

(2013) 07 KAR CK 0238
In the Karnataka High Court
Case No : Criminal Petition No. 6934 of 2012

Sri. M.R. Doreswamy and Sri. K.N. Balasubramanya Murthy	APPELLANT
Vs	
Smt. Lokeshwari	RESPONDENT

Date of Decision : 25-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Industrial Disputes Act, 1947 — Section 29, 33(C)(2)

Citation : (2013) 07 KAR CK 0238

Hon'ble Judges : K.N. Keshavanarayana, J

Bench : Single Bench

Advocate : K.L. Srinivasa, for the Appellant;

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—In this petition filed u/s 482 of Cr.P.C. the petitioners have sought for quashing the prosecution launched against them in C.C. No. 14744/2012 on the file of I-Additional Chief Metropolitan Magistrate, Bangalore, for the offence punishable u/s 29 of the Industrial Disputes Act (for short, "I.D. Act). The respondent raised an industrial dispute in respect of her removal from service of PES Institute of Technology and the said dispute was referred to Labour Court, Bangalore, in I.D. No. 3/2003. After contest, the said dispute was disposed of by an award dated 24.07.2007, wherein the Labour Court directed the petitioners who were the members of the second party to the dispute, to reinstate the respondent herein, who was the first party therein, into service in her original post in the institution and also to pay arrears of salary from March 2002 till the date of reinstatement. The Labour Court further directed them that her pay is required to be fixed as per the scale appropriate, the norms of which have been prescribed by the Government and it was also further held that she is entitled to get arrears of wages and all other consequential benefits with continuity of service till the date of her reinstatement. It was further held that she is required to be regularized as per the norms. The second party was also

directed to pay cost of Rs. 5,000/- to the first party. The award was directed to come into force after one month of publication of the award.

2. Alleging that even after the award came into force, the same has not been implemented by the petitioners herein, the respondent filed petition before the Labour Commissioner u/s 39 of the I.D. Act seeking sanction to file a complaint for the offence punishable u/s 29 of the I.D. Act. The show-cause notice was issued to the petitioners herein by the Labour Commissioner calling upon them to implement the award within 15 days and to submit compliance report. To the said notice, the petitioners submitted their reply stating that the matter is pending before the High Court in a writ petition questioning the correctness of the award passed by the Labour Court. However, the Commissioner by his order dated 29, 11.2008 permitted the respondent herein to file a complaint for the offence punishable u/s 29 of the I.D. Act. In the writ petition filed by the petitioner herein, initially there was an order of stay only with regard to payment of back wages. It appears the respondent was reinstated into the service with effect from 24.12.2008. It appears the petitioners also paid a sum of Rs. 1,41,300/- towards the arrears of salary along with its letter dated 24.12.2008. The respondent acknowledging the receipt of the said letter and also expressing her gratitude for having reinstated her into the service, sought details of the computation of the amount sent by them towards the arrears of salary. It is stated that the petitioners furnished those details. However, subsequently the writ petitions filed by the petitioners came to be dismissed and the award of the Tribunal was affirmed. The writ appeal filed against that order also came to be dismissed in the year 2009 itself. Thereafter, the respondent filed a complaint before the jurisdictional Magistrate on 14.10.2011 alleging the offence u/s 29 of the I.D. Act. The learned Magistrate before whom the complaint was lodged, took cognizance of the offence, recorded sworn statement of the respondent-complainant and directed issue of summons to the petitioners. Aggrieved by the same, the petitioners have presented this petition.

3. I have heard the learned counsel for the petitioners and also the respondent who is represented by her power of attorney holder.

4. The contentions urged in support of the prayer for quashing the prosecution are that the learned Magistrate in the impugned order has proceeded to register the criminal case and ordered issue of summons on the ground that the respondent has not been reinstated into service, which is factually incorrect since the respondent had been reinstated into service as far back as in December 2008 itself and in spite of the same, the complainant has made a false allegation in her complaint about her not having been reinstated into service. It is their further contention that the award of the Labour Court does not specify the quantum of arrears of salary payable nor from the award of the Labour Court, the arrears of salary could be easily computed and on the basis of the records available, the petitioners after computing salary payable, have paid the said sums to the respondent, which has been acknowledged by her and if according to the

respondent, there has been any arrears or balance, it is a matter of calculations by the Tribunal u/s 33(C)(2) of the I.D. Act, as such, it cannot be held that the offence u/s 29 of the I.D. Act has been made-out. It is also their contention that the award has been implemented in its entirety and still if there is non-compliance by respondents in respect of any part of the award, it has to be adjudicated in a separate proceeding u/s 33(C)(2) of the I.D. Act, in respect of which, the respondent has already filed a petition and the same is pending.

5. I have heard the learned counsel for the petitioners. At this stage, I am of the considered opinion that there are no justifiable grounds to entertain this petition.

6. No doubt as could be seen from the documents which are not seriously disputed by the respondent, she was reinstated into service in the month of December 2008. Permission to file a complaint was granted by the Labour Commissioner on 29.11.2008. The basis for filing the complaint is the permission accorded by the Labour Commissioner on 29.11.2008. According to the petitioner, on account of certain misconduct committed by the respondent subsequent to her reinstatement and after holding an enquiry, she has been removed from service on 21.05.2011. Of course, as could be seen from the allegations made in the complaint, lodged by the respondent on 14.10.2011, it is alleged that she has--not been reinstated into service. Obviously, this is subsequent to the purported order of dismissal passed on 2.1.05.2011. Therefore, the respondent appears to have stated that she has not been reinstated into service. The allegation made in the complaint further prima facie indicates that the entire arrears of salary as per the award passed by the Labour Court has not been paid. May be that the proceedings u/s 33(C)(2) of I.D. Act is pending, wherein the tribunal is required to compute the quantum of arrears of salary payable to the respondent. However, that by itself would not absolve the petitioners from being prosecuted for the offence u/s 29 of the I.D. Act, if the respondent is able to establish that there is non-implementation of award in its entirety on the part of the petitioners. Therefore, it is open to the petitioners in the proceedings now pending before the learned Magistrate to substantiate their defence that the award in entirety has been implemented and if such evidence is placed, it is needless to point out that the learned Magistrate is required to take that into consideration and pass appropriate orders while disposing of the matter. Having regard to the fact that the grounds on which the prosecution is sought to be quashed are in the nature of defence pleas, this Court in exercise of inherent powers saved u/s 482 of Cr.P.C. cannot quash the prosecution on such grounds. In this view of the matter, I find no merits in this behalf and accordingly the petition is rejected. It is open to the petitioners to urge all the contentions raised in this behalf by way of defence before the Trial Court.

In view of disposal of this petition, the application-I.A.I/2013 filed for vacating stay does not survive for consideration. Accordingly, the application stands dismissed.