

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-1043-MA-2013(O&M)
Reserved on: 11.03.2024
Pronounced on:13.03.2024

Ranbir Singh

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CRM-A-1044-MA-2013 (O&M)

Rishi Pal

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CRM-A-305-MA-2013 (O&M)

Karambir Singh

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CRM-A-1094-MA-2013 (O&M)

Tirlok Chand

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CRM-A-223-MA-2014 (O&M)

Jai Kumar

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CRM-A-1038-MA-2013 (O&M)

Santosh Ghosh

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CRM-A-1016-MA-2013 (O&M)

Ishwar Singh

...Applicant-Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present:

Mr. D.S. Adlakha, Advocate
for the applicant-appellant(s)

Mr. G.S. Sandhu, Advocate
for respondent No. 2

Ms. Geeta Sharma, DAG Haryana

Harpreet Singh Brar, J.

CRM-49272-2017 in
CRM-A-1043-MA-2013

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 6 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 6 days in filing the said application is condoned.

CRM-49273-2013 in
CRM-A-1044-MA-2013

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 5 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 5 days in filing the said application is condoned.

CRM-29892-2013 in
CRM-A-305-MA-2013

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 18 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 18 days in filing the said application is condoned.

CRM-50420-2013 in
CRM-A-1094-MA-2013

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 17 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 17 days in filing the said application is condoned.

CRM-4898-2014 in
CRM-A-223-MA-2014

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 15 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed

and delay of 15 days in filing the said application is condoned.

CRM-49262-2013 in
CRM-A-1038-MA-2013

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 6 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 6 days in filing the said application is condoned.

CRM-48173-2013 in
CRM-A-1016-MA-2013

This is an application under Section 5 of the Limitation Act, 1963 seeking condonation of a delay of 9 days in filing the application under Section 378(4) of the Cr.P.C.

For the reasons mentioned in the application, the same is allowed and delay of 9 days in filing the said application is condoned.

CRM-A-1094-MA-2013 and 6 connected cases

1. This common order shall dispose of all seven of the above-mentioned cases as they arise from the similar factual matrix. However, for the sake of brevity, facts are culled out from CRM-A-1094-MA-2013.

2. The present application has been preferred against the judgment of acquittal dated 09.09.2013 passed by learned Additional Chief Judicial Magistrate, Karnal in criminal complaint no. 27 dated 06.02.2008 filed under Section 32 and 34 of the Industrial Disputes Act, 1947 (hereinafter 'the Act') for commission of offence under Section 25-U, punishable under Section 25-T of the Act.

3. Briefly, the facts are that the applicant-appellant is a workman of

M/s Liberty Enterprises (hereinafter 'the firm') which is owned and occupied by respondent no.2-Adarsh Gupta. There was a dispute going on between M/s Liberty, Kutail, M/s Liberty Shoes Ltd., M/s Liberty Marketing Division Limited, Karnal and the workers union working in these establishment. On 22.12.2006, a settlement was arrived at between the workmen and the firm whereby the firm had agreed to take back all the workmen between 22.12.2006 to 31.12.2006.

Accordingly, the management started taking back the workmen in the three firms. However, the management started to transfer the certain workmen to other establishments. The applicant-appellant alleges that he was maliciously transferred to a place where no factory was in existence.

4. A show cause notice dated 30.10.2007 was issued by the competent authority, however the reply to the same was found to be unsatisfactory. Therefore, after obtaining the necessary sanction from the competent authority, the concerned Labour Inspector filed the complaint (supra). After assessing all the material available on record, the learned trial Court acquitted the respondent-accused vide judgment dated 09.09.2013.

5. Learned counsel for the applicant-appellant contends that the learned trial Court has failed to consider that the documentary evidence itself proves that the workmen were maliciously transferred by the management to a place where the factory did not exist. Further, the ocular version of the complainant is fully corroborated by the testimony of CW4-Ranbir Singh. The malicious transferring of workmen from manufacturing units of Gharounda to Sonipat amounts to unfair labour practice which is a punishable offence under the Act. Moreover, on 16.10.2007, the representatives of the firm had stated in

writing that 'there is no business of any type and no work is being done by the firm' which makes the deemed closure apparent in spite of the fact that the application filed by the firm under Section 25-O of the Act was rejected by the government.

6. He further contends that the workmen who were creating nuisance and played a negative role during the strike were transferred further corroborating the malicious nature of the transfers. The enquiry report (Ex. CW1/D), report dated 12.07.2007 (Ex. CW2/H) as well as the statements of CW1- Paramjeet Singh, Deputy Labour Commissioner and CW2-Anupam Malik, Joint Labour Commissioner further corroborates the same and strengthen the case of the prosecution.

7. Having heard the learned counsel for the applicant-appellant and after perusing the record of the case with his able assistance, it transpires that in his cross examination, Ram Sarup, Labour Inspector could not state whether he had visited the premises of the firm. Moreover, CW2-Anupam Malik, in his cross-examination, has admitted that as per standing orders (Ex. R1), the management retains the power to transfer the employees of the firm. The spot inspection report on the basis of which closure of the unit was alleged remains unproven as such, mere transfer of some workmen cannot be considered as closure in terms of Section 2(cc) of the Act.

8. Furthermore, all witnesses for the prosecution have specifically admitted that no notice was issued to respondent No. 2. It appears that the competent authority sanctioned prosecution without ascertaining the facts of the situation, holding an enquiry or affording an opportunity to the firm to present its case. Therefore, this Court is of the considered view that the alleged transfer of

the workmen does not fall within the purview of unfair labour practice as mentioned under item no. 7 of the Fifth Schedule of the Act.

9. In view of the facts and circumstances of the case, this Court finds that learned counsel for the applicant-appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present applications and hence, the leave to appeal is denied.

10. Accordingly, all the above mentioned applications are disposed of in the aforementioned terms.

March 13, 2024
reena

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No