IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 1695 of 2001

DR. ANIL KUMAR KHANDELWAL
VS.
STATE, REPRESENTED THROUGH LABOUR ENFORCEMENT OFFICER (CENTRAL)

For the Petitioner	: Mr. Milon Mukherjee, Sr. Adv. Ms. Kabita Mukherjee, Adv. Mr. Manas Dasgupta, Adv.
For the O.P.	: Mr. Ajit Kumar Mishra, Adv. Mr. Praloy Bhattacharjee, Adv. Mr. Abhisekh Dey, Adv.
For the State	: Mr. N.P. Agarwala, Adv. Mr. P. Bose, Adv.
Hearing concluded on	: 14th March, 2023
Judgement on	: 23rd March, 2023

Siddhartha Roy Chowdhury, J.:

1. This application under Section 482 of the Code of Criminal Procedure challenges the legality of the proceeding being case no. C-2676 of 2000 under Section 29 of the Industrial Disputes Act, 1947, pending before the learned Chief Judicial Magistrate, 24 Parganas (South) together with the order passed by learned Chief Judicial Magistrate in the aforesaid proceeding.

2. Briefly stated, the Labour Enforcement Officer (Central), Calcutta filed a petition of complaint under Section 29 of the Industrial

Disputes Act before the learned Chief Judicial Magistrate, 24 Parganas (South) stating, *inter alia,* that Dr. Anil Kumar Khandelwal, the General Manager, Calcutta City Region, Bank of Baroda having its office at 2/7, Sarat Bose Road, Calcutta-700020 was the employer within the meaning of Industrial Disputes Act at the relevant point of time. Ministry of Labour referred the dispute between management of Bank of Baroda and their workers represented by union, over the termination of services of two workmen but Conciliation Officer submitted a report to the appropriate Government indicating the failure of discussion. The appropriate Government, thereafter, referred the matter to the Hon'ble Central Government, Industrial Tribunal, Calcutta under Sub-Section 5 of Section 12 of the Industrial Disputes Act. On 14th May, 1998 Hon'ble Presiding Officer of Central Government, Industrial Tribunal passed an award in favour of workmen. It was observed that management of the Bank of Baroda was not justified in terminating services of Uma Sankar Ghosh and Shiba Prasad Mondal. They were directed to be reinstated them in service as casual sweeper with back wages. Assistant Labour Commissioner requested the General Manager, Calcutta City Region, Bank of Baroda to implement the award but the award was challenged by bank by preferring an application under Article 226 of the Constitution of India.

3. The Regional Labour Commissioner issued a show cause notice on 24th November, 1999. General Manager, Bank of Baroda confirmed receipt of such letter dated 4th December, 1999 and also confirmed

that the award was not implemented. Thus, management of Bank of Baroda was found to have contravened the provision of Section 296 of the Industrial Disputes Act, 1947 and accordingly, petition of complaint was filed before the Competent Court having territorial jurisdiction where the petitioner has been roped in as accused by name. However, no copy was supplied to the petitioner by the learned Trial Court.

4. It is contended by the petitioner that at the time of filing of the compliant he was not posted in Calcutta and was not the General Manager of Bank of Baroda. He was elevated to the position of Executive Director of Bank of Baroda on or about 21st June, 2000 and as such he cannot be implicated or roped in criminal proceeding under Section 29 of the Industrial Disputes Act. The petitioner further contended that at the relevant point of time he was not the employer or the person responsible for the implementation of the award. He was never posted in Calcutta. He was functioning from the Central office of the Bank of Baroda in Mumbai. It is further adverted that the award was passed on 14th May, 1999 and it has seized to have any effect on and from 14th June, 1999. It is contended that the alleged offence prescribes maximum punishment of six months and/or fine or both. Therefore, the petition of complaint so filed against the petitioner is barred by limitation in view of the provision of Section 468 of the Cr.P.C.

5. Mr. Milon Mukherjee, learned Senior Counsel representing the petitioner submits that the reference vide no. 163 of 1998 was made

by the appropriate Government to settle the dispute between the employer in relation to the management of Bank of Baroda and their workmen. The petitioner who was never posted as General Manager in Calcutta and by no stretch of imagination he could be held to be the employer and thus he had no obligation to implement the award. The offence was allegedly committed by the bank but the petition of complaint was filed against the petitioner by name depicting him as General Manager, Calcutta City Region, Bank of Baroda. The Bank of Baroda has not been impleaded as an accused person before the learned Chief Judicial Magistrate in the proceeding under challenge. According to Mr. Mukherjee, penal provision prescribed under Section 29 is imprisonment for six months. There is nothing to indicate that an offence under Section 29 is continuing offence and it will not be barred under Section 468 (2) (b) of the Code of Criminal Procedure for the simple reason that Sub-Section 5 to Section 19 read with Sub-Section 3 to Section 19 of the Industrial Disputes Act would show that there was no continuing obligation on the parties bounded by the award. In absence of any continuous obligation, the learned Chief Judicial Magistrate had no occasion to take cognizance of the offence which is barred by limitation. To buttress his point Mr. Mukherjee placed his reliance upon judgement of Co-ordinate Bench of this Hon'ble Court pronounced in ***Swarnjit Singh & Ors. vs. State & Another*** reported in **1985 SCC OnLine 458**.

6. It is further contended by Mr. Mukherjee that since award was for re-instatement with payment of back wages it cannot be held to be continuing offence.

