

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3975 OF 2015

Shri P. H. Parekh. ... Petitioner.
Versus
Shri Hari Mahadu Thorve & anr. ... Respondents.

Mr. S.R. Rober, advocate for Petitioner.

Mr. Abhijeet A. Desai a/w. Mr. Abhijeet A. Devkhile, advocate for
respondent No.1.

Ms. A.T. Javeri, APP for State.

CORAM : RAVINDRA V.GHUGE, J
DATE : JULY 13, 2016

P.C.:

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

2 I have considered the submissions of the learned advocates for
the respective sides. Respondent No. 1 is a worker who was
complainant before the Industrial Court in Complaint (ULP) No. 344

of 1993. Upon an interim order granted by the Industrial Court under section 30(2) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971 (hereinafter referred to as “MRTU & PULP Act”), the respondent worker preferred Criminal (ULP) No. 27 of 2002, since the interim order was not implemented by the Petitioner and the company.

3 By Judgment and Order dated 7/1/2012, the 2nd Labour Court, Pune dismissed the Criminal Complaint (ULP) No. 27/02 and acquitted the petitioner of the offence punishable under Section 48(1) of the said Act. The complainant worker preferred Revision (ULP) No. 22 of 2012 under Section 44 of the MRTU & PULP Act, 1971. The Petitioner therefore, filed an application Exh. C-2 praying to the Industrial Court that the revision petition is not maintainable, since an appeal is provided under section 42 of the said Act. The Petitioner therefore, prayed for the dismissal of the revision petition.

4 After hearing the parties, the Industrial Court concluded that a revision was not maintainable against the final judgment of the Labour Court under Section 48(1) and an appeal under Section 42 would be maintainable. The Industrial Court therefore, passed the impugned order dated 13/8/2015 disposing of the application Exh. C-2 and directing the office to register the revision petition as an appeal.

5 The petitioner is aggrieved by the impugned order on the sole ground that the Industrial Court should not have allowed the respondent worker to have his revision petition converted into an appeal and that the Industrial Court should have dismissed the revision petition, leaving it open to the respondent worker to prefer a regular appeal under Section 42.

6 The grievance of the petitioner is that the Industrial Court could not have exercised its powers under Section 43(2) thereby, permitting the worker to have his revision petition converted into an appeal.

7 Upon considering the submissions of the learned advocates, I do not find that the Industrial Court has committed any error in exercising its powers under Section 43(2), thereby permitting the worker, who is the revision petitioner, to convert the revision into an appeal.

7 This Court (Coram : Ravindra V. Ghuge, J) in the matter of **Subhash s/o Laxman Jadhav & anr. v/s. Vinod Nivratti Kamble & ors. in Writ Petition No. 1206 of 2016 decided on 10/3/2016** had dealt with the issue of maintainability of a revision petition under Section 44 of the said Act. It is concluded that an order of issuance of process or any other order passed by the Labour Court under Section 48 (1) of the Act, as long as it is not a final judgment, either

convicting or acquitting the person, a revision under section 44 would lie.

9 Section 42 and 43 of the MRTU and PULP Act, 1971 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 conviction, acquittal or sentence, as the case may be;

(2) 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 expiry of the said period.

43. Power of Industrial Court :-(1) The Industrial Court in an appeal under section 42 may confirm, modify, add to or

rescind any order of the Labour Court appealed against; and may pass such order thereon as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Court shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898, V of 1898.

(3) A copy of the order passed by the Industrial Court shall be sent to the Labour Court.”

It needs mention that though the bill regarding the MRTU & PULP Act, 1971 was prepared in 1971, before the Code of Criminal Procedure, 1973 was introduced, the said act was brought into effect only in 1975.

10 The Petitioner has been acquitted by the Labour Court. An appeal under Section 42(1)(b) would therefore, be maintainable before the Industrial Court. Section 43(2) is with regard to the powers of the Industrial Court and which would be such powers, as are exercised by the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898.

11 Considering the above, I do not find that there is any error in the impugned order. This Petition being devoid of merits is therefore, dismissed.

12 The Industrial Court, Pune shall therefore, proceed to register the appeal by converting the Revision Petition No. 22 of 2012 into an Appeal under Section 42.

13 Considering the fact that the respondent -worker is a beneficiary of the order dated 28/6/2002 and is yet to receive the benefits under the said order owing to the litigation, I am inclined to impose cost on the petitioner on account of the fact that though the application of the petitioner, in fact, stood allowed by the impugned order dated 13/8/2015, the Petitioner-management has dragged the worker to this court in this petition.

14 As such, the petitioner shall deposit an amount of Rs. 25,000/- before the Industrial Court at Pune in the appeal, which shall be registered forthwith by the Industrial Court. The amount shall be deposited within four weeks and the respondent worker shall be at liberty to withdraw the said amount without condition.

15 Though the appeal to be registered would carry the year as 2016, considering that the revision was filed in 2012, the Industrial Court shall endeavour to decide the appeal as expeditiously as possible and in any case on or before 23rd December, 2016.

15 Rule is discharged.

(RAVINDRA V.GHUGE, J)