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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
REVIEW PETITION NO.44 OF 2018
IN
WRIT PETITION NO.538 OF 2018

The National Organic Chemical Industries Ltd. And Anr....Petitioners
vs

Bhaskar Mendon & Anr. ...Respondents

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Mr. R.S. Pai, a/w. Mr. Anand R. Pai, i/b. Ms. Nikita Hinger, for the
Review Petitioners/Original Respondent Nos. 2 and 3.

Ms. Jane Cox, i/b. Ms. Karishma Rao, for Respondent No.1/Original
Petitioner.

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CORAM : S.C. GUPTE, J.

DATE : 5 NOVEMBER, 2019

JUDGEMENT:

. This review petition seeks review of an order and judgement passed by this Court in Writ Petition No.538 of 2018 on 8 August 2018. The review has been sought *inter alia* on the ground that the order and judgement suffers from an error apparent on the face of the record inasmuch as it does not consider, and is contrary to, the law stated by the Supreme Court in its judgements in **Dr. Baliram Waman Hiray vs. Justice B. Lentin¹** and **Keshab Narayan Banerjee vs. State of Bihar²**.

¹ (1988) 4 Supreme Court Cases 4192

² (2000) 1 Supreme Court Cases 607

2. The controversy in the petition concerns an important question of law bearing on the nature of proceedings arising out of references made to labour courts or industrial tribunals by appropriate governments under Section 10 of the Industrial Disputes Act, 1947. To be precise, the question is, whether such proceedings could be termed as proceedings in 'court' for the purposes of Section 195(1)(b) of the Code of Criminal Procedure ("Code").

3. This question has arisen in the context of the Petitioner's (i.e. the writ petitioner's) application against the Respondents (the review petitioners) under Section 340 of the Code, arraigning the latter as accused liable to be tried for offences under Sections 191, 193, 199 and 200 of Indian Penal Code ("IPC") for having intentionally made false statements in their written statement in a pending reference before the labour court. In his application, the Petitioner prayed for a complaint to be made in writing by the labour court and forwarded to Judicial Magistrate of First Class having jurisdiction to try offences under the abovementioned sections. The labour court rejected the application as untenable. The Respondents' argument, which appeared to have carried before the labour court, was that the labour court entertaining a reference made to it by the appropriate government, was not a 'court' for the purposes of Section 195(1) (b) of the Code and therefore, the proceeding before it, though a judicial proceeding, was not a proceeding in a 'court' within the meaning of Section 195(1)(b)(i).

4. This Court, in its order and judgement under review, held that insofar as the offence covered by Section 193 of IPC was concerned,

the proceeding in a pending reference before the labour court was a proceeding in a 'court' within the meaning of Section 195(1)(b)(i) of the Code, and accordingly, no person could be tried for an offence under that section (i.e. Section 193 of IPC) except on a complaint made by the labour court under Section 195(1)(b)(i) of the Code and therefore, the Petitioner's application under Section 340 of the Code was rightly made for a preliminary inquiry to be followed by such complaint. In coming to this conclusion, this Court relied on the law stated by the Supreme Court in **Lalji Haridas vs. State of Maharashtra**³. This Court held that according to the law stated in **Lalji Haridas**, a proceeding before a labour court in a reference made to it under the Industrial Disputes Act was a judicial proceeding for the purposes of Section 193 of IPC and hence, a proceeding before a court within the meaning of Section 195(1)(b)(i) of the Code. The Respondents did not refute the law stated by the Supreme Court in **Lalji Haridas**, but submitted that after that decision, Section 195 of the Code had undergone a decisive change. It was submitted that Section 195(3) [or rather its then equivalent, namely, 195(2) in the old Code which was in force when the judgement in **Lalji Haridas** was rendered], originally provided that the term 'court' in clause (b) of sub-section (1) of Section 195 included a civil, revenue or criminal court, but did not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877. The new Code, which came into force in 1973 (i.e. after the judgement in **Lalji Haridas**), on the other hand, provided that the term 'court', in clause (b) of sub-section (1) of Section 195, meant a civil, revenue or criminal court, and included a tribunal constituted by or under a Central, Provincial or State Act if declared by

³ (1964) 6 SCR 700 : AIR 1964 SC 1154

that Act to be a court for the purposes of that Section. Based on this change of law, it was submitted that now, under the new provision, a tribunal constituted by a Central or State Act may be a court for the purpose of Section 195(1)(b) of the Code if and only if that Act declares it to be such court. The argument was not countenanced by this court on the ground that what was necessary to be considered for the purposes of Section 195(1)(b) was not whether the forum, before whom the false statement was made, was a 'court' under sub-section (3) of Section 195 of the Code, but whether the proceeding before it was a judicial proceeding within the meaning of Section 193 of IPC, for if it was, it should then be termed as a proceeding before a 'court' for the purpose of Section 195(1)(b)(i) of the Code. This Court held that there was no difference to this position even after the introduction of the new Code. This Court held that even after the change in sub-section (3) of Section 195 of the Code, the proceeding in a reference would continue to be a judicial proceeding within the meaning of Section 193 of IPC, justifying, thus, its claim to be 'proceeding in a court' for the purpose of Section 195(1)(b) of the Code on the principle of law stated in **Lalji Haridas**.

