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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 586 OF 2014

Gulabrao s/o Bhadu Pawar,
Age: 47 years, Occu: Labour,
R/o. Eknathnagar, Kedgaon (Deviche),
Ahmednagar

..PETITIONER

VERSUS

Ajinkya Arun Firodiya,
Managing Director,
Kinetic Engineering Limited,
R/o. Swagat Bungalow, Plot No. 20,
Saptashrunji Colony, Senapati Bapat Road,
Opp. Chatushrunji Devi Temple,
Pune

..RESPONDENT

Mr P. V. Barde, Advocate for petitioner;
Mr V. S. Bedre, Advocate for respondent

CORAM : N.W. SAMBRE, J.

DATE : 11th April, 2016

ORAL ORDER :

Complaint ULP No. 56 of 1997 preferred by the present petitioner under Section 28 read with Item-1 of Schedule-IV of the Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act, 1971 (for short, M.R.T.U. & P.U.L.P. Act) came to be entertained by the learned Judge, 1st Labour Court, Ahmednagar, which was preferred against the employer - General Manager of Kinetic Engineering Ltd. Same came to be partly allowed, directing the employer to reinstate the complainant with continuity of service from the date of his termination but without back-wages vide judgment and order dated 19th August, 2007.

(2)

2. As the aforesaid order was not complied with, proceedings under Section 48(1) of M.R.T.U. & P.U.L.P. Act, was initiated before the learned Labour Court and Labour Court having noticed that the order was not complied with, vide order dated 3rd July, 2013, issued process against one Hemant K. Dike, Manager and Ajinkya Arun Firodiya, Managing Director of Kinetic Engineering Ltd. The said order was questioned in revision before the learned Industrial Court by respondent – Ajinkya Firodiya, Managing Director of Kinetic Engineering Ltd. The said revision bearing ULP No. 34 of 2013, came to be allowed by the learned Industrial Court, by judgment and order dated 28th October, 2013, thereby quashing the order of issuance of process. As such, present writ petition.

3. While trying to make out a case for grant of prayer of quashing and setting aside the impugned order dated 28th October, 2013, Mr. Barde, learned Counsel appearing on behalf of petitioner would urge that the respective parties to the original proceedings in complaint are responsible for implementing the orders, passed by learned Labour Court, were proceeded against for non-compliance, pursuant to the provisions under Section 48(1) of M.R.T.U. & P.U.L.P. Act. He would then submit that perusal of the impugned order passed by the learned Industrial Court on 28th October, 2013 depicts that the said revision came to be allowed purely on the pleadings submitted by Hemant Dike, claiming to be Senior General Manager. According to him, before quashing the order of issuance of process, the learned Industrial Court has neither considered role of the respondent, being original non-applicant No. 2 (Ajinkya Firodiya) and has

(3)

accepted case of non-applicants as pleaded in revision. According to him, order is not sustainable, as the learned Industrial Court has exceeded the revisional jurisdiction.

4. Mr. Bedre, learned Counsel appearing on behalf of the respondent has raised preliminary objections on maintainability of proceedings as according to him, in view of non-compliance of order in favour of the present petitioner, the learned Labour Court has already convicted accused Hemant Dike in the above referred proceedings and practically, purpose of initiation of proceedings has already served. He invited my attention to the judgment and order dated 17th December, 2015 passed in Criminal Complaint (U.L.P.) No. 2 of 2013 under Section 48 (1) of the M.R.T.U. & P.U.L.P. Act. He would then submit that, once the purpose for which proceedings were initiated, was already served and present petitioner was reinstated in service, no fruitful purpose will be served in going into the merits of the matter. He would then submit that the present petition be dismissed.

5. With the assistance of the respective Counsel, I have perused the order passed by the learned Labour Court on 19th August, 2007, wherein directions were issued in favour of present petitioner and against respondent, directing reinstatement of the petitioner with continuity of service. The fact remains, since the said order was not complied with. Present petitioner was prompted to initiate proceedings under Section 48(1) of M.R.T.U. & P.U.L.P. Act, and in the said proceedings also, no

(4)

compliance was reported. Fact remains that the order of the learned Labour Court has attained finality till Letters Patent Appeal before this Court. The claim that the respondent Ajinkya Firodiya is not responsible for compliance of the order in question though sought to be justified through the pleadings of accused in the revision. Fact remains that while doing so, the Industrial Court is required to ascertain the duties and functions of such person/accused and based on the same may proceed ahead with the application – revision for discharge.

6. In the present case, what is noticed is, the Industrial Court has accepted the statement of accused person made in the application which was without any legal foundation but for pleadings, and has discharged the accused Ajinkya Firodiya. The least that was expected of the Industrial Court was to consider the pleadings of the petitioner-complainant in an application under Section 48(1) of M.R.T.U. & P.U.L.P. Act, showing the respondent to be accused person in the same, and proceeded after ascertaining liability and responsibility in managing affairs of the Company, particularly in the matter of compliance of the Judicial verdicts given by the learned Court in favour of the petitioner to which respondent was party.

7. The order which is impugned in the present petition prima facie could be inferred as the one passed by the learned Industrial Court without considering above referred parameters and hence not in tune with the provisions of Section 48(1) of the Act. As a consequence of above, even if original accused No. 1 Hemant Dike is convicted under Section 48(1) of the

(5)

Act, still in my opinion, the order of issuance of process and the discharge order would not merged with the final order passed against other accused Hemant. The role of the present respondent Ajinkya has to be analysed, so as to find out whether he is entitled for discharge.

8. In the above background, the order dated 28th October 2013, passed by the Member, Industrial Court, Ahmednagar, in revision No. 34 of 2013, is quashed and set aside, with directions to the learned Member, Industrial Court to decide the claim of respondent afresh, after giving opportunity of hearing to both the parties in the light of observations made hereinabove.

9. Parties undertake to appear before the learned revisional Court on 16th June, 2016.

10. Writ Petition stands partly allowed in above terms.

(N.W. SAMBRE, J.)

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