
(1960) 03 BOM CK 0003

In the Bombay High Court

Case No : Criminal Revision Application No. 453 of 1959 with Criminal Revision Application No. 475 of 1959

Seth Radhakisan Ramnath

APPELLANT

Vs

Ramji Langadu

RESPONDENT

Date of Decision : 11-03-1960

Acts Referred:

Industrial Disputes Act, 1947 — Section 18, 29

Citation : (1960) 62 BOMLR 535 : (1960) 2 LLJ 317

Hon'ble Judges : D.J. Jagannadha Raju, J

Bench : Single Bench

Judgement

1. This judgment will dispose of two Criminal Revisions Nos. 453 and 475 of 1959. The facts involved are common and common questions of law are also involved. The facts giving rise to these two revision applications are that one Ramji, who is admittedly an employee of the bidi factory of the firm of Ramkrishna Ramnath of Kamptee at Tumsar, was dismissed on 20 October 1953. Admittedly Radhakisan (applicant in Criminal Revision No. 453 of 1959) is the proprietor of this firm and Ghasilal (applicant in Criminal Revision No. 475 of 1959) was the general manager and agent at Tumsar. After Ramji was dismissed by Ghasilal on 20 October 1953, he applied to the district industrial court, Bhandara, for a declaration that his dismissal was illegal. The district industrial court by its order dated 30 April 1956. Held the dismissal to be illegal and in appeal the State industrial court. Nagpur, confirmed this order on 28 June 1957. Ramji then gave notice to the firm of Ramkrishna Ramnath for being reinstated, but the firm replied on 15 July 1957 declining to reinstate him. Thereafter Ramit prosecuted the two applicants and also Goverdhandas for having committed an offence punishable under S. 47 of the Central Provinces and Berar Industrial Disputes Act of 1947 which will hereinafter be referred to as the Act. Goverdhandas was acquitted but the other two persons were convicted.

2. The trying magistrate hold that the prosecution evidence has sufficiently

established that the complainant was removed from duty without any cause or enquiry into the matter, and that such a removal of a permanent employee amounted to an illegal change as already held by the industrial courts. After holding that an illegal change had taken place, the trying magistrate held that both Radhakisan and Ghasilal were responsible for this illegal change. The trying magistrate thereupon convicted each of them under S. 47 of the Act and sentenced them each to pay a fine of Rs. 1,000 or in default to suffer simple imprisonment for 3 months.

3. In appeal the learned Sessions Judge held that the question whether an illegal change had taken place or not had become conclusive in view of the decision of the district industrial court and the State industrial court. He also added that even if that question can be gone into by civil or criminal court, even then having regard to S. 51 of the Act and item 3 of Sch. II there is no doubt that the dismissal of the complainant, not being in accordance with law, would amount to an illegal change. He, therefore, confirmed the conviction of both Radhakisan and Ghasilal under S. 47 of the Act and he also confirmed their sentences.

4. Section 47 of the Act reads as follows :-

"Penalty for illegal changes :- (1) Any employer who makes any illegal change shall, on conviction, be punishable with fine which may extend to five thousand rupees and in the case of a continuing offence with an additional fine which may extend to two hundred rupees per day for every day during which the offence continues after his last conviction for such offence.

(2) An employer who acts in contravention of a standing order settled under S. 30 shall, on conviction, be punishable with fine which may extend to one hundred rupees and in the case of a continuing contravention of such standing order, with an additional fine which may extend to twenty-five rupees per day for every day during which such contravention continues after his last conviction for such contravention."

The charge against the two applicants was that they had effected an illegal change and not that they had contravened any standing order. The charge against the two applicants and their convictions are, therefore, under S. 47(1) and not under Sub-section (2) of S. 47. This is conceded by the learned Special Government Pleader. The conviction of the two applicants, therefore, rests on the finding that they had made an illegal change. The finding in turn rests mainly on the decision of the industrial court that dismissal of Ramji amounted to an illegal change.

