

(1965) 04 KAR CK 0006

In the Karnataka High Court

Case No : Criminal Revision Petition No. 65 of 1965

Parasker U.S.

APPELLANT

Vs

Karnatak Mining Company (Private) Ltd.

RESPONDENT

Date of Decision : 20-04-1965

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Criminal Procedure Code, 1898 (CrPC) — Section 435, 439
Payment of Wages Act, 1936 — Section 15 (1), 17, 17 (1)

Citation : (1967) 2 LLJ 619 : (1965) 1 MysLJ 742

Hon'ble Judges : T.K. Tukol, J

Bench : Single Bench

Judgement

1. The sole point that arises for my decision on the strength of the preliminary objection raised by the respondent is whether the petition to revise the order passed by the District Judge, Bangalore, under S. 17 of the Payment of Wages Act, 1936, is tenable under S. 435 read with S. 439 of the Code of Criminal Procedure.

2. The facts material for the purpose of the decision of this case are not in dispute. The petitioner filed an application (Criminal Miscellaneous Case No. 15 of 1962) before the Second City Magistrate, Bangalore, for recovery of Rs. 3,860.99 from the respondent on the ground the he had been in the service of the respondent as a foreman and that the amount was due in respect of various items of claims enumerated in the petition. That petition came to be dismissed on the ground of limitation as also on merits. The petitioner then approached the District Judge, Bangalore, in M.A. No. 46 of 1963. The learned District Judge held that the appellant had not proved any of his claims and accordingly dismissed the appeal, directing the parties to bear their own costs.

3. It is against this decision that the present petition has been filed under S. 435 read with S. 439 of the Code of Criminal Procedure. The argument advanced on behalf of the petitioner by his learned counsel, Sir B. K. Bopayya, is that, as the

Second City Magistrate who passed the order is a criminal Court and as no specific provision has been made in the Payment of Wages Act (hereinafter called the Act), he had filed the petition under the aforesaid sections of the Code of Criminal Procedure. Sri G. V. Shantaraju appearing for the respondent has contended that no revision petition is competent against the order of the District Judge and that even if one was competent, it should be under the CPC and not under the Code of Criminal Procedure.

4. In support of his argument, the learned advocate for the petitioner has drawn my attention to S. 15(1) of the Act which empowers the State Government, by notification in the official gazette to appoint any Commissioner for Workmen's Compensation :

"or other officer with experience as a Judge of a civil Court or as a stipendiary magistrate to be the authority to hear and decide for any specified area all claims arising out of deductions from the wages, or delay in payment of the wages of persons employed or paid in that area."

It should be borne in mind that the section does not confer any power on a magistrate to decide cases under the Act as "authority" under S. 15. All that the section lays down is that an officer who has the experience of a Judge of a civil Court or as a stipendiary magistrate be appointed as the authority to hear and decide the cases. Reference to a "Judge of a civil Court or as a stipendiary magistrate" merely defines the qualification of the officer to be appointed as "the authority" for the purpose of S. 15. It has no reference to the present office held by the officer appointed for performing the duties and discharging the functions under S. 15. Therefore, the mere fact that a person who has the experience of stipendiary magistrate is appointed as a competent authority under S. 15(1) of the Act cannot convert the proceedings before him into criminal proceedings and the forum into a criminal Court.

5. This view finds support from a number of other sections contained in that Act. Section 17(1), which provides for an appeal against an order passed by the authority under Sub-section (2), (3) or (4) of S. 15 of the Act, lays down that an appeal against any of the orders passed under the provisions aforesaid shall be preferred within thirty days from the date of the order before the District Court or before the Court of Small Causes in the Presidency Towns. The District Court is obviously a civil Court and its proceedings are governed by the Code of Civil Procedure. Section 17A which was inserted by S. 8 of Act 68 of 1957 provides for conditional attachment of property of employer or other person responsible for payment of wages. Sub-section (2) expressly provides that the provisions of the Code of Civil Procedure, 1908 relating to attachment before judgment under that code shall, as far as may be, apply to any order for attachment under Sub-section (1). The power of attachment is conferred by Sub-section (1) both on the authority as also on the District Court. Section 18 defines the powers of authorities appointed under S. 15. It lays down that every authority appointed under Sub-section (1) of S. 15 shall have all the powers of a civil Court under the

Code of Civil Procedure, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents and every such authority shall be deemed to be a civil Court for all purposes of S. 195 of Chap. XXXV of the Code of Civil Procedure.

6. The various provisions contained in the rules framed under the Act lend further support to this view. The Payment of Wages (Procedure) Rules, 1937, prescribe the procedure in respect of various matters. Rule 11 lays down that in exercising the power under S. 18 of the Act authority shall be guided in respect of procedure by the relevant orders of Sch. I of the CPC with such alterations as the authority may find necessary, not affecting their substance, for adopting them to the matter before him.

7. The aforesaid discussion of the relevant provisions of the Act and the rules thereunder clearly indicate that the proceedings before the authority and before the District Court in appeal are civil proceedings and if a revision petition were to be filed, such petition has to be filed before the High Court under S. 115 of the Code of Civil Procedure. It is unnecessary for me to enter into the question as regards the tenability of the revision petition. It is sufficient to refer to a decision of this Court in *Codialabail Press Vs. Monappa (K.)*, in which it has been laid down that the District Court hearing an appeal under S. 17 of the Act against an order passed by the authority under S. 15 is a Court subordinate to the High Court, and that the proceedings before it are revisable under S. 115 of the Code of Civil Procedure.

8. I am, therefore, of the opinion that the present revision petition under S. 435 read with S. 439 is not competent and is accordingly dismissed.