

(2010) 05 KAR CK 0019

In the Karnataka High Court

Case No : Criminal Petition No's. 2577 and 2846 of 2005

Vikram Kirloskar

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473, 482
Industrial Disputes Act, 1947 — Section 29, 32

Citation : (2011) 128 FLR 511 : (2010) 6 KarLJ 690 : (2011) 2 LLJ 499 : (2011) 6 RCR(Criminal) 2720

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

Bench : Single Bench

Advocate : S.N. Murthy, for S. Mahesh and Company, for the Appellant; N.G. Phadke and V. Jayaram, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Keshavanarayana, J.—In these petitions filed u/s 482 of the Criminal Procedure Code, 1973 (for short, "the Code"), the Petitioners who have been arraigned as accused persons in CC No. 1097 of 2004 on the file of the Civil Judge (Junior Division), and Judicial Magistrate First Class, Harihar in Davanagere District, have sought for quashing the criminal prosecution launched against them in the said case.

2. Facts which have led to filing of these petitions in brief are as under:

Respondent 1 herein namely V.S. Kuber was an employee of M/s. Mysore Kirloskar Limited, Unit III, Sattur, later shifted to Yantrapur, Harihar. By order dated 30-9-1986, the Management of Mysore Kirloskar Limited dismissed him from service. Contending that his dismissal from service by the Management is illegal and contrary to law, Respondent 1 filed petition u/s 10A(4-A) of the Industrial Disputes Act, 1947 (for short, "the ID Act"). The Labour Court by award dated 8-7-2002 set aside the order passed by the Management dismissing Respondent 1 from service and directed his reinstatement into the service with

full back wages. The said award came to be published, as required by Section 17 of the ID Act, by the Government on 11-4-2003, and the award came into effect from 12-5-2003 as provided by Section 17A of the ID Act. As the management did not reinstate him as per the award of the Labour Court, Respondent 1 approached the Labour Commissioner to authorise him as required by Section 34(1) of the ID Act, to file a complaint against the Management for offence punishable u/s 29 of the ID Act, for breach of the terms of the award passed by the Labour Court. To the show-cause notice issued by the Labour Commissioner, the Management filed its objections inter alia contending that the company is not working from 1-1-2001 and the company has been declared as sick industry by the Board for Industrial and Financial Reconstruction (for short, BIFR") and BIFR on 31-10-2002, has recommended for winding up of the company and the said issue is before the High Court as such, the Management is not in a position to implement the award. However, the Labour Commissioner by order dated 16-7-2004 authorised Respondent 1 to file complaint against the Management for offence punishable u/s 29 of the ID Act. Pursuant to such authorisation, Respondent 1 filed complaint u/s 34 of the ID Act read with Section 200 of the Code against the Petitioners herein. The Petitioners 1 and 2 in Cri. P. No. 2846 of 2005 have been arraigned as accused 1 and 3 while Petitioner in Cri. P. No. 2577 of 2005 has been arraigned as accused 2. In the complaint accused 1 to 3 are described as the Managing Director, Ex-Managing Director and the Company Secretary respectively of Mysore Kirloskar Limited. The complainant inter alia contended that the accused are liable to implement the award of the Labour Court and inspite of the same they have failed to implement the award as such they have committed the offence punishable u/s 29 of the ID Act. The learned Magistrate before whom the complaint was presented, took cognizance of the offence alleged, recorded the sworn statement of the complainant and by forming an opinion about existence of a prima facie case against the accused persons, directed registration of the case and issue of summons to accused 1 to 3. After coming to know of the same, the Petitioners presented these petitions seeking to quash the criminal prosecution launched against them.

3. Upon service of notice of these petitions, Respondent 1 has appeared through his Counsel. Subsequently, the official liquidator attached to this Court came to be impleaded as Respondent 2 and upon service of notice, he has appeared through his Counsel.