7. Refuting such contention Mr. Ajit Kumar Mishra, learned Counsel representing the opposite party no. 1 submits that the petitioner was in the management cadre of the bank in question. Therefore, under Section 32 of the Industrial Disputes Act, 1947, he has the obligation to implement the award and inaction on his part can make him culpable for committing an offence within the meaning of Section 29 of the Industrial Disputes Act.

8. My attention is drawn to the provision of Section 32 of the said Act which says:-

> *"32. Offence by companies, etc.- Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence."*

9. It is adverted by Mr. Mishra that so long that award remains valid and operative, the petitioner is bound to implement it and the bank cannot escape the liability for being prosecuted under Section 29 of the Act and it continues to remain an offence till implemented. Therefore, Section 468 of the Cr.P.C. cannot be said to have any application in case like this. To buttress his point Mr. Mishra relies upon the judgement of Co-ordinate Bench pronounced in the case

Guha and Company & Another vs. R.N. Mishra & Another reported in **1985 SCC OnLine 544**.

10. The term 'employer' has been defined under the Industrial Disputes Act, 1947. Section 2 (g) defines 'employer' in the following manner:-

> *"(g) " employer" means--*
> *(i) in relation to an industry carried on by or under the authority of any department of [3] the Central Government or a State Government], the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;*
> *(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"*

11. Section 29 of the Industrial Disputes Act speaks of penalty for breach of settlement or award. It enunciates that:-

> *"29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach."*

12. Admittedly the reference was made to the Central Government Industrial Tribunal and employer in relation to the management of Bank of Baroda was represented by B.P. Bose, Manager (Personnel)

and not by the petitioner before this Court. Direction was given upon the management of Bank of Baroda to reinstate the workmen with back wages. The said order was challenged in a proceeding under Article 226 of the Constitution of India by Bank of Baroda, a body corporate. Here in this proceeding Bank of Baroda has not been impleaded as one of the accused persons. The petitioner, the Court is told, is now a superannuated person. He retired on superannuation way back in 2000. Though Mr. Mishra submits that whether at the relevant point of time Anil Kumar Khandelwal was the General Manager of Bank of Baroda posted at Calcutta or not is a question of fact and may only be decided by way of trial. Therefore, the matter should be left open for adjudication by the learned Trial Court.

13. Mr. Anil Kumar Khandelwal, in my humble opinion, even if it is assumed that he held the office of General Manager of Bank of Baroda and was posted in Calcutta, by no stretch of imagination it can be said that he had incurred any personal liability to implement the award. The complainant could have filed the application arraying the General Manager, Calcutta City Region, Bank of Baroda instead of implicating Mr. Anil Kumar Khandelwal as General Manager. As I have already pointed out in terms of Section 2 (g) in relation to any industry carried on by or under the authority of any department of the Central Government, the authority prescribed in this behalf should be considered as employer within the meaning of the Industrial Disputes Act. From the attending facts of the case, it is admitted that one Mr. B.P. Bose (Personnel) was given authority to

represent the management of Bank of Baroda before the Industrial Tribunal and not Mr. Anil Kumar Khandelwal, the petitioner herein. That apart in the proceeding under challenge being C-2676 of 2000 under Section 29 of the Industrial Disputes Act, Bank of Baroda, a corporate body has not been arrayed as an accused.

14. It is trite to say that vicarious liability cannot be attached to the office bearer of a body corporate like Bank of Baroda unless the juristic person i.e. Bank of Baroda is made an accused in the said proceeding. In this regard we can profitably use the judgement of Hon'ble Apex Court pronounced in the case of ***SUSHIL SETHI VS. STATE OF ARUNACHAL PRADESH*** reported in **AIR 2020 SC 765** wherein it is held by Hon'ble Apex Court that:-

> *"It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In the case of Maksud Saiyed v. State of Gujarat (2008) 5 SCC 668, it is observed and held by this Court that the penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make*

requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

On this score alone the criminal proceeding could have been quashed. But Industrial Disputes Act is a beneficial legislation.

15. The interest of workmen cannot be overlooked but at the same time the proceeding cannot be allowed to continue against the petitioner who did not play any role in his personal capacity. Whatever action, inaction, omission or commission was done by Mr. Anil Kumar Khandelwal, it was done in discharge of his official capacity and not in his personal capacity.

16. Therefore, in my humble opinion the proceeding being C-2676 of 2000 cannot be allowed to remain in force qua the petitioner Anil Kumar Khandelwal, a superannuated man who cannot be forced to attend a judicial proceeding simply because at one point of time he was in the management cadre of Bank of Baroda.

17. Quashing of the entire proceeding would be detrimental to the interest of the workmen who are not before this Court. Keeping in mind the object of the Industrial Disputes Act, 1947, I am inclined to give liberty to the petitioner to implicate or array Bank of Baroda a body corporate as one of the accused persons within two weeks from date. The proceeding may continue against the General Manager, Calcutta, City Region of Bank of Baroda if Bank of Baroda, a body

corporate is arrayed as accused, but not against any officer by name including Mr. Anil Kumar Khandelwal. After all the principal employer is the bank and employees of all categories serve the bank as employee. Before parting with the case, I would like to place on record that I do not consider it expedient to examine the petition of complaint in the light of Section 468 of the Code of Criminal Procedure at this stage.

18. With the above observation the criminal revision is disposed of.

19. Learned Chief Judicial Magistrate is requested to dispose of the proceeding as expeditiously as possible to secure the rights of the litigants particularly the workmen to have speedy justice.

20. Let a copy of this judgement along with lower Court record be sent to the learned Trial Court for information and necessary action.

21. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)