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CRIMINAL/APPEAL/(ULP)/NO/01/2018
JUDGMENT

<u>FILED ON:</u>	<u>05.04.2018</u>
<u>REG. ON:</u>	<u>10.04.2018</u>
<u>DECIDED ON:</u>	<u>29.10.2018</u>
<u>DURATION:</u>	<u>00Y,06M,19D</u>

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

Exh. O-6

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

:APPELLANT
(Original 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

:OPPONENT
(Original Accused)

(IN THE MATTER OF APPEAL U/S. 42 OF THE
M.R.T.U. & P.U.L.P. ACT 1971)

.....
APPEARANCES:Adv. C.N. Itkari for Appellant
:Adv. D.P. Marathe for Opponent
.....

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-:JUDGEMENT:-
(DICTATED IN OPEN COURT ON 29.10.2018)

1. The appellant has filed instant appeal U/s. 42 of the M.R.T.U. and P.U.L.P. Act 1971 challenging thereby the Judgment and Order passed by Ld. Labour Court in C.C. (ULP) No. 03/2014 dated 22.03.2018.

The necessary facts are as follows:

2. The appellant was in the employment of Osmanabad Janata Sahakari Bank Ltd (Hereinafter mentioned as the bank). The services of appellant came to be terminated and the same was challenged by way of Complaint (ULP) No. 100/2004. The Ld. Labour Court allowed the complaint by Judgment dated 24.09.2012. The bank preferred Revision Application (ULP) 38/2012 but the same was dismissed by Judgment dated 02.04.2014. The bank preferred Writ Petition No. 6751/2014 before the Hon'ble Bombay High Court, Bench At Aurangabad and the same is pending but no interim relief is granted although R & P of the complaint and Revision Petition is called for.

In the above factual matrix it is contended that the opponent failed to comply with the order passed by Ld. Labour

Court dated 24.09.2012. Thus it is urged to quash and set aside the impugned Judgment, convict the opponent and impose stringent punishment.

3. The opponent has appeared in the matter on service of notice. It is submitted that, the impugned Judgment is valid, legal and needs no interference at the hands of this Court. It is therefore urged to dismiss the appeal.

It is submitted that, the bank has preferred Writ Petition 6751/2014 before the Hon'ble Bombay High Court and the same is pending. It is submitted that, the appellant did not show readiness towards reinstatement. The appellant himself had submitted proposal for settlement. The bank was ready to pay the dues as per the calculations made by it. Thus there was no deliberate disobedience of the Judgment passed by the Ld. Labour Court. Therefore, it is urged to dismiss the appeal.

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

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<u>S.N.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1.	Whether the impugned Judgment under appeal suffers from error of facts as well as law apparent on the face of the record. ?	In the Negative
2.	Whether the appellant is entitled for reliefs as prayed ?	In the Negative
3.	What order?	As per final order

-: REASONS:-

5. It is necessary to discuss in brief the history of past litigations to appreciate the facts of the matter. The complainant was in the employment of the bank on the post of clerk since 1983. The services of the complainant came to be terminated and the complainant challenged the same by way of Complaint (ULP) No. 100/2004 before the Ld. Labour Court, Latur. The said Complaint (ULP) came to be allowed by Judgment dated 24.09.2012. The bank was directed to reinstate the complainant in service as before with continuity of service and back wages to the extent of 75% from the date of complaint i.e. 08.12.2000 and costs quantified at Rs. 1000/-.

The bank challenged the said Judgment before this Court by way of Revision Application (ULP) No. 38/2012 but the same is rejected by Judgment dated 02.04.2014. Thereafter the bank has challenged both the Judgments before the Hon'ble Bombay High Court Bench at Aurangabad by way of Writ Petition No. 6751/2014. In the said Writ Petition the Hon'ble Bombay High Court was pleased to call for the R & P but no interim relief is granted while admitting the Writ Petition.

There has been other litigations also between the parties. The bank had challenged, the grant of interim relief by the Ld. Labour Court, by way of Writ Petition No. 11742/2010. The said Writ Petition came to be disposed of by Judgment dated 10.03.2011. The opponent had filed Revision Application (ULP) No. 17/2015 against issuance of process by the Ld. Labour Court and the same came to be dismissed by Judgment dated 06.10.2015.

The appellant had also preferred Criminal Writ Petition No. 1432/2017 that came to be disposed of by Hon'ble Bombay High Court, Bench at Aurangabad vide Judgment dated 24.11.2017. The appellant has also filed an application for recovery under section 50 of the MRTU & PULP Act 1971 bearing no. 05/2016 and the same is pending before this Court.