5. What is now submitted in the review petition herein is that the above conclusion of this Court is directly in conflict with the decision of the Supreme Court in **Dr. Baliram Waman Hiray's** case, which was, though not cited before this Court when the order and judgement under review was delivered, directly on the point, and which, in effect, had stated that the law in **Lalji Haridas** no longer applied to the case such as ours. On that basis, the review petition was admitted and the matter was heard at length afresh, and is being disposed of by the present

order.

5. In **Dr. Baliram Waman Hiray's** case, the Supreme Court directly debated the issue whether the law stated by it in **Lalji Haridas** was still binding or good law even after the amendment of Section 195 by enactment of sub-section (3) in the new provision of Section 195 of the Code. What was contended before the Court was that sub-section (3) of Section 195 of the present Code had brought about a change in the law; that was with a view to implement 41st Report of the Law Commission, particularly, paras 15.90, 15.93, 15.94 and 15.99 thereof. Originally, i.e. under the old Code, the term 'court', in clauses (b) and (c) of sub-section (1) of Section 195, was said to 'include' a civil, revenue or criminal court, and therefore, gave rise to a controversy whether tribunals or officers acting in judicial capacity or exercising quasi-judicial functions should be regarded as courts for the purposes of Section 195(1)(b). The Law Commission, in its 41st Report (Paragraphs 15.93 to 15.101, and in particular in para 15.99) observed that "in any concrete case this question is bound to create problem of interpretation", and accordingly, suggested a change in law for the purposes of Section 195(1)(b), observing as follows :

" We consider that for the purpose of clauses (b) and (c), "court" should mean a civil court or a revenue court or a criminal court properly so called, but where a tribunal created by an Act has all or practically all the attributes of a court, it might be regarded as a court only if it is declared by that Act to be a court for the purposes of this section."

It was submitted that Parliament, accordingly, enacted sub-section (3) of Section 195 to put an end to the controversy. The new

sub-section was in the following terms:

“(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.”

In view of this change, it was urged before the Supreme Court in **Baliram Hiray**'s case that a tribunal constituted by or under an Act can be deemed to be a 'court' for the purposes of Section 195(1)(b) of the Code **only if** it was declared to be so by that Act for the purposes of Section 195. It was submitted that whether any tribunal (i.e. other than civil, criminal or revenue court, properly so called) was a 'court' for the purposes of Section 195 was no more a question of interpretation, but of express enactment; if the statute expressly provided for such tribunal to be a 'court' for the purposes of Section 195 only then would it be such court but not otherwise. As a corollary, what was submitted was that the majority decision in **Lalji Haridas** no longer held the field. The Supreme Court found considerable force in the argument. The Supreme Court, in its discussion on the subject, observed as follows:

“24. The crucial question that falls to be determined in this appeal is whether sub-section (3) of Section 195 has brought about a change in the law and therefore the majority decision in Lalji Haridas case no longer holds the field as submitted by Dr. Chitale, appearing on behalf of the appellant, or was merely declaratory of the law as declared by the Court in Lalji Haridas case, as argued by the learned Advocate General, and therefore the decision in Lalji Haridas case is still good law. It cannot be doubted that sub-section (3) of Section 195 of the Code has been enacted by Parliament to implement the recommendations of the 41st report of the Law Commission which

brought about the unsatisfactory state of law due to conflict of opinion between different High Courts as to the meaning of the word 'Court' in [Section 195\(1\)\(b\)](#) read in the context of [Section 195\(2\)](#) of the earlier Code. The interpretative exercise undertaken by the Courts over the years as to the precise meaning of the term 'Court' as defined in [Section 195\(1\)\(b\)](#) of the old Code prior to the introduction of sub-section (3) of [Section 195](#) of the present Code reveals an endless oscillation between two views – each verging on a fringe of obscurity and vagueness. As echoed by Lord Macmillan in his *Law & Other Things* at p. 48:

In almost every case, except the very plainest, it would be possible to decide the issue either way with reasonable legal justification and that in such cases, ethical considerations operate and ought to operate.

