

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 487 OF 2016

Vijay s/o. Laxmanrao Vahadne,
Age 43 years, Occu. Service,
R/o. Mohini Nagar, Kedgaon,
Tq. & Dist. Ahamednagar.

....Petitioner.

Versus

Ajinkya Arun Firodiya,
Age 33 years, Occu. Business,
The Managing Director of
Kinetic Engineering Limited,
Near Dhound Road, Ahmednagar,
R/o. C/o. Kinetic Engineering Ltd.,
Ahamadnagar.

....Respondent.

Mr. K.M. Nagarkar, Advocate for petitioner.

Mr. V.S. Bedre, Advocate for respondent.

CORAM : T.V. NALAWADE, J.

DATED : 20th March, 2017.

JUDGMENT :

1. Rule. Rule made returnable forthwith. By consent, heard both the sides for final disposal.

2. The petition is filed to challenge the judgment and order of Revision ULP No. 15/2014, which was pending before the Industrial Court, Ahmednagar. By the decision under challenge, the Industrial Court has allowed the revision of the present respondent - Ajinkya Firodiya and the process issued

against him by Labour Court in a proceeding under section 48 (1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (MRTU & PULP Act) is set aside.

3. It was mainly submitted for respondent - Ajinkya Firodiya that he came in picture in 2014 when the matter between the petitioner and the employer was decided and so, the process ought not have been issued by the Labour Court against the respondent. This submission of the respondent - Ajinkya cannot be accepted as the order is still not implemented, which was made in favour of petitioner and which has become final. In similar matter, in **Criminal Writ Petition No. 586/2014 decided on 11.4.2016 [Gulabrao s/o. Bhadu Pawar Vs. Ajinkya Arun Firodiya]**, this Court has set aside the order of Industrial Court by observing that only on the basis of contentions in the revision, the proceeding could not have been allowed. The nature of duties of respondent - Ajinkya and holding the post of Managing Director need to be considered. His knowledge with regard to the order made against the employee needs to be considered and then some order can be made. The observations can be found at para Nos. 5 to 7 and they are as under :-

"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 proceeding also, no 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 proceeded 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. and P.U.L.P. Act, showing that 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 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."

4. In the result, for the same reason, this Court holds that the order made by the Industrial Court in favour of respondent dated 26.3.2014 cannot sustain in law. It is quashed and set aside by allowing the present petition. The matter is

remanded back to the Industrial Court to decide the contentions made by respondent - Ajinkya on the basis of record noted above. Opportunity needs to be given to the present petitioner. The parties are to appear before the Industrial Court on 10.4.2017.

Rule is made absolute in aforesaid terms.

[T.V. NALAWADE, J.]

ssc/