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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.2421 OF 2016

M/s.AFL Private Limited

...Petitioner

Versus

1. Vilas L. Chavan

2. The State of Maharashtra.

...Respondents

Mr.J.P.Cama, Senior Counsel a/w Mr.D.A.Nalawade Mr.Jayesh R. Desai,
i/b M/s.Desai & Desai Associates, for the Petitioner.

Mr.Rajesh Patil, for the Respondent No.1.

Mr.V.B.Konde-Deshmukh, A.P.P for the Respondent-State

***CORAM : REVATI MOHITE DERE, J.
DATE : 1st SEPTEMBER, 2016***

P.C. :

1. Heard learned Senior Counsel for the petitioner, learned counsel for the respondent no.1 and the learned A.P.P.

2. By this petition, the petitioner has impugned the order dated 9th July 2012, by which process was issued by the Labour Court, Mumbai, in Miscellaneous Criminal Complaint (ULP) No.22 of 2012 as against the petitioner and its officers & executives; as well as the Judgment and Order

dated 17th June, 2016, passed by the President, Industrial Court, Mumbai in Revision Application (ULP) No.30 of 2016.

3. Learned Senior Counsel for the petitioner submitted that the petitioner - company had filed a writ petition in this Court, being Criminal Writ Petition No.526 of 2016 praying therein, for quashing and setting aside of the aforesaid orders. He submitted that the said petition was filed on the basis of the additional documents obtained by the petitioner - company under the Right to Information Act. According to the learned senior counsel, the additional documents, showed the falsity of the complaint. He submitted that as the learned counsel for the respondent no.1, therein, raised an objection, the said writ petition being Criminal Writ Petition No.526 of 2016, was disposed of with liberty to the petitioner, to approach the revisional Court, with the said additional documents. Accordingly, the petitioner filed a Revision Application before the Industrial Court at Mumbai, being Revision Application (ULP) No.30 of 2016. The President Industrial Court, Maharashtra, Mumbai, after hearing the parties was pleased to dismiss the said Revision Application (ULP) No.30 of 2016 and as such confirmed the order of issue process

dated 9th July, 2012, passed by the learned Labour Court, Mumbai. It is against this order and the order issuing process that the present petition is filed by the petitioner - company.

4. Learned Senior Counsel for the petitioner – company urged that the Industrial Court had not considered the additional material which was obtained by the petitioner from the RTO, to show that the registration numbers of the Tractors/Forklifts were not of the said vehicles, but were of buses/delivery vans. He relied on page nos.185 and 186 of the said petition in support of his submission. He submitted that the said documents go to the root of the matter inasmuch as, the complaint that the goods were transported in 4 Tractors, 3 Forklifts and 35 Trolleys, stands falsified with the new information supplied by the RTO i.e. the numbers mentioned of the vehicles in the complaint were of buses/delivery vans. According to the learned senior counsel the order issuing process ought to be quashed on this very ground. He also submitted that the accused No.3 - Sulekha Sule was discharged from the said case vide order dated 22nd December, 2015, by the 10th Labour Court, Mumbai on the ground that the accused no.3 - Sulekha Sule was not in employment. This also according to him,

vindicates his stand, that the complaint is false.

5. Learned Counsel for the respondent no.1 vehemently opposed the grant of any relief sought for in the petition. He submitted that the Managing Director of the aforesaid petitioner – company had filed a petition in this Court, being Criminal Writ Petition No.4074 of 2013 which was summarily dismissed by this Court (Coram:M.L.Tahaliyani,J.), vide order dated 25th November, 2013. He submitted that it was observed by this Court in para 4 of the said order that the submissions of the petitioner therein i.e. Managing Director of the petitioner – company, would have to be proved at the time of trial. He further submitted that as the petitioner therein i.e. – Cyrus Guzder, Managing Director of the aforesaid petitioner – company had failed to obtain any relief, from this Court, the petitioner – company has filed the present petition, praying for the very same reliefs. He submitted that some of the grounds/premise on which the present petition is filed i.e. co-accused, Cyrus Guzder, Managing Director of the petitioner - company was out of India when the alleged incident is stated to have taken place and that Sulekha Sule has been discharged by the Labour Court, are the very same grounds which were urged in the petition filed by

the co-accused - Cyrus Guzder, Managing Director of the petitioner – company. He submitted that the additional material which is sought to be produced by the petitioner – company, will have to be tested in trial and cannot be considered at this stage.

6. Perused the papers, including the copy of the petition filed by the co-accused i.e. - Cyrus Guzder, Managing Director of the petitioner – company, as well as the impugned orders. The respondent no.1 filed a criminal complaint against the petitioner – company, Cyrus Guzder the Managing Director of the petitioner – company and Sulekha Sule alleging therein, that inspite of an interim order restraining the company not to deal with or dispose off the plant or machinery of its carting division, the said machinery was removed by the said persons and as such the petitioner – company and the co-accused had committed breach of the said order under section 48 of the MRTP and PULP Act, 1971. According to the respondent no.1, on 20th August, 2011 at about 3.30 p.m, he had seen the transfer and movement of the plant or machinery, being monitored under the supervision and control of the co-accused. It is alleged in the said criminal complaint that the said machinery and equipment which was transported,

