

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.1276 OF 2014

Jaywant Vamanrao Kadu (Patil)
The Managing Director, Sangli Dist.
Coop. Bank Ltd. Sangli

.. Petitioner

-Versus-

Bank Employees Union Kolhapur & Ors.

..Respondents

Mr. Umesh Mankapure for petitioner

Mrs. V.R.Bhonsale, APP for State

Mr. Sandesh Shukla with Harsh Bhende i/b. Harsh Nevagi & Associates
for respondent No.1.

CORAM : DR. SHALINI PHANSALKAR JOSHI, J.

DATE : 22nd February 2016.

P.C.

1] This petition challenges the process issued against the petitioner for the offences punishable under section 48 of M.R.T.U. & PULP Act, 1971 by the Labour Court, Sangli, by its order dated 22nd August 2013. The petitioner challenged the said order in revision (ULP) No.70 of 2013 before the Industrial Court, Kolhapur. However, his revision came to be dismissed by order dated 15th February 2014. Hence, the present petition.

2] The facts which are relevant for deciding this petition are to the

effect that in view of the order passed by the Industrial Court at Sangli on 23rd June 2009 in Complaint ULP No.5 of 2009, the petitioner herein was restrained from holding written examination as pre condition for granting promotions during pendency of the said complaint.

3] As per the grievance of the respondent union, despite such interim order passed by the industrial court on 23rd June 2009, the petitioner herein proceeded to hold written examination as a precondition for granting promotions. The written examination was held on 7th April 2011 and thereby the petitioners had committed the contempt of court order and thereby become liable for prosecution under section 48 of MRTU & PULP Act. It is the case of the petitioners that they have not committed the breach of any order and if at all any contempt was committed, then, the limitation for issuance of process against the petitioner was one year, both under section 20 of Contempt of Courts Act and also under section 468 of Cr.P.C. In the instant case, however, the complaint is filed much beyond the period of one year i.e. on 17th July 2011. Hence, it is urged that the complaint was hopelessly barred by limitation. Therefore, the labour court should not have taken cognisance of the said offence. As the labour court has issued the process against the petitioner despite the complaint being barred by limitation under the provision of Contempt of Courts Act and also under section 468 of Cr.P.C., the impugned order of

issuance of process is liable to be quashed and set aside.

4] To substantiate his contention, the learned Counsel for the petitioner has relied upon section 20 of the Contempt of Courts Act which lays down limitation for taking action for contempt. As per the said section, no court shall initiate any proceedings contempt, either on its own motion or otherwise, after the expiry of period of one year from the date on which the contempt, as alleged have been committed. Here in the case it is submitted that the contempt of the order of Industrial court can be said to have been committed when the written examination was held on 7th April 2012 as a pre-condition for grant of promotions and, therefore, the complaint was barred by limitation.

5] Further, reliance is also placed on section 468 of Cr.P.C. to submit that for the offence under section 48 of the MRTU & PULP Act, the punishment prescribed is three months and/or fine. Section 468 of Cr.P.C., sub-clause (b) stipulates that, except as otherwise provided elsewhere in the code, no court shall take cognisance of an offence after the expiry of the period of limitation of one year if the offence is punishable with imprisonment for a term not exceeding one year. Hence, looked at it from this aspect also, according to the learned Counsel for the petitioner, the complaint was hopelessly barred by limitation. Hence,

the trial court has committed an illegality in issuing the process against the petitioner on the basis of such a complaint.

6] As regards the applicability of the provisions of section 20 of the Contempt of Courts Act, learned Counsel for the respondent has relied upon the division bench judgement of this Court in the case of Wazirkhan Sherkhan Vs. Proprietor, M/s. Shrikrishna Gyanodaya Cottage Industries, Nagpur reported in 1979 Mh.L.J 325, in particular, para 6 thereof to submit that the said provisions are not applicable to offence under section 48 of MRTU & PULP Act. In this authority it was held as follows:-

