

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL WRIT PETITION NO.69 OF 2020

(Ravishankar s/o J.N. Laxminarayan Jonniah Vs. M/s Hindalco Industries Ltd.,
Mumbai thr. Managing Director)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. R.N. Deshpande, Advocate for Petitioner.
Mr. V.A. Thakare, APP for Respondent/State.

CORAM: ROHIT B. DEO, J.

DATE: 14th JANUARY, 2021.

The petitioner is assailing the order dated 13.12.2019 rendered by the Member, Industrial Court-3, Nagpur in Appeal (BIR) 5/2019 whereby the appeal is dismissed as not maintainable and on merit.

2. The petitioner – appellant preferred the said appeal being aggrieved by the order dated 04.11.2019 rendered by the Labour Court below application Exh.61 which application sought permission to adduce evidence on affidavit, in Criminal (BIR) Case 1/2011. The Labour Court rejected the said application holding that in view of section 83 of the Maharashtra Industrial Relations Act (MIR Act) the trial of the offence is governed by the Code of Criminal Procedure, 1973 (Code) and the procedure to be followed is that prescribed for conducting a summary trial, which rules out grant of permission to file affidavit in lieu of oral examination in chief.

3. The Industrial Court held that the appeal is not maintainable under section 84 of the MIR Act. The said provision reads thus:-

84. Appeals

(1) Notwithstanding anything contained in section 83 an appeal shall lie to the Industrial Court -

- (a) against a decision of a Labour Court in respect of a matter falling under clause (a) or (c) of paragraph A of sub-section (1) of section 78 except to the extent to which it determines whether a strike [lock-out, closure or stoppage] was illegal or not, or a decision of such Court under paragraph C of sub-section (1) of the said section;*
- (b) against a conviction by a Labour Court by the person convicted;*
- (c) against an acquittal by a Labour Court in its special jurisdiction, by the [State] Government.*
- (d) for enhancement of a sentences awarded by a Labour Court in its special jurisdiction, by the [State] Government.*

(2) Every appeal shall be made within thirty days from the date of decision conviction, acquittal or sentence, as the case may be:

Provided that the Industrial Court may for sufficient reasons allow an appeal after the expiry of the said period.

4. The finding of the Industrial Court that the appeal is not maintainable is unexceptionable.

5. Assuming, *arguendo*, that the submission of the learned counsel deserves to be tested on merit, filing of an affidavit in lieu of oral evidence is a procedure unknown to the procedure regulating summary trial under the code. No fault can be found with the view of the Industrial Court that the petitioner – appellant was not entitled to file an affidavit in lieu of oral examination in chief.

6. It is unfortunate that the worker who is a terminated employee is unnecessarily litigating. It is not as if the Court prevented him from adducing evidence. All that the petitioner worker was expected to do was to step into the witness box. He ought to have been better advised. In the interest of observing restraint, I say nothing more.

7. The petition is dismissed.

JUDGE