4. I have heard Sri S.N. Murthy, Senior Counsel appearing for the Petitioners, Sri N.G. Phadke, Counsel appearing for Respondent 1 and Sri V. Jayaram, Counsel for Respondent 2.

5. Sri S.N. Murthy, raised the following contentions in support of these petitions:

(i) As the award of the Labour Court came into effect on 12-5-2003 pursuant to its publication on 11-4-2003 as required by Section 17 of the ID Act, the same was in operation for a period of one year as per Sub-section (3) of Section 19 of the ID Act, from 12-5-2003, as such the complaint ought to have been filed on or

before 11-5-2004, therefore, the complaint filed on 23-9-2004 was barred by time u/s 468 of the Code and under these circumstances the learned Magistrate could not have taken cognizance.

(ii) Even prior to the date of the award of the Labour Court i.e., 8-7-2002, the company had been declared as a sick industry by BIFR on 12-10-2001 and directions as provided by Section 22A of Sick Industrial Companies (Special Provisions) Act, 1985 (for short, "SICA") had been issued directing the company not to dispose of any of its assets except with the consent of the Board and BIFR on 31-10-2002 recommended for winding up of the company, therefore, in the light of the direction issued by BIFR u/s 22A of SICA, it would be unjust and unfair to prosecute the directors of the company as such initiation of prosecution against the Petitioners is not legal.

(iii) As per the recommendations of the BIFR, the company was ordered to be wound up by order dated 1-4-2004. Thus even as on the date of the filing of the complaint, the company ceased to exist, therefore, on account of these subsequent developments, the Petitioners are not in a position to implement the award as such there is no commission of criminal offence.

(iv) Sri Vikram Kirloskar, the Petitioner in Cri. P. No. 2577 of 2005 ceased to be Director of the company with effect from 29-12-2000 and this fact was within the knowledge of Respondent 1 as is evident from the description of parties in the cause title of the complaint wherein Sri Vikram Kirloskar has been described as Ex-Managing Director of the company, therefore, the prosecution launched against Sri Vikram Kirloskar, the Petitioner in Cri. P. No. 2577 of 2005 is liable to be quashed.

(v) The procedure adopted by the learned Magistrate in recording the sworn statement of the complainant by permitting the Advocate to put questions and eliciting answers, is contrary to the well-settled principles of law and since list of witnesses was not annexed to the complaint as required by law, the learned Magistrate ought not to have taken cognizance.

(vi) After winding up, the assets of the company have been sold by the Official Liquidator in public auction and the proceeds are in deposit therefore the only remedy for the complainant is to approach the Official Liquidator with a claim.

5-A. Per contra, Sri N.G. Phadke, would submit as under.

(a) Section 29 of the ID Act speaks of breach of binding award and not an award in operation as per Section 19(3) of the ID Act and since the award passed by the Labour Court directing reinstatement with back wages is a binding award against the Management, and non-implementation of such binding award is a continuous offence, the provisions of Section 468 of the Code has no application and in view of Section 472 of the Code, the complaint filed even after expiry of period of one year of its operation as provided by Section 19(3) of the ID Act is not barred by time as such the learned Magistrate is justified in taking

cognizance of the offence.

(b) The direction u/s 22A of the SICA issued by BIFR on 31-10-2002 was operative only during the period beginning with the recording of the opinion by the Board for winding up of the company under Sub-section (1) of Section 20 and upto commencement of the proceedings relating to the winding up before the High Court and since in the case on hand the proceedings relating to the winding up of the company was received by the Company Court on 6-1-2003, the restraint order issued by BIFR ceased to be operative with effect from 6-1-2003, therefore, the prosecution launched for offence u/s 29 of the ID Act on the basis of the complaint lodged on 23-9-2004 and the cognizance taken thereon is in accordance with law.

(c) Merely because the company was subsequently ordered to be wound up, it has no effect on the prosecution for the offence punishable u/s 29 of the ID Act.