“6.The provision in sub-section (1) of section 48 provides for a penalty for a person who fails to comply with any order of the Court under section 30 (1) (b) or section 30 (2) and such a person on conviction is liable to be punished with imprisonment which may extend to three months or with fine which may extend to five thousand rupees. Sub-sections (2) and (3) of section 48 create offences in respect of certain acts or omissions as provided in those sub-sections. Sub-section (4) enables the Industrial Court or the Labour Court in a case where an offence under sub-section (2) or (3) is committed in the view or presence of such Court to forward the case to a Magistrate having jurisdiction to try the same after recording the facts constituting the offence as also the statement of the accused as provided in the Code of Criminal Procedure. The Magistrate to whom the case is forwarded is then directed to proceed to hear the complaint against the accused persons in the manner provided in the Code of Criminal Procedure, Sub-sections (1) to (4) of section 48 thus deal with certain offences. While a specific provision is made

in sub-section (4) with regard to the offences contemplated by sub-sections (2) and (3) and in a given case the Court itself is empowered to forward the papers to the Magistrate, the offence created by sub-section (1) of section 48 is expressly made cognizable under section 55. Indeed section 55 is a specific provision made only in respect of offence under section 48 (1). Section 55 reads as follows:-

“55. The offence under sub-section (1) of section 48, shall be cognizable.”

The scheme of the first four sub-sections of section 48, therefore, clearly is that certain offences are created and penalty is provided for those offences. Though the section is marginally headed 'Contempt of Industrial or Labour Courts', the contents of section 48 are not restricted merely to matters relating to contempt. Actually so far as contempt is concerned, the provisions are to be found only in the latter part of section 48 i. e. sub-sections (5) to (8). It is well known that the marginal heading of a section cannot control the construction of a section though it may be used as a guide to find out what the section was intended to deal with. Though the marginal heading of section does not make any reference either to penalty or offences the provisions in section 48 (1) to (4) in fact deal only with certain offences and punishment therefor and only sub-sections (5) to (8) make provision relating to contempt. Unless, therefore, it is possible to find that the sweep of sub-sections (5) to (8) of section 48 was intended to take in non-compliance or disobedience or an interim order made under section 30 (2) such disobedience or non-compliance could not be dealt with as amounting to contempt of the Industrial Court.”

7] In view of this legal position, it can be safely stated that section 48 of the Act being a self contained code, prima facie, it appears that the provisions of section 20 of Contempt of Courts Act , cannot be made applicable. Even otherwise also, if it is held that the said provisions are applicable even then, the question for consideration in the instant case is

when the cause of action arose for lodging the complaint. The order of which the breach or contempt is alleged reads as follows:-

“The application is allowed. Respondents are hereby directed not to hold written examination as pre-condition for granting promotions during the pendency of the complaint”.

8] According to the submission of learned Counsel for the petitioner, the moment the written examination was held, which respondent was directed not to hold, the contempt or the offence took place. Both the trial court and revisional court have held that it is not only the restriction on holding written examination but restriction was on holding written examination as a pre-condition for granting promotion. Therefore, the cause of action for contempt of court or even for the offence under section 48 of MRTU & PULP Act took place only when the promotion was given on the basis of the written examination on 28th June 2012. As the complaint is filed within 20 days thereafter on 17th July 2012, it was definitely within limitation.

9] On the face of it, I do not find any perversity in the reasoning given by the trial court and also the revisional court. The the direction was not merely not to hold written examination but it was further that it should not be held as a pre-condition for granting promotion. Therefore, only when

the marks obtained in written examination were considered for the purpose of promotion, the holding of written examination became pre-condition for grant of promotion. Merely holding of written examination was not prohibited but what was prohibited was to consider or to hold written examination as pre-condition for granting promotion. Therefore, only when the performance in the written examination was also considered for promotion, the cause of action arose either for contempt or under section 468 of Cr.P.C. As in the instant case, such cause of action arose on 28th June 2012 when the order of promotion was issued on the basis of the marks obtained in written examination, the complaint filed within one month thereafter, is definitely within limitation and, therefore, it cannot be said that either it is barred under section 468 of Cr.P.C. or under section 20 of Contempt of Courts Act, if the provisions of the said Act are held to be applicable.

9] As a sequel to the above discussion, the petition holds no merits and hence stands dismissed.

(JUDGE)