25. In that uncertain state of law, the Law Commission observed in paragraph 15.99 of its Report that it felt that in any concrete case this question is bound to create problem of interpretation and accordingly suggested a change in law for the purposes of [Section 195](#) of the Code. It felt that the term 'Court' for the purposes of clauses (b) and (c) should mean a Civil, Revenue or a Criminal Court, properly so called, but where a tribunal created by an Act has all or practically all the attributes of a Court, it might be regarded as a Court only if declared by the Act to be a Court for the purposes of [Section 195](#). Indubitably, the introduction of the inclusive clause in the definition of 'Court' in sub-section (3) of [Section 195](#) has brought about a change in the law."

7. The Supreme Court, in **Baliram Hiray's** case, appears to have placed strong reliance on the principles stated in **Heydon case**, as enunciated in **Craies on Statute Law**, 6th Edn., at P.96, in the following words:

"That for the sure and true interpretation of all statutes in general (be they penal or beneficial restrictive or enlarging of the common law), four things are to be discerned and considered: (1) what was the

common law before the making of the Act (2) What was the mischief and defect for which the common law did not provide (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth (4) The true reason of the remedy. And then the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and pro privato commodo, and to add force and life to the cure and remedy according to the true intent of the makers of the Act pro bono publico."

The Court held that following the rule in **Heydon case**, it appeared to it that for construing sub-section (3) of Section 195 of the Code it was not only legitimate but highly convenient to refer both to the former Code and the state of uncertainty brought about due to conflict of views between different High Courts, and to the present Code which sought to provide a remedy. The court held that sub-section (3) of Section 195 was brought in to put an end to the then existing controversy concerning what tribunals were included within the meaning of the term 'court' in Section 195.

8. Apropos the decision in **Lalji Haridas**, the Court observed that it must be remembered that that decision was rendered prior to the enactment of sub-section (3) of Section 195 of the present Code; the court in **Lalji Haridas** was, therefore, concerned with the definition of the term 'court' under Section 195(2) of the earlier Code which was an inclusive one. There being no provision in Section 37(4) of the Indian Income Tax Act, 1922 (which was under construction before the court in **Lalji Haridas**) akin to Section 40 of Indian Railways Act, Section 23 of Workmen's Compensation Act or Section 18 of the Payment of Wages Act (all of which provided that the tribunals under those Acts would be

‘courts’ for the purposes of Section 195 of the Code), the matter was one of construction. The question whether an Income Tax Officer, acting under Section 37(4) of the Income Tax Act, 1922, was a court for the purposes of Section 195(1)(b) was, thus, more a question of interpretation than one of express enactment. The court held, in the premises, that the decision of the majority in **Lalji Haridas** case was “now more of academic interest”.

9. This discussion in **Baliram Hiray** more or less puts paid to the controversy in the present matter. In the present case, by virtue of sub-section (3) of Section 11 of the Industrial Disputes Act, 1947, any inquiry or investigation before a court constituted thereunder (reference, as in the present case, being one such inquiry) is deemed to be a judicial proceeding within the meaning of Section 193 of IPC. It may, thus, attract punishment under that section. But no complaint of that court is necessary for trying any person thereunder by virtue of Section 195(1)(b)(i) of the Code, since it is not a proceeding before a ‘court’ within the meaning of sub-section (3) of Section 195 under the restrictive meaning of the term ‘court’ under the changed law. The Industrial Disputes Act does not provide that for the purposes of Section 195 of the Code, the labour court constituted thereunder will be a ‘court’, and, as explained by the Supreme Court in **Baliram Hiray**’s case, absent any such express enactment, it is not permissible to construe a tribunal as a ‘court’ for the purposes of Section 195 as a matter of interpretation.

10. There is, thus, no infirmity with the impugned order of the labour court which holds the application before it under Section 340 of the Code for a preliminary inquiry followed by a complaint of

commission of offence under Section 193 of IPC, as untenable.

11. The order and judgement under review, thus, deserves to be reviewed and the writ petition deserves to be dismissed. It is ordered accordingly.

12. Learned Counsel for Respondent No.1 to the review petition (original petitioner) prays for a certificate of appeal under Article 134-A. Considering the fact that the case involves a substantial question of law of general public importance, where an authoritative Supreme Court judgement may be necessary so as to put at rest any remaining doubt as to the precise extent to which the law stated by the Constitution Bench in **Lalji Haridas** case survives after the judgment of **Dr. Baliram Waman Hiray**, this Court is of the view that a certificate of appeal deserves to be issued. Certificate is, accordingly, granted under Article 134-A for appeal to the Supreme Court.

Smita
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(S.C. GUPTE, J.)