(d) The contention of Vikram Kirloskar that he ceased to be the Director of the company with effect from 29-12-2000 is highly doubtful in the light of the statement made in the petition before this Court that he resigned some time in 2002 and in any case it is a disputed fact as such, on the basis of such disputed fact, criminal prosecution cannot be quashed and the said disputed fact is required to be decided during the trial of the case.

(e) If the averments made in the complaint are read as a whole, it would prima facie indicate that all the 3 accused persons have failed to implement the binding award as such, the learned Magistrate is justified in taking cognizance of the offence, therefore exercise of the power u/s 482 of the Code is not warranted.

(f) There is no irregularity in recording the sworn statement of the complainant and the list of witnesses has been separately annexed to the complaint as such there is no illegality in the procedure adopted by the learned Magistrate. Therefore, the learned Counsel sought for dismissal of the petitions.

6. In support of the respective contentions, the learned Counsels placed reliance on several decisions.

7. With respect to the first contention urged by Sri S.N. Murthy that the complaint was barred by time, it is relevant to note few undisputed dates, which have bearing on this aspect of the matter:

(1) The award of the Labour Court was passed on 8-7-2002.

(2) The award was published in the Gazette on 11-4-2003.

(3) The award came into force with effect from 12-5-2003.

(4) Sanction for prosecution u/s 34(1) of the ID Act was sought by the complainant on 30-12-2003.

(5) Sanction was accorded by the Labour Commissioner on 16-7-2004.

(6) Complaint was filed on 23-9-2004.

(7) Cognizance was taken on 24-9-2004.

8. It is the contention of Sri S.N. Murthy that as per Section 19(3) of the ID Act, the award would remain in operation for a period of one year from the date on which it became enforceable u/s 17A of the ID Act, therefore, the complaint ought to have been filed within the period of one year i.e., on or before 11-5-2004 and since the complaint came to be filed only on 23-9-2004, it is barred by time as per Section 468 of the Code. In support of this contention, he sought to place reliance on decision of Single Bench of Calcutta High Court in the case of Swarnajit Singh and Ors. v. State and Ors. 1986 Lab I.C. 1123 (Cal.), Single Bench decision of Bombay High Court in the case of State of Maharashtra v. Ajit Maneklal Choksi 1979 Lab I.C. 559 (Bom.) and also on the decision of the Single Bench of this Court in the case of Harsha C. Desai, Dharwad v. Baskar, Dharwad 1984 Cri. L.J. 59.

9. However to counter this argument, Sri Phadke placed reliance on a Single Bench decision of this Court in the case of Management of Naga Theatre v. R. Raja. 1999 (4) KLD 115

10. Section 19 of the ID Act deals with period of operation of settlement and awards. Sub-sections (1) and (2) deals with settlement while Sub-sections (3) to (6) relate to awards.

11. Sub-sections (3) to (6) which are relevant to the case on hand read as under:

19. Period of operation of settlements and awards.--(1) x X X X X

(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year [from the date on which the award becomes enforceable u/s 17A]:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it [to a labour Court, if the award was that of a Labour Court or to a Tribunal, if the award was that of a Tribunal or of a National Tribunal], for decision whether the period of operation should not, by reason of such change, be shortened and the decision of [Labour Court or the Tribunal, as the case may be], on such reference shall be final.

(5) Nothing contained in Sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under Sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award". Thus as per Sub-section (3) of Section 19 of the ID Act, an award shall remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17A of the ID Act. u/s 17A, an award becomes enforceable on the expiry of 30 days from the date of its publication u/s 17. Thus from the combined reading of Sections 17A and 19 of the ID Act, it is clear that in the normal course the award will be in operation for a period of one year and 30 days from the date of its publication.

As per Sub-section (5) of Section 19 of the ID Act, the operative period of the award as prescribed u/s 19(3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

As per Sub-section (6), inspite of expiry of the period of limitation of the operation of the award, the award continues to be binding on the parties unless and until a notice of two months is given by either of the parties showing intention to terminate such award.

