

(2012) 08 BOM CK 0022

In the Bombay High Court

Case No : Cr.A.J. Writ Petition No. 3824 of 2011

S. and S. Industries and Enterprises Ltd. and Another

APPELLANT

Vs

Rajendra N. Gurav and Others

RESPONDENT

Date of Decision : 17-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 39, 48, 48(1)

Citation : (2013) 137 FLR 263

Hon'ble Judges : K.U. Chandiwal, J

Bench : Single Bench

Advocate : Shamrao Patil and Avinash Patil, for the Appellant; Ketki Rege and Rajesh More for State, for the Respondent

Final Decision : Allowed

Judgement

K.U. Chandiwal, J.—The petitioners question propriety and legality of order dated 6th January, 2009 issuing process in miscellaneous criminal complaint (ULP) No. 126 of 2008, initiated at the instance of respondent No. 1. The petitioners had a factory at Mumbai dealing in packing of edible oil coming from Chennai and marketed at Mumbai, however it was closed with effect from 12th May, 2000, owing to mounting financial losses.

The respondent No. 2-Noel Monteiro was one of the employee in the unit at Mumbai. He filed the complaint (ULP) No. 741 of 2000 for himself and on behalf of other employees seeking payment of wages and legal dues.

The grievance was, the Company (petitioners) did not comply ex-parte order dated 20th October, 2007 recorded in complaint (ULP) No. 741 of 2000, or that it was not challenged by petitioners. In fact, the petitioners had deposited an amount of Rs. 2,10,035/- towards payment of legal dues on 17th July, 2009 in the Industrial Court at Mumbai.

2. The petitioners feel that the order impugned issuing process is illegal, bad in law as it was passed on a wrong assumption that the ex parte order dated 20th October, 2007 passed by the Industrial Court in complaint (ULP) No. 741 of 2000 was not challenged by the petitioners.

3. In fact, miscellaneous application was filed on 21st November, 2008 whereas miscellaneous criminal complaint (ULP) No. 126 of 2008 was filed on 24th December, 2008. The copy was also served to the respondent No. 2 before filing the said criminal complaint on 15th December, 2008. It could not be served to respondent No. 1 as he was not a party in main proceedings. The order dated 20th October, 2007 was subject to challenge, having not reached finality, the criminal complaint (ULP) No. 126 of 2008 should not have been entertained. It is imperative, there was no material before the learned Judge while exercising the powers to take cognizance of the offence and issue process. This is more so as the learned Judge was not informed that the orders were subject of challenge, thus there was suppression of facts.

4. The complaint (ULP) No. 741 of 2000 was not filed by the respondent No. 1 as he has in subsequent paragraph accepted, he is one of the concern employee in the said complaint. The expression "one of the party in the complaint and one of the concern employee in the complaint" has naturally distinct connotation and they travel in altogether different area. Thus, there was a deliberate inconsistency created by the respondent No. 1 while filing the criminal complaint. The Advocate for respondent Nos. 1 and 2 before both the Courts was the same. He was also conscious of pending restoration application, but consciously it was suppressed.

5. Rule 96(a) of the Labour Courts (Practice and Procedure) Rules, 1975 relied by the respondents has no consequence nor applicable to the facts of the case, which reads as under:--

96(a) If in the opinion of Court a person has committed contempt of Court u/s 48 of the Act, the Court may on its own motion or on the application by any person, initiate proceeding u/s 48 of the Act and shall submit report in that behalf to the Industrial Court or the High Court, as the case may be.

6. Section 39 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair labour Practices Act, 1971 provides three categories of persons who are competent to file criminal complaint against the persons who commit offence u/s 48(1) of the said Act. The person affected would be category No. 1. The person means a body of individual, also unrecognised union can be complainant under the cover of body of individual and as said, it has a right to institute a criminal complaint taking recourse to section 39 of the said Act. In the present proceedings, the respondent No. 2, by virtue of application made by 16 employees under Order I, Rule 8 of C.P.C. has made an application to the Industrial Court. The complainant did not satisfy his role in the matter nor he figured in those employees, complaint could not have been attended to without

other employees being informed or specific leave of the Court is obtained. Explanation in complaint by respondent No. 1 is without legal base. Personal execution can only be taken by party on record.

7. In the criminal complaint by respondent No. 1 in paragraph 1 he refers of Noel Monteiro, being authorised person to file the proceedings in representative capacity. In paragraph 9, it is informed that the petitioners stopped appearing in complaint (ULP) No. 741 of 2000 and did not file written statement and consequently, the order dated 20th October, 2007 was recorded by the Industrial Court. The learned Judge had examined various facts but he was not informed deliberately of restoration and the complainant therein (respondent No. 1) was not a party to the original proceedings. Taking survey of the above facts, the order of process issued by the learned Judge, Labour Court dated 6th January, 2009 is set aside. Petition is allowed in the above terms.