was lying in the airport premises and was taken away in 4 tractors, 3 forklifts and 35 trolleys. In the complaint, the respondent no.1 has disclosed, the vehicle registration numbers of the 4 tractors and 3 forklifts. Pursuant to the said complaint, the learned Judge, Labour Court vide order dated 9th July, 2012 was pleased to issue process against all the accused including the petitioner - company. The petitioner – company challenged the said order issuing process before the Industrial Court, Mumbai, by filing a Revision Application (ULP) No.7 of 2013. The Presiding Officer, Industrial Court was pleased to dismiss the said revision, vide Judgment and Order dated 11th February, 2013. The petitioner – company in the said Revision Application had sought quashing and setting aside of the proceedings and also for recall of the order of the process, issued against the petitioner-company and other accused who are party to the original complaint. It appears that thereafter, co-accused, Mr.Cyrus Guzder, (original accused no.2), independently filed a revision application being Criminal Revision Application (ULP) No.156 of 2013 pointing out, that he was not in India at the relevant time and therefore, there was no question of controlling and supervising the work as alleged in the complaint and flouting the orders. The Industrial Court, Mumbai, dismissed

the said Revision Application, pursuant to which co-accused Mr.Cyrus Guzder, approached this Court by filing a Petition, being Criminal Writ Petition No.4074 of 2013. This Court (Coram:M.L.Tahaliyani,J.), vide order dated 25th November 2013, summarily dismissed the said petition after hearing the parties. It was observed in the said order, in particular para 4 of the order as under:-

“4. All these things will have to be proved at the time of trial. This Court will not interfere the order passed on factual issues by the trial Court i.e. Labour Court and the Industrial Court in the writ jurisdiction. Writ Petition is summarily dismissed.”

7. The aforesaid order has not been challenged by the co-accused - Cyrus Guzder, Managing Director of the petitioner-company. It appears that thereafter, sometime in December 2013, the petitioner received information from the RTO, under the Right to Information Act. The information received was regarding the registration details of the vehicles (Tractors/Forklifts) mentioned in the criminal complaint. The information received under the RTI vide letter dated 7th January, 2014, disclosed that the registration numbers of the vehicles (Tractors and Forklift) sought for,

were numbers of delivery vans/buses. Based on the said information obtained under the RTI Act, from the RTO, the petitioner-company approached this Court by filing Criminal Writ Petition No.526 of 2016. After hearing the parties and in view of the objection raised by the respondent no.1, that the petitioner had an alternate substantive remedy by way of a Revision, the petitioner sought leave to withdraw the petition with liberty to approach the revisional Court, on the basis of the additional material. Thereafter, on the basis of the liberty granted by this Court, the petitioner filed a Revision Application in the Industrial Court, Mumbai. The Presiding Officer, Industrial Court, Mumbai, after hearing the parties, was pleased to dismiss the said Revision Application and was pleased to confirm the order issuing process.

8. Learned Senior Counsel for the petitioner's submission is two fold, (i) that the additional documents that were obtained from the RTO reveal the falsity in the criminal complaint, inasmuch as, the vehicle numbers stated to be of the Tractors/Forklifts were not of the said Tractors/Forklifts but were of buses/delivery vans. He relied on the Judgment of the Apex Court in the case of **Anita Malhotra v/s Apparel**

Export Promotion Council and Another¹. He submitted that the said document was received under the RTI Act and as such the said document ought to be accepted; and (ii) co-accused Sulekha Sule has been discharged from the said case, after observing that she was not in employment, at the relevant time, thus again pointing out to the falsity of the complaint.

9. Learned Counsel for the Respondent No.1 has denied the documents furnished by the petitioner and urged that the said documents and contents therein would have to be proved, under the Evidence Act, at the time of trial. He submitted that the petitioner is put to strict proof regarding the contents of the documents. It is pertinent to note that the said documents were obtained in 2014. The said documents are on page nos.185 and 186 of the petition. Although, there is discrepancy in the numbers, the same will have to be tested at the time of trial and the contents of the documents will have to be proved in the course of trial. Merely because there is some discrepancy in the registration numbers of the vehicles, allegedly used for transporting goods, by flouting orders, does not mean the entire complaint is false. Perused the order dated 22nd

1 (2012) 1 SCC 520

December, 2015 passed by the 10th Labour Court, Mumbai, discharging co-accused Sulekha Sule from the said case. Co-accused Sulekha Sule has been discharged from the said case on the ground, that the charges against her were groundless. A perusal of the order shows that Sulekha Sule was discharged from the said case, as she was not a party to the original complaint, being Complaint (ULP) No.273 of 2010 and as she was not in employment at the relevant time. It is not in dispute, that this Court (Coram:M.L.Tahaliyani,J.), vide order dated 25th November, 2013, had summarily dismissed the petition filed by the co-accused – Cyrus Guzder, the Managing Director of the petitioner – company, after observing, that all the grounds raised by the petitioner therein, will have to be proved at the time of the trial. The said order has not been challenged by co-accused - Cyrus Guzder, the Managing Director of the petitioner-company, and as such has attained finality. As far as the petitioner – company is concerned, the ground raised in the petition for quashing the order of issue process on the basis of the additional documents received under the RTI, cannot be entertained, at this stage, as the said documents will have to be proved during trial.

10. Considering the aforesaid, no ground is made out for quashing the impugned orders. The petition is accordingly dismissed.

11. It is made clear, that the observations made herein are prima facie and are confined to this petition, and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

REVATI MOHITE DERE, J.