

-:IN THE INDUSTRIAL COURT AT LATUR:-
(BEFORE SHRI S.S. KHANDEKAR, MEMBER)
-:CRIMINAL/APPEAL/ ULP/ No./01/2018:-
-:CNR NO: MHIC24-000058-2018:-

Shri. Lahu Baliram Bhosale
Age about 50 years
Occ: Nil, R/o. Parshuram Housing
Society, Sanja Road, Osmanabad,
Tq. & Dist. Osmanabad.

:APPELLANT
(Ori. Complainant)

-:VERSUS:-

Shri. Vasant Sambhaji Nagade
age about 74 years
Chief Executive Officer,
Osmanabad Janata Sahakari Bank Ltd.
Head Office, Main Road, Osmanabad
Tq. & Dist. Osmanabad.

:RESPONDENT
(Ori. Accused)

ORDER BELOW EXH C-4
(DICTATED IN OPEN COURT ON 23.07.2018)

1. The Appellant has filed the Appeal under section 42 of the M.R.T.U. & P.U.L.P. Act, 1971 against the Judgment dated 22.03.2018 passed by the Ld. Labour Court, Latur in Criminal Complaint (ULP) No. 03/2014.

2. The respondent has filed the instant application thereby urged for dismissal of the Appeal. It

is submitted that after the recording of evidence and hearing litigating sides, the Ld. Labour Court discharged the respondent. U/s. 378 of C.R.P.C. (Code of Criminal Procedure, 1973) there is no provision to prefer appeal before this Court against the order of acquittal/discharge. Therefore, it is urged that present appeal is not maintainable because as per the provision of C.R.P.C. there is no appeal provided before this Court against the order of discharge.

It is also contended that for the same offense and for the same cause of action appellant had filed Criminal Complaint (ULP) No. 21/2010 before the Ld. Labour Court against the same respondent. On 16.12.2016 the said Criminal Complaint was dismissed and the respondent was discharged. Therefore, the respondent cannot be prosecuted for the second time. U/s. 300 of C.R.P.C., the Criminal Complaint (ULP) No. 03/2014 and the instant appeal both are not maintainable. Therefore it is urged to dismiss the appeal at the threshold. The respondent filed documents along with list Exh.C-6.

3. The appellant has filed reply below Exh. U-7. It is submitted that, present appeal is filed against the order dated 22.03.2018 passed by the Ld. Labour Court in Criminal Complaint (ULP) No. 03/2014.

It is submitted that accused cannot be discharged in such Criminal Complaints because provision of discharge under section 258 C.R.P.C. is not applicable to Criminal Complaints filed under M.R.T.U. & P.U.L.P. Act, 1971.

It is submitted that, the instant appeal is not filed U/s. 378 of C.R.P.C. but the same is under the provisions of section 40 and 42 of the M.R.T.U. & P.U.L.P. Act, 1971. It is submitted that, special law will prevail over general law. The earlier Criminal Complaint (ULP) No. 21/2010 was filed for non-compliance of interim order dated 22.01.2010 passed by the Ld. Labour Court, Latur in Complaint (ULP) No. 100/2004. The Criminal Complaint (ULP) No. 21/2010 came to be dismissed on 16.12.2016 on the ground of continuance absence of the present appellant. Therefore, Criminal Complaint (ULP) No. 21/2010 has no relevancy to the instant Criminal

Appeal. There is no question of same offense or same cause of action. It is submitted that section 300 of C.R.P.C. deals with principle of double jeopardy. The appeal as filed, is maintainable before this Court. Therefore it is urged to reject the application.

4. On the basis of rival contentions the following Points arise for my determination and my findings are as below for reasons to follow.

<u>Sr.</u> <u>No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the appeal is : maintainable against the impugned Judgment passed by the Ld. Labour Court in Complaint (ULP) No. 03/2014 on 22.03.2018?	In the Affirmative.
2	Whether the instant appeal is : maintainable against the impugned Judgment in Criminal Complaint (ULP) No. 03/2014 dated 22.03.2018 when the appellant had preferred earlier Criminal Complaint (ULP) No. 21/2010 ?	In the Affirmative.
3	What order ?	: Application is rejected.

:-REASONS:-

As to Point No.1

5. The counsel for the respondent argued that once the Ld. Labour Court passed the order of release of the respondent and it is directed that such release will have the effect of discharge then appeal is not maintainable before this Court. The Ld. Counsel for the respondent has elaborated the provision of C.R.P.C. to demonstrate that wherever there is discharge, the proper remedy is by way of appeal against the acquittal with the leave of the Court under section 378 of C.R.P.C. before Hon'ble High Court.

Another contentions raised by the counsel for the respondent is that the present appellant had earlier filed Criminal Complaint before the Ld. Labour Court that came to be dismissed for want of prosecution due to continuous absence of the appellant. Therefore, second complaint on the same facts, same cause of action and same respondent is not maintainable. Therefore, it is urged to dismiss the appeal.