5. Radhakisan and Ghasilal have now come in revision and the following points were urged :

(1) The criminal court must come to an independent finding as to whether there was any illegal change or not, uninfluenced by the decisions of the industrial courts. The decision of the industrial courts is not binding on the criminal courts.

(2) The dismissal of Ramji does not amount to a change within the meaning of the Act. Even if it amounts to a change, it is not an illegal change.

(3) The charge levelled against the persons at the trial was that no notice had been given as required by S. 31 of the Act.

(4) The finding of the criminal courts that an illegal change had taken place because no notice had been given as required by S. 31 of the Act and the finding of the industrial court that an illegal change had taken place are erroneous because no notice under S. 31 need be given when an employer contemplated a dismissal of an employee.

(5) The illegal change contemplated in S. 47 to the one referred to in S. 51 of the Act and no other.

(6) The criminal courts as well as the industrial courts did not go into the question whether there was a contravention of the standing orders.

(7) Contravention of the standing orders was not the subject-matter of the complaint or the particulars of the offence explained, to the accused at the trial.

(8) Ramji was dismissed by the oral order of Ghasilal and, therefore, Radhakisan cannot be made liable victoriously for what Ghasilal had done.

6. I shall discuss these questions seriatim. The first is whether the decision of the industrial courts given under S. 41 of the Act that dismissal of Ramji was illegal is binding on the criminal courts. The district industrial court, Bhandara framed an issue whether the dismissal of the applicant Ramji from service was illegal and answered the question in the affirmative. In the reasons also the district industrial court observed as follows :

"I find that the applicant was dismissed and that his dismissal was illegal."

7. The learned Special Government Pleader concedes that the words "illegal change" are not found in the decision of the district industrial court, but he contends that the finding that the dismissal was illegal amounts to a finding that the dismissal was an illegal change. In appeal the State industrial court observed that the order of the district industrial court declaring the dismissal illegal was absolutely correct. It also observed that the change effected by such a wrongful dismissal was an illegal change and that the learned Judge of the district Industrial court was right in declaring that the dismissal was an illegal change. The question is whether these decisions are conclusive in a criminal trial.

8. Industrial courts are established under Chap. III of the Act. The district industrial court acts under S. 23 of the Act and the State industrial court hears appeals from the orders passed by the district industrial court. Section 23 of the Act provides that the district industrial court may determine such Industrial disputes and deal with such other industrial matters as may be prescribed. Rule 36 of the rules framed under the Act enumerates the matters on which a district industrial court can adjudicate. Section 41 of the Act also provides as follows :-

"Authority to decide illegality :- The State industrial court or 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 lockout or any change of which notice has been given or which has taken place is illegal."

It is conceded that the district industrial court had jurisdiction to pass the order in question both under S. 41 of the Act and rule 36(b) of the rules framed under the Act.

9. The main question, however, is whether the finding of the industrial courts that the dismissal of Ramji was illegal is binding on criminal courts in a prosecution of the employers under S. 47 of the Act. In support of his contention that it is so binding the learned Special Government Pleader relies on S. 22, Sub-section (12), and Sub-section (13). Sub-section (12) enacts that the order of the State industrial court shall be binding on all the parties who appear or are represented before the court and on all parties summoned to appear as parties, whether they actually appear or not, and on the successors, heirs and assigns of the employer, and in the case of a union which is a party to the proceedings before such court, on all persons who were members of such union on the date of the dispute or who become members of the union thereafter. Sub-section (13) provides that no order passed by the state industrial court shall be called in question in any civil or criminal court. Section 23, sub-section (7), similarly enumerates the persons on whom the order of the district industrial court shall be binding. Sub-section (8) of S. 23 provides that no order passed by the industrial court shall be called in question in any civil or criminal court. It is, therefore, contended that the orders passed by the industrial courts are conclusive and binding on criminal courts in criminal prosecutions. In a criminal prosecution the prosecution comes out with a case that the accused has committed an offence and the accused denies having committed such an offence. The accused does not challenge or call in question the order passed by the industrial court.