As to Point No.1 and 2

6. It is the case of appellant that he had preferred Complaint (ULP) No. 100/2004 that came to be decided by Judgment dated 24.09.2012. Due to non-compliance of the said order, the appellant filed Criminal Complaint C.C. (ULP) No03/2014. From perusal of the said criminal complaint, it is seen that the appellant mentioned in the single paragraph that the appellant was working on the post of Clerk-cum-Cashier and his services were terminated on 15.07.2000. Thereafter outcome of Complaint (ULP) No. 100/2004 and Revision Application (ULP) No. 38/2012 are mentioned in summary manner. It is submitted that respondent failed to comply Judgment dated 24.09.2012, therefore the opponent committed contempt of Court and is liable for maximum punishment and fine.

7. The Ld. Labour Court has recorded the plea of the accused vide Exh. O-4 dated 08.09.2016. The criminal complaint proceeded further and the evidence of the applicant is recorded on 18.11.2016 and 18.01.2018. Thereafter statement under section 313 is recorded on 17.02.2018 and on 23.02.2018 evidence of the accused is recorded. Thereafter the

Ld. Labour Court heard the counsels for the litigating parties and passed Judgment dated 22.03.2018 and thereby dismissed the complaint.

8. The counsel for the complaint argued that the Ld. Labour Court failed to apply judicious mind in the facts of the case. It needs to be seen that under section 40 of the Act of the 1971 the powers of the Labour Court are provided. It is mentioned that Labour Court shall exercise the powers of Judicial Magistrate First Class and such trial would be summary trial. It is argued that, the Labour Court has not recorded the plea of the accused and the summons and forms were not as per the Labour Court Practice and Procedure Rule 1975. The Ld. Labour Court wrongfully held that heavy burden lies upon the complainant to prove his case. The MRTU & PULP Act is special Act and Code of Criminal Procedure is general Act. The Act of 1971 no were prescribed heavy burden upon accused. The orders of the Courts are not complied with by the opponent till today. The Ld. Labour Court observed that complainant is neither reinstated nor paid wages. It is admitted by accused that there is no stay to the execution and operation of Judgment dated 24.09.2012. The accused admitted to be

C.E.O. of the respondent bank upto 22.09.2014. In Writ Petition No. 6751/2014 there had been talks of compromise but the same are not acceptable to the appellant. Likewise compromise before Labour Court was not acceptable to the appellant i.e. document Exh.C-18. The Ld. Labour Court erroneously held that the appellant no were pleaded or stated during evidence that the opponent knowingly and intentionally failed to follow the Judgment. As per section 29 of the Act 1971 the order and the Judgment is binding upon parties to the complaint. The Labour Court failed to notice that the appellant was not ready for compromise or settlement. There was no necessity to prosecute the bank as party respondent in criminal complaint. The Ld. Labour Court wrongfully held that there has to be Mens Rea present for conviction in such criminal complaints under the Act 1971. Therefore it is argued to allow the appeal and convict the opponent and impose stringent punishment. The counsel for the appellant filed written notes of arguments vide Exh.U-9 .

9. The counsel for the appellant filed case laws along with list Exh.U-10.

I) *AIR 2001 Supreme Court 2651 John Thomas V/s. Dr. K Jagadisan.*

II) *2006 Criminal Law Journal 1660 Mehta Prafulchandra Kalidas V/s Patel Cheljibhai Kalidas & Anr.*

III) *2002 (1) MPLJ 243 Bhiwani Denim and apparels v/s. Bhaskar Indu Ltd.*

IV) *AIR 1977 Supreme Court 2279 R.S. Joshi V/s. Ajit Mills Ltd.*

V) *AIR 1982 Supreme Court 1473 Peoples Union for democratic rights & Anr. V/s Union of India & Anrs.*

I am in respectful submission to the ratio laid down by the Hon'ble Courts in the above said case laws but the facts of the case in hand and the case laws mentioned above, are distinct. Therefore the ratio is of no help to the appellant.

10. The counsel for the opponent justified the impugned Judgment. It is argued that the appellant had not shown readiness towards reinstatement. The appellant is interested only in the monetary gains, without performing any work. It is argued that the appellant has raised a huge demand of Rs. 66/- Lakhs from the bank without any basis. The appellant instead of coming with clean hands himself submitted proposal for settlement. Such a settlement was also offered by Bank in the pending Writ Petition. Instead of agreeing with the settlement

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the appellant backtracked and continued with criminal prosecution. The opponent was not the sole decision making authority in the bank. Due to these circumstances it was not possible for the opponent to comply the order dated 24.09.2012. Therefore there is no willful dis-obedience and hence the appeal is liable to be dismissed.

