, therefore, there is contempt. After recording plea of the present revision applicant wherein he pleaded not guilty, trial has been conducted. The complainant has examined himself. Thereafter, statement of the accused under Section 313 of Code of Criminal Procedure has been recorded. The accused has examined defence witness D.W.1 Rajendra Francis Pandit to prove his innocence. After considering the evidence on record, the learned Labour Court has convicted the accused for the contempt of Labour Court punishable under Section 48 (1) of the MRTU and PULP Act, 1971, and sentenced him to suffer simple imprisonment for one month. The said conviction is challenged in the aforesaid Appeal (Criminal) ULP No.04 of 2015 which came to be dismissed on 08-11-2019. Hence, this revision.

4. Heard learned Advocate Mr. V. N. Upadhye for the revision applicant, learned Additional Public Prosecutor Mr. S. B. Pulkundwar for respondent No.1-State, and learned Advocate Mr. P. V. Barde for respondent No.2.

5. It has been vehemently submitted on behalf of the revision applicant that, the conviction awarded to the revision applicant is not sustainable in the eyes of law. Though the revision applicant was serving with Social Centre as Secretary, it was the Trust. Perusal of the Judgment in Complaint ULP No.50 of 1996 would show that, Social Centre was the party to the proceedings but when Criminal Complaint ULP No.20 of 2008 was filed, it was against the revision applicant by name and in his capacity as Secretary to the Social Centre. The Trust was not made a party to the said proceedings. The said proceeding was not maintainable against the Secretary alone. It has been specifically stated by the revision applicant in his statement under Section 313 of Code of Criminal Procedure that, he was Secretary of Social Centre from 2004 to 2012 and, thereafter, he had no control over the affairs of the Trust. He could not have implemented the order thereafter. Section 39 of the MRTU and PULP Act provides for taking cognizance of offence by Labour Court. It runs thus ;

"39. Cognizance of offence : - No Labour Court shall take cognizance of any offence except on a complaint of acts constituting such offence made by the person affected thereby or a recognised union or on report in writing by the Investigating Officer."

Further in view of Section 40 of the MRTU and PULP Act, the Labour Court

becomes the Court of Magistrate of First Class and gets equivalent powers as they are in the Code of Criminal Procedure. Even as regards conduct of trial is concerned, the procedure laid down in Chapter XXI of the Code of Criminal Procedure for summary trial would then be applicable. Here in this case, when an explanation has been given by the accused under Section 313 of Code of Criminal Procedure and, thereafter, he has led the evidence in order to show as to what actions or steps were taken to implement the order yet it was not in the hands of the Secretary. The said explanation ought to have been accepted by the learned Judicial Magistrate First Class. He ought to have seen that the contempt of the order of the Court is not willful and, therefore, he ought to have acquitted the revision applicant. The learned Court had not taken into consideration the ratio laid down in, *Aneeta Hada v. Godfather Travels*, reported in 2012 (4) Mh.L.J. 527 : 2012(5) SCC 661, in which it was held that,

"If the company is not impleaded as accused, the complaint against a Director of the company would not be maintainable."

Further he relied on the decision in, *Dipak Ray v. Mafatlal Engineering Employees Union and others* reported in 1995(2) Bom.C.R. 216, decided by this Court at Principal Seat, wherein the issue was,

"Whether a Director or Officer of a company incorporated under the Companies Act, 1956 can be liable for contravention of an order passed under the provisions of the Act even though such Director or Officer was not party to the proceedings in which the order was passed, despite there being no provision in the Act imposing such vicarious penal liability on the said Director or Officer of the company."

It was held that,

"In absence of such clear cut provision making a Director or an Officer of a company vicariously liable of a criminal act of the Company, it would not be possible to prosecute a Director or individual Officer for an offence alleged to have been committed by the company and the prosecution would not be maintainable."

The learned Advocate for the revision applicant, therefore, prayed for setting aside the impugned order by allowing the revision and acquitting the revision applicant.

6. Per contra, the learned Advocate representing the respondent No.2 submitted that, when it is not in dispute that the impugned order was passed on 02-01-2008 to which in fact the Secretary can be said to be the party directly because the citation would show that, Social Centre was made party respondent through secretary. After the said order was passed, definitely the employer was duty bound to obey that order. So also the secretary who would be responsible for the affairs of the Trust or company should see that the order is implemented in letter and spirit. Even till today the said order is not complied with. In all five

orders are at least running in favour of the respondent No.2 yet he has not got any relief. Procedure that was adopted by the learned Labour Court was perfectly legal. Even prior to filing of that Criminal Complaint No.20 of 2008, the complainant had met the secretary for the implementation of the order. Even after the withdrawal of the writ petition before this Court, there was once again an attempt on the part of the respondent No.2 to get the order implemented yet there is no positive response from the employer. Learned Advocate for respondent No.2 pointed out the decision in, *M. R. Patil, Vice-Chairman and Managing Director, Maharashtra State Road Transport Corporation and Another v. Member, Industrial Court, Amravati and Another*, reported in 1996 (2) Mh.L.J. 299, equivalent 1996 BCI 135, Bombay High Court Bench At Nagpur. In this case it has been specifically observed that, the decision in case of *Dipak Ray* is per incuriam. In this case it has been held that,

"Every person who was bound to obey/ complied with the order passed by Labour Court face to do so then he would be liable under Section 48 (1) of the MRTU and PULP Act. It does not matter whether the company is one of the accused or not as the responsibility of that person is then required to be considered."

Further same view has been taken in, *I. H. Mehta v. Ashok Bhargav Jadhav and Ors.*, reported in 2013 ALL MR (Cri) 530. It was therefore submitted on behalf of the respondent No.2 that, both the Courts below have taken correct view and now there is absolutely no scope under its revisional jurisdiction to this Court to interfere with the sentence that has been imposed on the revision applicant.