10. The question whether such an order should be set aside is not before the criminal court. What Sub-section (8) of S. 23 and Sub-section (13) of S. 22 lay down is that the orders passed by the industrial courts cannot be set aside or challenged as incorrect in any civil or criminal court, but these sections do not enact that the finding given by the industrial courts must be accepted as conclusive by the criminal courts for the purposes of criminal prosecutions.

11. Chapter VII of the Act deals with penalties. Section 43 penalizes an employer who declares a lockout which is held by the State industrial court to be illegal. Section 44 penalizes any employee who goes on strike or who joins a strike which is held by the State industrial court or the district industrial court to be illegal. It is clear from these two sections that whether a strike or a lockout is illegal has to be determined by the industrial court and not by the criminal court.

The expression in S. 43 is not "any employer who declares an illegal lockout" but is "any employer who declares a lockout which is held by the industrial court to be illegal." Similarly the expression used in S. 44 is not "any employee who goes on an illegal strike" but is "any employee who goes on strike which has been held by the industrial court to be illegal." But such an expression has not been used in S. 47. The expression used in S. 47 is "any employer who makes any illegal change." Section 47 does not use the expression "any employer who makes any change which has been held by the industrial court to be illegal." The difference in the wording of S. 47 and the wording of Ss. 43 and 44 is very significant and shows that for purposes of S. 47 it is not sufficient that the change has been declared illegal by an industrial court; the criminal court has to come to an independent finding that the employer has made an illegal change.

12. In this connexion the learned Special Government Pleader also relies on *State v. Caulfield Holland, Ltd.* 1953 I L.L.J. 458 where S. 29 of the Industrial Disputes Act, 1947 (Central Act), was the subject-matter of interpretation. This section provides :

"If any person commits a breach of any term of any settlement or award which is binding on him under this Act, he shall on his first conviction therefore be punishable with fine which may extend to two hundred rupees and in the event of a second or subsequent conviction, with fine which may extend to five hundred rupees."

13. The Bombay High Court rejected the contention urged before it that the employers could argue that they were not actuated by any wilful intention to commit the breach of the award. Then the following observations were made (p. 462) :-

". . . Now, if this plea were to prevail, virtually the criminal court would be sitting in appeal over the decisions of the industrial tribunals and that, we think, is plainly inconsistent with the scheme of the Act in general, and with the specific provisions of S. 18 in particular, which make the awards binding on all parties to the industrial dispute. If there is no material change in the circumstances of the accused, the criminal court would be bound to treat the award as conclusive between the parties and would have to proceed on the assumption that it was obligatory on the accused to comply with the directions of the award. The criminal court would not be justified in examining the merits of the dispute as to the financial capacity of the accused afresh because the award is binding as much on the accused as on the employees."

Section 18 of the Central Industrial Disputes Act of 1947 provides that a settlement arrived at in the course of conciliation proceedings under the Act or an award which has become enforceable shall be binding on all the parties to the industrial dispute, etc.

14. Now, if we turn to S. 29, it provides that if any person commits a breach of any term of any settlement or award which is binding on him under the Act, he

shall be punishable under this section. The questions before a criminal court in a prosecution under S. 29 of the Central Act are, therefore,

- (i) whether there was a settlement or award,
- (ii) whether that is binding under the Act, and
- (iii) whether the person in question has committed breach of any of its terms.