11. Heard the Ld. Counsels and perused the documents. The Ld. Counsel for the appellant argued that the Ld. Labour Court failed to follow the rules of Labour Court Rules and provisions of Code of Criminal Procedure in conducting the trial. As discussed above I find that the argument is misconceived on this point. The Ld. Labour Court has issued notice before issuance of process. It had given time to the accused to submit say. Thereafter process was issued. Plea was recorded. The complainant was given opportunity to depose in support of his contentions. Thereafter statement under section 313 came to be recorded. The accused was given opportunity to depose and the complainant was given opportunity to cross-examine the accused. This demonstrate that the Ld. Labour Court has followed the procedure of summary trial. I do not find any fault on this count.

12. It is argued that the Ld. Labour Court wrongfully held that heavy burden lies upon the accused to prove guilt of the accused beyond reasonable doubt. It is argued that the Act of 1971 being special Act, no such burden is casted upon the accused. I am unable to agree with this argument. On perusal of section 48 of the Act of 1971 it is seen that heading of the section itself speaks 'contempt of Industrial or Labour Court'. Section 48 (1) deals with dis-obedience of an order of Court which amounts to civil contempt. It is settled law that standard of proof in cases of charges of contempt is like one in a criminal case. Though the criminal complaint was outcome of Labour disputes, but the standard of proofs as required in Labour jurisprudence would not apply to it. Whereas the appellant was required to prove that the opponent committed an act with intention or deliberately, by cogent evidence, beyond reasonable doubt. Therefore this argument of the counsel for appellant cannot be accepted.

13. On the perusal of the criminal complaint it is seen that the appellant has not uttered a single word about his readiness to join towards reinstatement. Although the appellant at the stage of appeal has filed certain documents with list

Exh.U-12 in support of his contentions that he had sent letters towards resuming duty to the bank on 22.01.2010, 15.10.2013, 05.06.2014, 16.06.2016 and 12.09.2016; but the appellant failed to demonstrate what prevented him from placing these documents before the Ld. Labour Court during trial. No contention in support of documents, filed with list Exh. U-12, is raised in the criminal complaint. Therefore, I find no error in the conclusion drawn by the Ld. Labour Court towards refusal of the complainant to join duties.

14. Much emphasis has been placed upon that the Ld. Labour Court could not have passed an order thereby releasing the accused and observing that such release shall amount to discharge. Although the words used in the operative portion of the order passed by the Ld. Labour Court do not find place in the provision of section 42 of the Act of 1971 wherein appeal is provided only against the conviction or acquittal or for enhancement of sentence, the same do not affect the merits of the matter. Therefore only a formal direction is required to be issued in the operative portion of the instant Judgment.

15. The complainant had given the proposal for settlement in pursuance of directions of the Ld.Labour Court vide Exh.C-18. It is seen that the compromise offered by the bank was not acceptable to the complainant. It is pertinent to note that such a process was also carried out before the Hon'ble Bombay High Court in pending Writ Petition No. 6751/2014. This demonstrates that compromise talks were going on between the parties.

The dis-obedience of the order has to be deliberate or intentional. In the instant complaint there is no contention raised that the accused intentionally or deliberately failed to comply with the Judgment dated 24.09.2012. It has been held that it is only willful dis-obedience which amounts to contempt. The complainant failed to demonstrate willful dis-obedience on the part of accused.

16. Another aspect of the matter is that the appellant has filed application under section 50 of the Act of 1971 which is pending before this Court. The Hon'ble Bombay High Court in the matter of **Jagdish V Gursahani V/s. Air India Ltd** reported in 2001 (4) Mhlj 237 was pleased to hold as follows.