12. Single Bench of this Court in the case of Management of Naga Theatre, considering the provisions of Section 19 of the ID Act, has held that in the light of provisions of Sub-sections (3), (5) and (6) of Section 19 it is clear that operation of the award mainly depends upon the nature, terms and circumstances and the continuing obligation, if any, on the parties to the award.

13. u/s 29 of the ID Act what is made punishable is, breach of any terms of binding award. Thus, it is the binding nature of the award and not the period of operation, which is relevant for launching the prosecution.

14. In Management of Naga Theatre, this Court referring to several decisions of the Apex Court and other High Courts and also decision of Single Bench of this Court in N.K. Shah Vs. M/s Engineering General Workers Union, Bangalore, it has been observed thus in paras 12 and 14:

12. Thus on going through the various pronouncements referred to above of the Apex Court as well as the High Court of Madras, Rajasthan, Calcutta and also the latest pronouncement of this Court in the case of N.K. Shah Vs. M/s Engineering General Workers Union, Bangalore, and the undisputed fact in the case on hand that though by the award reinstatement was ordered and as long as the reinstatement award was not complied with or implemented, it would be, in my opinion a continuing offence. Merely because the period of operation has expired,

it does not mean that the character of the offence as continuous offence "does not cease to operate". As stated earlier it is binding nature of the award and non-implementation of the same is punishable u/s 29 of the ID Act and it does not depend on the period of operation of one year as contemplated u/s 19(3) if the said provision is read with Sub-sections (5) and (6) of Section 19 of the ID Act.

14. In view of the aforesaid finding, I am of the clear view and opinion that in view of the fact that the offence u/s 29 of the ID Act is a continuing offence, the embargo placed u/s 468 of Code of Criminal Procedure. of limitation is not applicable to the case of present nature. Even otherwise in the case of social beneficial legislation and of offence arising under the same, the Court can and should take note of provisions of Section 473 of Code of Criminal Procedure. which empowers the Court to extend the period of limitation in certain circumstances. This provision u/s 473 of Code of Criminal Procedure. is based on principles of natural justice.

I am in respectful agreement with the aforesaid opinion of the Single Bench. No doubt Single Bench of the Calcutta High Court in Swarnajit Singh's case and Single Bench of the Bombay High Court in Ajit Maneklal Choksi's case referred to supra have held that complaint filed for the offence u/s 29 of the ID Act after the expiry of one year from the date of enforceability of the award, is barred by limitation u/s 468(2)(b) of the Code. However, both these decisions do not refer to the decisions of the Supreme Court, which are referred to in Management of Naga Theatre's case. In these decisions, effect of Sub-sections (5) and (6) of Section 19 has not been considered. In view of the fact that I am in agreement with the view of the Single Bench of this Court in Management of Naga Theatre's case, I am not inclined to place reliance on the decisions, of Calcutta and Bombay High Courts relied upon by the Learned Senior Counsel for the Petitioners. In N.K. Shah's case relied upon in Management of Naga Theatre's case, another Single Bench of this Court has held that non-implementation of settlement or award is a continuing offence and is not controlled by Section 468 of the Code.

15. In Harsha C. Desai's case, having regard to fact that the complaint had been filed nearly 41/2 years after the last installment as per the award fell due, this Court held that the complaint was time barred. Having regard to fact that under the award the Management was directed to pay certain sums of money in installments by prescribing the dates, this Court held that failure to pay installment is not a continuing offence. However, in the case on hand, the award directed reinstatement of Respondent 1 with full back wages and it is a binding award on the Management. As observed above, Section 19(6) of the ID Act directs that inspite of expiry of period of operation of the award, the award continues to be binding on the parties unless and until a notice of two months is given by either of the parties showing intention to terminate such award. u/s 29 of the ID Act, the breach of binding award is made punishable. Therefore, the decision in Harsha C. Desai's case is not applicable to the facts of the case on

hand. In the light of the law laid down in Management of Naga Theatre's case with which I am in agreement, I find no substance in the first contention of the learned Senior Counsel for the Petitioners with regard to the complaint being time barred. Therefore, I hold that the complaint filed after the expiry of one year from the date on which it became enforceable is not barred by time u/s 468 of the Code.