15. The penal section itself provides that the settlement or award must be binding under the Act, and in what circumstances a settlement or award is binding under the Act is to be found in S. 18 of the Act. We have, therefore, to read both Ss. 18 and 29 of the Central Act together. The criminal court has merely to find whether under the Central Act the award is binding as contemplated by S. 18, and S. 18 provides that the settlement or award shall be binding. It is, therefore, an offence under S. 29 of the Central Act if a person commits a breach of any of the terms of any settlement or award referred to in S. 18. If there is such an award, the only question before the criminal court is to see whether there has been any breach of its terms. That is why the Bombay High Court observed that the criminal court is bound to treat the award as conclusive between the parties and would have to proceed on the assumption that it was obligatory on the accused to comply with the directions of the award. As already observed, the only question before the criminal court in cases falling under Ss. 29 and 18 of the Central Act is whether the accused had committed a breach of any of its terms. That is the only question before a criminal court if the award or settlement falls under S. 18 of the Central Act. The Bombay case does not, therefore, support the contention that all decisions of industrial courts are conclusive in criminal prosecutions. The view taken with regard to S. 29 was based on S. 18 of the Central Act and on the special wording of S. 29 itself which corresponds to the wording of Ss. 43, 44 and 45 of the Central Provinces and Berar Industrial Disputes Settlement Act, 1947. In a Prosecution under S. 47 of the Act the criminal court must come to an independent finding whether the employer had made an illegal change.

16. At this stage the contention that an illegal change means only an illegal change as defined in S. 51 of the Act may be considered. Section 51 reads as follows :-

"Illegal change. - (1) No employer shall make any change in any industrial matter in regard to which a standing order has been settled under S. 30, or which is mentioned in Sch. II, before the agreement referred to in Sub-section (1) of S. 35 is arrived at, or where no such agreement is arrived at before the Conciliation proceeding has been completed, or in cases where there is a subsisting submission before the arbitration proceeding has been completed or where a dispute relating to such industrial matter has been referred to the Wage Board, the State industrial court or the district industrial court for decision before such decision had been given.

(2) No employer shall make any such change in contravention of the terms of a registered agreement, a settlement or an award . . .

(3) Any change made in contravention of the provision of Sub-section (1) or (2) shall be illegal."

17. No doubt, under S. 41 of the Act, industrial courts can decide whether a change, of which notice has been given or which has taken place, is illegal. But how are the Industrial courts to determine whether such a change is illegal or not ? This would depend on the meaning of the word "illegal." Of course, if the change referred to is an illegal change as defined in S. 51 the industrial court may give decision accordingly. But in regard to other changes not referred to in S. 51, how is the industrial court to decide whether the change is illegal or not ? The word "illegal" has not been defined in the Act and in Stroud's Judicial Dictionary it is stated that

""Illegal" has, in a statute, a meaning very near to, but not the same as, void, and where a thing is only "illegal" quoad A., it is inoperative as against him and yet may be binding on B. (per Alderson, B., Job v. Lamb)." [(1856) 11 Ex. 539 at 542.]

In some cases the word "illegal" means "not sanctioned by law or contrary to some authoritative provision or regulation on the subject" (per Kinross, L.P., in Lanarkshire Steel Company v. Caledonian Railway) [6 Fraser 47].

18. It is also possible to take the view that "illegal" means contrary to the Act or rules made under the Act, and it is also possible to take a third view that "illegal" means contrary to the Act or rules made under the Act or standing orders. The standing orders would vary from industry to industry and from employer to employer. It would, therefore, not be reasonable to include contravention of a standing order as an illegality, although a contravention of a standing order may be punishable under Sub-Section (2) of S. 47.