.Para 7. *The provisions of Model Standing Order 10A, particularly Clause (2) thereof are of significance because a clear remedy is provided to the employer as well as to the employee in the event of a dispute arising as regards the computation of the subsistence allowance. Now, it is well settled that when a Contempt Petition comes up for hearing before the High Court, the existence of an alternative remedy does not necessarily or ipso facto bar access to the person who claims a breach of the order of the High Court. But the existence of a remedy provided by the Statute itself is indeed a relevant circumstance in deciding as to whether the High Court should exercise the power to punish for contempt. The power of the High Court to punish for contempt is intended to protect the majesty of the law and the dignity of the Court. The power is intended to take within its purview willful or deliberate acts which constitute a defiance or breach of a judgment or order of the Court. The existence of an alternative remedy to seek redressal would be relevant in cases such as the present where a computation that has been made, the entitlement of an employee to an allowance or the validity of a deduction made by the employer is called into question. In such a case, unless the Court comes to the conclusion that there is a clear deliberate or wilful breach of the order passed by the Court or an attempt to evade compliance by resorting to subterfuge, the Court would be inclined to relegate the party to pursue its alternate remedy. This view is supported by recent Judgments of the Supreme Court and of this Court where, the existence of an alternative remedy has been held to be a sound reason enough not to entertain contempt proceedings. In a similar line of cases the Supreme Court has held that the power to punish for contempt cannot be used as a substitute for the execution of a decree or order of the Court. A brief*

reference to these decisions may be in order. In *Kapildeo Prasad Sah v. State of Bihar*, the position was summed up in the following words in a Judgment of the Supreme Court delivered by Mr. Justice D. P. Wadhwa :

"For holding the respondents to have committed contempt, civil contempt at that, it has to be shown that there has been wilful disobedience of the judgment or order of the Court. Power to punish for contempt is to be resorted to when there is clear violation of the Court's order. Since notice of contempt and punishment for contempt is of far-reaching consequence, these powers should be invoked only when a clear case of wilful disobedience of the Court's order has been made out Initiation of contempt proceedings is not a substitute for execution proceedings though at times that purpose may also be achieved.....

Willful would exclude casual, accidental, bona fide or unintentional acts or genuine inability to comply with the terms of the order. A petitioner who complains breach of the Court's order must allege deliberate or contumacious disobedience of the Court's order."

In a more recent judgment in *R. N. Dey v. Bhagvabati Pramanik*, Mr. Justice M. B. Shah delivering the judgment of the Supreme Court held that the power of contempt should be used sparingly and not for the execution of the decree or for the implementation of an order when an alternative remedy in law is provided for. The principle was placed thus in para 7 in the judgment :-

"The weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the Court is to be exercised for maintenance of the Court's dignity and

majesty of law. Further, an aggrieved party has no right to insist that the Court should exercise such jurisdiction as contempt is between a contemner and the Court.....".

Para 8. A learned Single Judge of this Court (D. K. Deshmukh, J.) in a matter arising under the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 also took the view that when there was a sufficient remedy available for the purpose of moving the School Tribunal, a contempt petition would ordinarily not lie. In para 6 of his judgment, the learned Single Judge has held as follows :

"..... In a case where effective remedy is provided by the statute for enforcing the order and the petitioner does not avail of that remedy and rushes to the High Court, the High Court certainly be justified without there being anything else than mere disobedience of the order in declining to entertain the contempt petition. It is thus clear that the existence of remedy for enforcing the order made by the subordinate Court as also the question whether the petitioner has availed of that remedy is a relevant consideration. It therefore becomes necessary for me to find out whether the order made by the School Tribunal is capable of being enforced by any other mode."

Para 9. In view of the position in law, this Contempt Petition would not be maintainable in view of the fact that the Petitioner has a clear remedy available under Clause (2) of Model Standing Order 10A. Clause 2 of the said Standing Order empowers the workman or the employer to refer a dispute to the Labour Court, where a dispute arises "regarding the subsistence allowance payable." That, in substance, is the nature of the dispute which is sought to be raised by the

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Petitioner. The Petitioner has an alternative remedy. The resort to the power to punish for contempt is in apposite.

17. The above observations are squarely applicable to the case in hand. The complainant has now completed age of superannuation. Therefore now there is no propriety left in prosecuting towards reinstatement. The recovery application of the appellant is still pending. In the above facts and circumstances I do not find any reason to interfere with the impugned Judgment. Therefore the Point No. 1 and 2 are answered accordingly.

As to Point No. 3:

18. In the premise of above facts and circumstances, as I find that the appeal is liable to be dismissed, therefore I proceed to pass the following order.

:-ORDER:-

1. The appeal is dismissed.
2. The operative portion of the Point No.3 of the impugned Judgment stands modified as that the accused is acquitted.
3. The R & P of Criminal Complaint (ULP) No. 03/2014 be sent back to Labour Court, Latur forthwith.
4. No order as to cost.

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5. Proceedings are closed.

Latur.
29.10.2018

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

In-Charge Assistant Registrar
Industrial Court, Latur.

Arguments Heard On:	05.10.2018
Judgment Dictated On:	29.10.2018
Judgment Transcribed On:	29.10.2018
Checked And Signed On:	29.10.2018