7. At the outset, those admitted facts would make it very clear that, specific order was passed for reinstatement of the respondent No.2. That order was given to Social Centre who was party to complaint ULP No.50 of 1996 through its secretary. When the revision applicant is accepting a fact that, he was the secretary of the said Trust since 2008, and the order came to be passed in 2008 and, thereafter, the revision applicant was holding the said post till 2012, then definitely he was one of the officers/ employers who was under obligation to comply with the order. It will not be out of place to mention here that, though the revision was filed by Social Centre before Industrial Court as well as the writ petition before this Court; there was absolutely no stay to the order passed by the Labour Court on 02-01-2008. There appears to be one more attempt by the present revision applicant to show that, he was making genuine efforts to implement the said order. However, if we consider the suggestions given to the complainant and also the statement under Section 313 of Code of Criminal Procedure as well as testimony of the defence witness, it can be revealed that, he was asking the complainant to accept less than it was granted under the orders of 02-01-2008. It cannot be considered as a genuine effort. Even he has led evidence in criminal complaint which he ought to have led in the main petition which was in respect of pay rolls since 1994. D.W.1 Rajendra Pandit has produced pay roll prepared by him and then states that, except the person

mentioned in the pay roll, there was no other person working as Field Officer in Social Centre. That stage to show something on merits had gone and what was to be implemented was in view of setting aside the termination order he was reinstated with 25 % back wages from 31-03-1995. However, there is no evidence to show the compliance thereof.

8. No doubt it appears that the said order dated 02-01-2008 was thereafter challenged in revision as well as writ petition yet the fact remains that, there was no stay granted by any of the Courts. Merely because those proceedings were pending, no advantage can be given to the present revision applicant.

9. Now as regards the only point which the revision applicant wants to agitate is that, the criminal complaint could not have been only against him or in fact it should have been against Social Centre only. Decision in case of Deepak Ray (Supra) has been held to be per incuriam by this Court in case of M. R. Patil (Supra). Following are the observations in case of M.R. Patil ;

"23. All the above mentioned provisions have not been noticed in Deepak Rays case, as that case has turned only on the rationale that there is no provisions in the Act like section 32 of the Industrial Disputes Act and, therefore, a person cannot be vicariously liable. It is held by the Division Bench of this Court in Kashibai v. State of Maharashtra, 1993 Mh.L.J. 1168 that where the necessary provisions of the Act are not noticed, such judgment becomes per incuriam and has no binding force in the law of precedents. Applying the same rule, it will have to be said that the judgment in Deepak Rays case could not be read in as general terms as the learned Counsel for the petitioners wants it to be read. It will have to be seen that the petitioners herein are insisting on the reading of the judgment in far wider terms than the judgment permits it. It will have to be held that the said judgment has to be read only in terms of the facts stated therein, and not in the manner the petitioners want this Court to do."

"24. In view of what is stated above, it would not be necessary to make any reference to the larger Bench, as there would be no conflict in the law stated earlier in S. J. Mehtas case 1991 FLR 908 and Deepak Rays case 1995 (2) Mh.L.J. 149 = 1995 (1) CLR 200."

10. This Court had taken note of Section 30 of MRTU and PULP Act and the intention of the legislature behind the said provision, thereafter the Section 48 has been interpreted. Those observations are in paragraphs No.20, 21 and 22. They are not required to be reproduced here. Suffice it to say that, the interpretation of Section 48 has been made that, the person who is being tried under Section 48 of the Act need not be a party to the original proceedings, but then that person should be the person who was bound to obey the order passed by the Labour Court. The word "any person" used in Section 48 of the MRTU and PULP Act has been so interpreted. Here in this case, it can be seen that, Social Centre was party to Complaint ULP No.50 of 1996 through Secretary. That means, the Secretary was required to represent the Company or Trust. When

Criminal Complaint ULP No.20 of 2008 was filed on 02-12-2008, at that time also the present revision applicant was the Secretary. Under such circumstance, he was legally bound to obey the order dated 02-01-2008. Whether Social Centre is a party to the proceedings under Section 48 or not, will not make a difference when the present revision applicant as Secretary he was then, was bound to obey the order. His subsequent resignation in 2012 will not absolve him from the liability. Since Section 34 of the MRTU and PULP Act contemplates in respect of monitory relief that is granted that, it should be equivalent to a money decree, then it can be executed within one year and during that period the present revision applicant was the Secretary. Further in case of I. H. Mehta (Supra) also the quashment was sought on the ground that the applicant therein was not party to the proceedings. However it was held that,

"Since the applicant was General manager, it would fall to his duties to ensure that the order was not breached. Merely because applicant was not party to the said proceedings, proceedings in question cannot be quashed."

In this case also the decision in case of M.R. Patil (Supra) was relied.

11. Under such circumstances, there is no legal flaw in the decision of holding the revision applicant guilty of committing offence under Section 48 of the MRTU and PULP Act, it leaves no scope for interference that too under the provisions of Section 397 or 401 of the Code of Criminal Procedure to this Court. There is no merit in the revision application, it deserves to be rejected. Accordingly revision application stands rejected. Revision applicant to surrender himself before the Trial Court within 7 days from today. In case of his failure to surrender, the Trial Court may issue warrant for the arrest of accused for serving the sentence.

Later on -

12. After the Judgment is pronounced, the learned Advocate for the revision applicant prays for stay of the order passed today as well as to stay effect of the order passed by the learned Labour Court, for six weeks. However, taking into consideration the fact that though the original order, which was supposed to be implemented, was passed in 2008 and it has not been implemented yet. Stay is granted for four weeks.