19. In some cases the word "illegal" has been interpreted to mean anything done or omitted to be done by a man for which he is liable in a civil action. The word "illegal" has been defined in S. 43 of the Indian Penal Code thus :-

"The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

20. But in view of the fact that there is a special section in the Act regarding illegal changes, namely, S. 51, Sub-section (3) of which provides that any change made in contravention of the provisions of Sub-section (1) or Sub-Section (2) shall be illegal, the better view would be to hold that illegal changes are restricted to the illegal changes as defined in S. 51 of the Act, otherwise the legislature would have explained when a change is illegal. It is not likely that the legislature has contemplated that industrial courts would go into general questions of law such as the liability for a civil action. The definition of "illegal" as

used in the Indian Penal Code is very exhaustive and need not necessarily apply to the meaning of the word "illegal" as used in the Act. But even if we adopt the definition of the word "illegal" as contained in S. 43 of the Penal Code, it is difficult to hold that the dismissal of Ramji is an illegal change. The word "change" is defined in S. 2(6) of the Act as a change in any industrial matter. "Industrial matter" has been defined in S. 2(13) thus :-

"industrial matter" means any 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 or employee,

(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."

21. As an industrial matter includes the relationship between an employer and an employee, a dismissal of an employee would amount to a change in the relationship between them and would, therefore, be a change as defined in S. 2 of the Act. The question, therefore, is whether the dismissal of Ramji without giving a notice would be an illegal change. A "dismissal" is not prohibited by law. What S. 42 of the Act prohibits is a dismissal under special circumstances referred to in that section, and it is not the case of the prosecution that the special circumstances referred to in S. 42 of the Act have any application in the instant case. It has also not been proved that the dismissal of Ramji was under such circumstances as to furnish a ground for a civil action. This question was not considered by the criminal courts. A more dismissal of an employee is not an offence. A contravention of the standing orders is, however, penalized by Sub-Section (2) of S. 47, but for purposes of the definition of the word "illegal" in S. 43 of the Penal Code the offence must be an offence under the Penal Code and not under any special or local enactment in view of S. 40 of the Indian Penal Code where the meaning of the word "offence" is explained. Although a contravention of a standing order may be penalized under S. 47(2) of the Act, such a dismissal is not an offence as defined in S. 43 of the Penal Code and such a dismissal would, therefore, not be illegal unless by "illegal" is meant anything contrary to the standing orders. In my opinion, it would not be reasonable to give such a wide meaning to the word "illegal." Moreover, what S. 47(2) penalized is acting in contravention of a standing order. The standing orders attributable to the industry in question have not been placed on record and it is also conceded by the learned Special Government Pleader that it is not the prosecution case that the two applicants had contravened the standing orders.

The standing orders in any case could not have prohibited dismissal. They may have provided for giving a notice or the holding of an enquiry, but they could not have prohibited the dismissal as such. Failure to give a notice or failure to make an enquiry may be a contravention of the standing order, but does not amount to a change or to an illegal change. The mere dismissal could not amount to contravention of the standing orders. In any case even if an act is in contravention of the standing order, that would not make the act illegal unless it satisfies the definition of the word "illegal" as used in the Penal Code. This definition is very wide and there is no reason to adopt even a wider definition. Moreover, as already observed, the better view would be to restrict illegal changes to illegal changes defined in S. 51 of the Act.

22. The prosecution case before the Magistrate and the Sessions Judge and also here has been that the case falls under S. 31 of the Act because the employer did not give 14 days' notice as required by Sub-section (1) of that section which reads as follows :

"31. Employer desiring change to give notice. - (1) If an employer intends to effect a change in any standing orders settled under S. 30 or in respect of any Industrial matter mentioned in Sch. II he shall give fourteen days' notice of such intention in the prescribed form to the representative of employees."

23. It is contended that the dismissal of Ramji is a change in respect of an industrial matter mentioned in Sch. II, and that, therefore, the employer is required by S. 31 to give 14 days notice of such intention, to the representative of the employees. Reliance is placed only on item 3 of Sch. II, which is as follows :

"Dismissal of any employee except in accordance with law or as provided for in the standing orders settled under S. 30 of this Act."