16. There appears to be no serious dispute as to the fact that the Mysore Kirloskar Limited was declared as a sick industry by BIFR and the Board, recommended for winding up of the company u/s 20(1) of SICA, by its opinion dated 31-10-2002.

Section 22(1) of SICA directs that where an enquiry u/s 16 is pending or any scheme referred to u/s 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal u/s 25 relating to an industrial company is pending, no proceedings for winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver thereof and no suit for the recovery of money or for enforcement of any security against the industrial company or any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the board or the Appellate Authority as the case may be.

Under Section 22A of SICA, the board is empowered to issue directions to the sick industrial company not to dispose of any of its assets except with the consent of the Board during the period of preparation and consideration of the scheme u/s 18 or during the period beginning with recording of opinion by the Board for winding up of company u/s 20(1) of SICA and upto commencement of the proceedings relating to winding up before the concerned High Court.

17. A Division Bench of this Court in the case of Indian Plywood Manufacturing Company Limited, Dharwad Vs. The Commissioner of Labour in Karnataka, Bangalore and Others, , held that provisions of the ED Act cannot be controlled or intended to have been curtailed by incorporation of Section 22 of SICA and the provisions of Section 22 of the SICA cannot override the admitted and settled claims of the workman under the ED Act.

18. The Apex Court in the case of Kusum Ingots and Alloys Ltd., etc. Vs. Pennar Peterson Securities Ltd. and Others, , has ruled that Section 22 of SICA does not create any legal impediment for instituting and proceeding with a criminal case on the allegations of the offence u/s 138 of the Negotiable Instruments Act, 1881 against a company or its Directors. Learned Senior Counsel appearing for the Petitioner fairly submitted that the embargo imposed u/s 22 of SICA would not come in the way of launching of the criminal prosecution for the offence punishable u/s 29 of the ID Act for non-implementation of the award. However, according to the learned Senior Counsel, in the light of Section 22A of SICA, prosecution could not be launched for non-implementation of the award.

19. In Kusuma Ingots and Alloys Limited's case, the Apex Court has considered the question, whether Section 22A of SICA affects a criminal case for offence u/s 138 of NI Act. Having regard to facts of that case that criminal prosecution for the offence punishable u/s 138 of NI Act was launched between the period during which the direction u/s 22A was operative, the Apex Court held thus in para 19:

19. x x x x In a case in which BIFR has submitted its report declaring a company as "sick" and has also issued a direction u/s 22A restraining the company or its directors not to dispose of any of its assets except with consent of the Board then the contention raised on behalf of the Appellants that a criminal case for the alleged offence u/s 138 of NI Act cannot be instituted during the period in which the restraint order passed by BIFR remains operative cannot be rejected outright. Whether the contention can be accepted or not will depend on the facts and circumstances of the case. Take for instance, before the date on which the cheque was drawn or before expiry of the statutory period of 15 days of after notice, a restraint order of the BIFR u/s 22A was passed against the company then it cannot be said that the offence u/s 138 of NI Act was completed. In such a case it may reasonably be said that the dishonouring of the cheque by the Bank and failure to make payment of the amount by the Company and/or its Directors is for reasons beyond the control of the accused. It may also be contended that the amount claimed by the complainant is not recoverable from the assets of the Company in view of the ban order passed by BIFR. In such circumstances it would be unjust and unfair and against the intent and purpose of the statute to hold that the Directors should be compelled to face trial in a criminal case.

