

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12313 OF 2016

ISMT Ltd.,
C-1, M.I.D.C.,
Ahmednagar
(Previously known as Indian
Seamless Metal Tubes Ltd.,)
Through Mr.Santosh Padmakar Dabir,
Associate Vice President (ER) -- PETITIONER

VERSUS

1. Jaggannath Gangadher Mate,
Age-48 years, Occu-Service,
R/o Dongergaon, Post : Jeur,
Tq and Dist.Ahmednagar,

2. Sodi Fabricators and Erectors,
L-28, MIDC Industrial Area,
Ahmednagar -- RESPONDENTS

Mr.V.N.Upadhye, Advocate for the petitioner.
Mr.P.V.Barde, Advocate for the respondents.

(CORAM : RAVINDRA V. GHUGE, J.)

DATE : 13/12/2016

ORAL JUDGMENT :

1. Rule. Rule made returnable and heard finally by the consent of the parties.

2. The petitioner is aggrieved by the order dated 21/10/2011 by which Cri.Appl.No. 4/2007 filed by the respondent u/s 48(1) of the

MRTU and PULP Act, has been allowed and the accused Mr.Nageshchandra Eknath Aadhav has been convicted with imposition of fine of Rs.3,000/- for having violated the directions of the Industrial Court.

3. The petitioner is further aggrieved by the judgment of the Industrial Court dated 24/09/2014 by which Cri.Appeal No.1/2012 filed by the Management of Indian Seamless Metal Tubes Limited through Dattatraya Digambar Ghotankar.

4. I have heard the strenuous submissions of Mr.Upadhye for the Management and Mr.Barde on behalf of the employee.

5. Mr.Upadhye has put forthwith a two fold submission. Firstly, that the Manager of the petitioner Factory was the respondent in the ULP Complaint before the Industrial Court. There is no dispute on this count. As such, the petition filed by the petitioner as well as the Criminal Appeal filed by him would be maintainable since the Manager Mr.Nageshchandra Eknath Aadhav is no longer in employment. Secondly, that as Mr.Aadhav is not in employment, the judgment of the Labour Court convicting Mr.Aadhav can be challenged by the Vice President of the company of Mr.Ghotankar.

Mr.Barde contends that in criminal proceedings, the accused alone, if aggrieved, can file a criminal appeal as well as this petition.

6. There is no dispute that Mr.Nageshchandra Eknath Aadhav was the accused/respondent in Criminal (ULP) No.4/2007. The company was made a party through the Manager and the name of Mr.Aadhav was not mentioned in the cause title. Yet, the entire proceedings were conducted before the Labour Court by Mr.Aadhav and it appears that there was no grievance or objection raised on this count. Mr.Aadhav himself has appeared in the matter and has executed a bail bond. Statement u/s 313 of the Cr.P.C. was also recorded by Mr.Nageshchandra Aadhav. As such, Mr.Aadhav accepted the responsibility of the disobedience of the order of the Industrial Court in Complaint (ULP) No.308/1989. Consequentially, Mr.Aadhav was convicted and suffered the punishment of fine of Rs.3,000/-.

7. In the above backdrop, in my view, Mr.Aadhav should have preferred the Criminal Appeal keeping in view the provisions of Section 42 of the MRTU and PULP Act, 1972, which read as under :-

“42. Appeal :-

(1) Notwithstanding anything contained in section 40, an

appeal shall lie to the Industrial Court -

(a) against a conviction by a Labour Court, by the person convicted ;

(b) against an acquittal by a Labour Court in its special jurisdiction, by the complainant ;

(c) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.

(e) Every appeal shall be made within thirty days from the date of the conviction, acquittal or sentence, as the case may be :

Provided that, the Industrial Court may, for sufficient reason, allow an appeal after the expiry of the said period.”

8. It is apparent from Section 42(1)(a) that an appeal against conviction by a Labour Court can be filed only by the person convicted. There is no provision under the Act of 1971 to entertain a stranger's appeal since there is no provision to substitute a convicted accused. Substitution of a person in criminal proceedings after conviction is alien to criminal jurisprudence. There is no dispute that Mr.Aadhav did not prefer the appeal and which was preferred by Mr.Dattatraya Digambar Ghotankar. From the entire appeal memo, even if it is assumed that a convicted person can be substituted for filing an appeal, there is no statement made by Mr.Dattatraya Digambar Ghotankar as to what are the circumstances in which the

appeal is filed by him.

9. The Industrial Court, while dismissing the appeal, has concluded that Mr.Ghotankar is a responsible person and therefore he cannot be considered to be a stranger to the criminal appeal for seeking the setting aside of the conviction of Mr.Aadhav.

10. In the light of the above, though this petition deserves to be dismissed, I deem it proper to exercise my jurisdiction to make a specific observation that Criminal Appeal No.1/2012 filed by Mr.Ghotankar was not maintainable under Section 42(1)(a) of the Act of 1971. In the light thereof, the observations of the Industrial Court to the extent of concluding that Mr.Ghotankar can prefer the appeal are quashed and set aside.

11. This petition, being devoid of merit, is therefore dismissed.

(RAVINDRA V. GHUGE, J.)