24. It is contended that there has been a change in this item, but in my opinion, this contention cannot be accepted because S. 31 refers to a change in industrial matter and if the industrial matter to the dismissal, then there must be a change in the matter of dismissal. Dismissal is not a change in dismissal. In criminal matters words of a statute cannot be given a meaning different from their natural meaning. Moreover, there is nothing to show that the dismissal of Ramji was not in accordance with law or as provided for by the standing orders. As already observed, it was never the prosecution case that the offence of the two applicants consists in contravening the standing orders. That is why the prosecution did not produce the standing orders. I, therefore, hold that S. 31 has no application and that the prosecution has not proved that it was necessary for the employer in the instant case to give 14 days' notice, under S. 31. The sole contention for the prosecution in the Courts below as well as here has been that the two applicants had made illegal changes by not giving 14 days' notice as required by S. 31 of the Act. But the trying Magistrate has observed that Ramji was removed from duty without any cause or enquiry into the matter and that

such a removal of a permanent employee amounted to an illegal change as already held by the Industrial courts. The industrial courts, however, made a declaration that the change to illegal solely by reason of the fact that no notice was given as required by S. 31(1) of the Act. The Magistrate did not explain why even if there was no enquiry the dismissal was an illegal change for the purposes of S. 47 of the Act.

25. The learned Sessions Judge has observed that even if the question of illegal change can be gone into by civil or criminal courts, having regard to S. 51 of the Act and item 3 of Sch. II, there is no doubt that the dismissal of Ramji not being in accordance with law would amount to an illegal change. The reference to item 3 of Sch. II would seem to suggest that the Sessions Judge was referring to S. 31 of the Act which has already been considered by me, but the Sessions Judge has referred to S. 51 of the Act which is already quoted above. This section also refers to a change in any industrial matter with regard to any standing order which is settled or which is mentioned in Sch. II. As already pointed out, the dismissal is not a change in any industrial matter mentioned in Sch. II, although it is a change in an Industrial matter as defined in S. 2(13) of the Act. What S. 51 of the Act provides is that no change shall be made before the agreement referred to in Sub-Section (1) of S. 35 or where no such agreement is arrived at before the conciliation proceedings has been contemplated or in cases where there is a subsisting submission before the arbitration proceeding has been completed or where a dispute relating to such industrial matter has been referred to the Wage Board, the State industrial court or the district industrial court for decision before decision has been given. In the instant case the matter of Ramji's dismissal was not referred to arbitration or to the Wage Board of the State industrial court or to the district industrial court, at the time when Ramji was dismissed. Section 51 has, therefore, no application.

I, therefore, hold that the prosecution has failed to prove that by dismissing Ramji an illegal change had been made.

26. In view of this finding the conviction of both the applicants will have to be set aside and both the revision applications will have to be allowed. I will, however, refer to the other contention regarding Radhakisan. It is an admitted fact that Ramji was dismissed on the oral order Ghasilal. The courts below held Radhakisan also responsible in view of the allegation that although Ramji had made a complaint to Radhakisan, the proprietor, the latter did not interfere. Section 47 of the Act penalizes any employer who makes an illegal change. The word "employer" has been defined in S. 2(11) of the Act. Both Radhakisan and Ghasilal are employers for the purposes of the Act and this is not challenged. The question is whether the dismissal had been made by Radhakisan although it was Ghasilal who passed the oral orders of dismissal. There was prosecution evidence that about a month after the order of dismissal a complaint had been made to Radhakisan, but Radhakisan declined to interfere. But that does not mean that the dismissal, even if it was an illegal change, was made by Radhakisan. In the

criminal law there can be no vicarious liability unless a statute expressly provides for it. Vide Ravula Hariprasada Rao Vs. The State, and Emperor Vs. Isak Solomon Macmull, . Unless there is a clear provision in a statute a master will not be criminally liable for acts of his servant. Radhakisan cannot, therefore, be held criminally liable.

27. I, therefore, hold that the prosecution has failed to prove that the two applicants had made illegal changes. The two revision applications are allowed and the convictions of the two applicants under S. 47(1) of the Act are set aside as also their sentences. The fines, if paid, shall be refunded.