Whereas in the case on hand, as noticed earlier, the report of BIFR holding Mysore Kirloskar Limited as a sick industry was dated 12-10-2001 and the recommendation of BIFR for winding up of the company was dated 31-10-2002. As could be seen from the order passed by this Court in company petition on 1-4-2004, the summary records of the proceedings along with the communication dated 24-12-2002 sent by the Registry of the Board was received by the Registry of this Court on 6-1-2003. From this, it is clear that the restraint order passed u/s 22A of the SICA ceased to operate with effect from 6-1-2003. Admittedly, complaint was filed on 23-9-2004 much after the restraint order issued u/s 22A of SICA Ceased to operate. The learned Magistrate took cognizance of the offence on 24-9-2004. Therefore, as on the date the complaint came to be filed and cognizance was taken thereon, there was no restraint order passed as per Section 22A of SICA in operation. Under these circumstances, it cannot be said that criminal case for the alleged offence punishable u/s 29 of the ID Act could not have been instituted on the date when the complaint was lodged. Therefore, the decision of the Supreme Court in Kusum Ingots and Alloys Limited's case is not applicable to the facts of the case, on hand. Under these circumstances, I do not find any substance in the second contention of Sri S.N. Murthy.

20. No doubt, pursuant to the recommendations of BIFR, the company was ordered to be wound up by this Court as per order dated 1-4-2004. Under these circumstances, the question to be considered is, whether on account of this subsequent development, prosecution for the offence u/s 29 of the ID Act could not have been initiated and proceeded with. In my considered opinion, merely because the company has been ordered to be wound up, it cannot be a ground to hold that no criminal prosecution can be launched against the functionaries of a company, as mentioned in Section 32 of the ID Act for the offence punishable u/s 29 of the ID Act committed by such company long before passing of winding up order. As noticed above, the award dated 8-7-2002 came into force with effect from 12-5-2003. The management of the company was under an obligation to implement the said award. The said offence being a continuing offence, even prior to the winding up order came to be passed, the offence was complete.

21. As per Section 32 of ID Act every Director, Manager, Secretary, Agent or any other officer or person concerned with the Management of a Company are deemed to be guilty of such offence where the person committing an offence under the Act is a company. Thus by a legal fiction, the Directors and other functionaries of the company are deemed to be guilty of the offence committed by the company. In the case on hand, since the award was binding on the company and non-implementation of such award is punishable u/s 29 of the ID Act, the Director and other functionaries of the company are deemed to be guilty of the offence committed by the company. Thus even prior to the date of order of winding up of the company, the functionaries of the company were deemed to be guilty of said offence. Therefore, in respect of such offence, a complaint filed against the functionaries of the company cannot be held to be not maintainable on the ground that in the mean while the company has been ordered to be wound up.

22. A Single Bench of this Court in the case of M/s. Orr Cee Electronics Limited, Mysore and Others Vs. Judicial Magistrate First Class (II Court), Mysore and Others, , rejecting the argument that once a winding up order is passed, any offence committed by the company must stand obliterated, has stated thus in para 4:

4. It was lastly contended by Counsel appearing for the Petitioners that since the company had been now ordered to be wound up, the prosecution proceedings could not go on. The argument in substance was that once a winding up order is passed, any offence committed by the company must stand obliterated. I see no substance in that submission either, for in my opinion, there is no juristic principle supporting the submission nor was any cited by Mr. Murthy, Counsel appearing for the Petitioners. The winding up order may be relevant for purposes of liquidating the liabilities of the company and disposal of the available assets for purposes of paying all those, who have a claim to make, but it is difficult to see how an offence already committed could be said to get obliterated just because a winding up order has been made. The fact that the company is no

longer able to meet the demand the non-payment of which constitutes the basis of the offence alleged against it, is in my opinion, besides the point. Whether or not the supervening circumstances, which have resulted in the liquidation of the company should weigh with the Magistrate in the matter of imposing a lesser punishment is something that I do not wish to pronounce upon. It shall indeed be open to the company including the Petitioners herein to cite all such reasons and circumstances to call for a lenient view in the matter, but leniency in the quantum of punishment must be understood to be distinctly different from the maintainability of such proceedings

I am in respectful agreement with the said opinion. In the light of the above, I find no substance in the 3rd contention urged by Sri S.N. Murthy.

