

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.1112 OF 2015

G. Jhunjhunwala.] ... Applicant

Versus

1. Dashrath Laxman Tanawade,]
 2. State of Maharashtra.] ... Respondents

Mr. A. P. Mundargi, Senior Advocate, a/w Mr. Murlidhar Khadilkar i/b
 MAG Legal for Applicant.

Mr. A. S. Peerzada for Respondent No.1.

Mr. Deepak Thakur, APP for State.

CORAM :- A. S. GADKARI, J.

DATE :- APRIL 05, 2016

P. C. :-

1. By the present application, under Section 482 of the Cr.P.C., the Applicant has questioned the correctness of the Judgment and Order dated 03/09/2014 in Revision Application (ULP) No.67 of 2013 passed by the Industrial Court at Mumbai thereby dismissing it, as against the Applicant and other two co-accused.

2. As per the record annexed to the present Application, on the complaint filed by the Respondent no.1 bearing Misc. Cri. Complaint (ULP) No.20 of 2013 against the Applicant herein and four

others, the learned Judge, 11th Labour Court, Mumbai, issued process for not complying with the order dated 01/12/2011 in Complaint (ULP) No.537 of 2008, against the accused persons by its order dated 02/04/2013. The Applicant and four other accused persons challenged the issuance of the said process by filing Criminal Revision Application (ULP) No.67 of 2013 on 22/04/2013 before the Industrial Court at Mumbai.

3. The record further discloses that, at the inception of the hearing of the said Revision Application, the original complainant raised an objection about the maintainability of the said Revision at the behest of the present Applicant and two other accused viz. Sandip Sarda and C. Madhusoodanan on the ground that the said 3 persons did not sign the Vakalatnama in favour of the concerned Advocate at the time of filing of the said complaint. The learned Judge of the Revisional Court, by an interim order dated 19/08/2014, directed the Advocate for the Applicant and other two accused persons to obtain Vakalatnama within a period of 14 days from the date of passing of the said order and in the alternative to amend the Revision Application and to delete the Applicant and other two accused persons from the array of applicants and join them as respondents therein. The record discloses that the Applicant and the two other accused persons did not comply with the said order dated 19/08/2014.

The said Revision Application subsequently came up for final hearing before the Industrial Court at Mumbai on 03/09/2014. The learned Member of the Industrial Court, Mumbai, was pleased to

partly allow the Revision Application (ULP) No.67 of 2013 and quashed the issuance of process against the original accused no.5 Dhananjay Salvi by the impugned Judgment and Order dated 03/09/2014. As the applicant and other two accused persons did not file Vakalatnama for and in favour of the concerned Advocate representing them, the said revision stood dismissed for non-compliance of the earlier order dated 19/08/2014 and for not signing Vakalatnama as stated earlier.

4. Heard the learned Senior Counsel for the Applicant and the learned Counsel for the Respondent no.1 and with their assistance, I have also perused the record annexed to the Application

5. The learned Senior Counsel appearing for the Applicant fairly conceded the fact that, it was a lapse on the part of his client in not signing the Vakanatnama despite the interim order dated 19/08/2014 passed in that behalf. He submitted that due to the said lapse on the part of his client, the Revisional Court has dismissed the application on technical ground that the Vakalatnama was not duly signed thereby authorizing the concerned Advocate to represent him. He further submitted that the impugned Judgment and Order as against the Applicant may be set aside and an opportunity of being heard may be given to the Applicant before the learned Revisional Court.

6. The learned Counsel for respondent no.1 vehemently opposed the application and submitted that as a fact, liberty was granted to the applicant by an order dated 19/08/2014; however, as the applicant did not comply with the said order, the consequences followed and the revision has been dismissed as against the Applicant for not signing the Vakalatnama for and in favour of the concerned Advocate who appeared and represented the Applicant before the Revisional Court. He submitted that no leniency may be shown to the Applicant and the present Application may be dismissed with costs.

7. It is a matter of record that the applicant herein did not sign Vakalatnama for and in favour of the concerned Advocate and that is the only ground which was weighed with the Revisional Court for rejection of the Revision Application as against the Applicant. It does further appear to me that because of the dismissal of the said Revision, the order of issuance of process is still in force and the Applicant was not heard on merits in the said Revision in that behalf. As the Applicant was not heard on merits, it appears to me that it has caused injustice to the Applicant and therefore the order dated 03/09/2014 passed by the Revisional Court needs to be set aside only to the extent it affects the Applicant herein. In view of the same, the Applicant's present Application is allowed. The Applicant is hereby permitted to contest the said Revision Application (ULP) No.67 of 2013 by filing Vakalatnama.

The learned Senior Advocate for the Applicant undertakes that his client would file Vakalatnama in favour of an Advocate of his

choice within a period of three weeks from today. After the concerned Advocate for Applicant files Vakalatnama in Revision Application (ULP) No.67 of 2013, the learned Judge of Industrial Court, Mumbai, to grant an opportunity to the applicant of being heard in the matter and thereafter to pass appropriate orders as per the provisions of law.

8. The Application is allowed in the aforesaid terms.

(A. S. GADKARI, J.)