6. The counsel for the respondent relied upon the case law of **Manjit Singh v/s Jaswant Kaur** being Judgment dated 22.04.2017 passed by the Hon'ble Additional Session Judge, Delhi. On the basis of said case law it is argued that the appeal is not maintainable as the proper remedy is by way of leave to appeal to Hon'ble High Court.

I am in respectful submission to the ratio laid down by the above said case law but the facts of the said case and the instant case are distinct therefore the ratio of the said case law is of no help to the respondent.

7. The counsel for the appellant argued that the Ld. Labour Court passed the impugned Judgment in criminal complaint instituted U/s. 48 of the M.R.T.U. & P.U.L.P. Act, 1971. After the impugned Judgment is passed, appeal is provided as per the scheme of the Act. It is argued that the M.R.T.U. & P.U.L.P. Act 1971 being the special law for the labour matters, shall always prevail over the Code of Criminal Procedure 1973, which is a general law. It is also argued that the

earlier criminal complaint was against the interim order and therefore there is no hindrance in filing the subsequent criminal complaint on the basis of Judgment or the instant appeal. Therefore it is argued to reject the application.

8. Heard the Ld. Counsels at the length and perused the documents filed on the record. As per the impugned Judgment the Ld. Labour Court has arrived at the findings that the appellant failed to prove that the respondent committed offense punishable U/s. 48 of the M.R.T.U. & P.U.L.P. Act. Therefore, it is concluded that "accused is released and his release shall have the effect of his discharge".

The said Judgment is under challenge before this Court U/s. 42 of the M.R.T.U. & P.U.L.P. Act, 1971. Whether the Ld. Labour Court could use such phraseology or not, or grant such a relief in the said circumstances, as per the scheme of the Act, is a debatable Issue.

U/s. 42 sub-section 1 (b) appeal is maintainable by the complainant before this Court

against an order of acquittal by the Ld. Labour Court in its special jurisdiction. It is also provided that every appeal shall be made within 30 days from the date of conviction, acquittal or sentence as the case may be. Section 42 deals with powers of Industrial Court and provides that Industrial Court in an appeal under section 42 may confirm, modify, add to or rescind any order of the Ld. Labour Court appeal against; and may pass the such order thereon as it may deem fit. Under sub section 2 it is provided that in respective offenses punishable under this Act, the Industrial Court shall have all the powers of the High Court of Adjudicature at Bombay under the Code of Criminal Procedure.

Therefore on perusal of these provisions it is apparent that appeal is maintainable against all the orders passed by the Ld. Labour Court on the completion of trial. Therefore I am of the view that the objection of the respondent towards maintainability of the appeal on this count, is to be answered in the negative.

As to Point No.2

9. The respondent has also raised an objection that Criminal Complaint (ULP) No. 21/2010 came be dismissed for want of prosecution on 16.12.2016. The subsequent criminal complaint and instant appeal arising out of such subsequent complaint is not maintainable. The respondent has filed documents along with list Exh. C-6. On perusal of the said Criminal complaint 21/2010 it is seen that the said criminal complaint was filed in pursuance of the interim order dated 12.12.2010 passed by the Ld. Labour Court in Complaint (ULP) No. 100/2004. The criminal complaint came to be dismissed on 16.12.2016.

On perusal of section 48 of the MRTU & PULP Act it is seen that as per sub-section it is provided that any person who fails to comply with any order of the Court under Clause (b) of sub-section (1) or sub-section (2) of section 30 of this Act on conviction to be punished to imprisonment which may extent to three months or with fine which may extent to Rs. 5000/-.

Section 30 (1) (b) reads as follows:-

Where a Court decides that any person named in the complaint has engaged in, or is engaging in, any unfair labour practice, it may in its order-

direct all such persons to cease and desist from such unfair labour practice, and take such affirmative action (including payment of reasonable compensation to the employee or employees affected by the unfair labour practice, or reinstatement of the employee or employees with or without back wages, or the payment of reasonable compensation), as may in the opinion of the Court be necessary to effectuate the policy of the Act;

Section 30 (2) reads as under:-

In any proceeding before it under this Act, the Court, may pass such interim order (including any temporary relief or restraining order) as it deems just and proper (including directions to the person to withdraw temporarily the practice complained of, which is an issue in such proceeding), pending final decision;

10. On perusal of section 30 read with section 48 it is seen that an application under 48 is maintainable against an order passed by the Court under section 30 sub-section 2 as well as against the order passed by the Court under section 30 sub-section 1 clause (b). Therefore, due to the scheme of the Act the Criminal Complaint (ULP) No. 03/2014 as well as the appeal filed against the Judgment dated 22.03.2018 is

maintainable before this Court. Therefore, the objection of the respondent, on this count also, is liable to be answered in negative. Therefore, in view of my findings thereon the point no.2 is answered accordingly.

As to Point No.3

11. In the premise of above the said conclusions I find that the application Exh.C-4 is liable to be rejected. Therefore, I pass the following order.

:-ORDER:-

1. The application Exh.C-4 is rejected.
2. The appeal to proceed further.
3. No order as to costs.

Latur.
23.07.2018

Sd/-
(S.S. Khandekar)
Member,
Industrial Court, Latur