23. As noticed earlier, Section 32 of the ID Act creates a legal fiction whereby every Director, Manager, Secretary, Agent or other officer or person concerned with the management of a company which has committed the offence under the Act shall be deemed to be guilty of such offence unless such person proves that offence was committed without his knowledge or his consent. Thus even when the person committing the offence is a company, all its functionaries are deemed to be guilty of such offence unless they prove that the offence was committed without their knowledge or consent. In the case on hand, the award of the Labour Court was passed against the Management of Mysore Kirloskar Limited directing reinstatement of the complainant with full back wages.

24. As per Section 29 of the ID Act non-implementation of the award is an offence. Thus according to the complainant, the offence punishable u/s 29 of the ID Act was committed by the company and it is for the said offence complaint came to be filed against the Petitioners herein stating that accused 1 is the Managing Director, accused 2 is Ex-Managing Director and accused 3 is Company Secretary. The fact that as on the date when the offence was committed by the company, accused 1 was the Managing Director and accused 3 was the Company Secretary of Mysore Kirloskar Limited, is not in serious dispute. However, the complainant himself in the cause title of the complaint has described accused 2- Vikram Kirloskar as Ex-Managing Director. It is the contention of Vikram Kirloskar that he ceased to be the Director of the Company with effect from 29-12-2000 as such, as on the date of the commission of the alleged offence, he was not a functionary of the company as described u/s 32 of the ID Act, therefore, he cannot be prosecuted for the offence committed by the company. Along with the petition, he has also produced a copy of particulars furnished in Form 32 in respect of appointment of Directors, Manager and changes among them submitted by the Company Secretary of Mysore Kirloskar Limited dated 12-1-2001 which is certified by the Registrar of Companies in Karnataka. As per the contents of this documents Vikram Kirloskar resigned as Director of the company with effect from 29-12-2000. Of course, during the course of the argument, the learned Counsel for the complainant sought to contend that though Vikram Kirloskar appears to have resigned from the post of the Managing

Director, he continued to be the Chairman of the Board of Directors and also the company and he was also eligible to offer himself for reappointment. To support this contention, he sought to place reliance on the copy of the 59th Annual report of the company for the year 1999-2000. According to the learned Counsel, the fact whether Vikram Kirloskar ceased to be a Director of the company as on the date of the commission of the offence is a disputed question of fact and therefore the same will have to be adjudicated and decided during the trial of the case. Merely because the complainant has disputed the said fact that, by itself cannot be a ground to reject the contention raised on behalf of Vikram Kirloskar, if the undisputed document produced by him indicates that he ceased to be a Director long before the date of commission of the offence alleged. The certificate issued by the Registrar of Companies in Karnataka which has a presumptive value clearly indicates that Vikram Kirloskar ceased to be the Director of the company with effect from 29-12-2000. It is pertinent to note that in the cause title of the complaint after describing accused 2-Vikram Kirloskar as Ex-Managing Director of Mysore Kirloskar Limited, the complainant in the body of the complaint has not stated anything about Vikram Kirloskar. In paragraph 2 of the complaint it is stated as under:

The accused/Respondents, namely Shri Shyam Kirloskar is the Managing Director of M/s. Mysore Kirloskar Limited, Shri S. Padmanabhan is the Company Secretary of M/s. Mysore Kirloskar Limited. That both these accused/Respondents are liable to implement the said award dated 8-7-2002. The complainant was ready and willing to report to the duties in pursuance to the said award and the same was conveyed by the complainant to the accused/Respondents by his letters dated 13-5-2003, 7-7-2003 and 15-9-2003. The last letter dated 15-9-2003 has been received by the 1st accused/Respondent has received the same on 16-9-2003. However, the accused/Respondents failed to comply with the said award dated 8-7-2002. Thereby, the accused/Respondents have committed an offence punishable u/s 29 of the Industrial Disputes Act, 1947.

Again in paragraph 4 of the complaint, it is stated thus:

4. The accused/Respondents are liable to implement the award dated 8-7-2002 by reinstating the complainant back to services and by paying full back wages upto the date of his reinstatement. The said award has come into operation from 12-5-2003 and the said award is binding on the accused/Respondents as on today. That, both the accused/Respondents have committed the offence on 12-5-2003, punishable u/s 29 of the Industrial Disputes Act, 1947 by not implementing the award, which is binding on them, and the said offence is a continuing one even to this date as the accused/Respondents have not reinstated the complainant into the services with continuity of service and have not paid him full back wages from the date of dismissal to this date.

Thus from the above averments made in the complaint itself, it is clear that the complainant intend to prosecute only accused 1 as Managing Director and accused 3 as Company Secretary. From this, it is further clear that the

complainant was aware that accused 2-Vikram Kirloskar is an Ex-Managing Director of the company and as on the date of the offence alleged, he was neither the Managing Director nor Director of the company so that he could be prosecuted for the offence with the aid of Section 32 of the ID Act. It is for that reason, the complainant has not made any averments against accused 2 in the body of the complaint. Therefore, I am of the considered opinion that there was no material before the learned Magistrate to indicate that accused 2 was guilty of the offence alleged by virtue of Section 32 of the ID Act as such the order taking cognizance of the offence and issuing summons to accused 2 is illegal and the same has been passed without application of judicious mind. The materials available on record is sufficient to indicate that accused 2-Vikram Kirloskar ceased to be a Director of the company with effect from 29-12-2000 itself and as on the date of the commission of the offence alleged he was neither the Managing Director nor Director nor a person concerned with the Management of the Company as stated in Section 32 of the ID Act. Therefore, he cannot be prosecuted for the offence alleged to have been committed by the company. Therefore, I find considerable force in the contention raised by Sri S.N. Murthy in this behalf. In this view of the matter, the continuance of the prosecution against accused 2 results in abuse of process of the Court and to prevent the abuse of process of the Court and to secure the ends of justice, it is just and necessary to quash the proceedings against accused 2.

25. Though a ground is urged to the effect that along with the complaint, list of witnesses was not annexed to the complaint as required by law, I find no substance in the said contention as a certified copy of list of witnesses annexed to the complaint has been produced by the learned Counsel for Respondent 1. Therefore, the said contention is not available to the Petitioners. The other technical ground urged was that sworn statement of the complainant has been recorded with the assistance of the Counsel for complainant as though it was examination-in-chief. However, I see no substance in this contention also for the reason that the perusal of the certified copy of the sworn statement produced would indicate that the learned Magistrate has recorded the summary of the statement of the complainant and that the Advocate for the complainant has not been permitted to put questions to the complainant while recording his statement. Therefore, I find no illegality or irregularity committed by the learned Magistrate in recording the sworn statement of the complainant.

26. In view of the above discussions, exercise of power u/s 482 of the Code to quash the prosecution launched against the Petitioners in Cri. P. No. 2846 of 2005 is not warranted and therefore I find no merit in the said petition. However, in view of the fact that accused 2-Vikram Kirloskar was not the functionary of Mysore Kirloskar Limited as on the date of the commission of the offence alleged by the company, prosecution launched against him cannot be continued and therefore, it is liable to be quashed against him.

27. Accordingly, Cri. P. No. 2577 of 2005 is allowed. Prosecution launched against

accused 2-Vikram Kirloskar in CC No. 1097 of 2004 on the file of the Civil Judge (Junior Division) and Judicial Magistrate First Class, Harihar in Davanagere District, is hereby quashed. Cri. P. No. 2486 of 2005 is hereby dismissed.