

Filed on : 12/10/2017
Registered on : 25/10/2017
Decided on : 12/12/2017
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BEFORE SMT. S.P. KALE,
JUDGE, SECOND LABOUR COURT, MUMBAI

Miscellaneous Criminal Complaint (ULP) No.45 of 2017

In

**(ULP Misc Criminal Contempt 30 of 2012) Copy filed in CC 02
of 2012 for info**

In

**In Connected Matters of (ULP)15 OF 2003 and all the
connected matters below**

Application (IDA) 33 of 2012

In

Writ Petition 1457 of 2011

In

In Original Complaint (ULP) 15 OF 2003

Shri. Rohit Agarwal
B-408, Ridhi Sidhi Ratna,
Kanti Nagar, Andheri (East),
Mumbai-400 059.

...Complainant

v/s.

1. M/s. International Gemological Institute(Pvt) Ltd.,
Situated at 404, Mani Mahal,
11/21 Mathew Road,
Mumbai-400 004.

...Respondent no.1

2. Shri. Tehmasp Printer
404, Mani Mahal,
11/21 Mathew Road,
Mumbai-400 004.

...Respondent no.2

3. Smt. Sindhu Loyal
404, Mani Mahal,
11/21 Mathew Road,

Mumbai-400 004.

...Respondent no.3

4. Advocate Usha Tiwari
8, Raja Bahadur Mansion,
Ambalal Doshi Marg,
Mumbai.

...Respondent no.4

5. Advocate R.R. Yadav
F/302, Shanti Complex,
Sakivihar Road, Powai, Mumbai-72.

...Respondent no.5

6. & Others

AND

Miscellaneous Criminal Complaint (ULP) No.46 of 2017

In

**(ULP Misc Criminal Contempt 30 of 2012) Copy filed in CC 02
of 2012 for info**

In

**In Connected Matters of (ULP) 15 OF 2003 and all the
connected matters below
Application (IDA) 33 of 2012**

In

Writ Petition 1457 of 2011

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In Original Complaint (ULP) 15 OF 2003

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Mumbai.

...Respondent no.4

5. Advocate R.R. Yadav
F/302, Shanti Complex,
Sakivihar Road, Powai, Mumbai-72.

...Respondent no.5

6. & Others

CORAM : Smt. S.P. Kale, Judge.
Appearances : Complainant in person.
: Smt.Usha Tiwari, Adv. for Respondents.

JUDGMENT
(Delivered on : 12-12-2017)

1) The present Miscellaneous Criminal Complaints filed by the complainant in person in the matter of Misc. Judicial Criminal Application No. 45 of 2017 under the heading of as Cr.P.C. section 340 as Miscellaneous Judicial Case under section 195 on applications/reply/exhibits filed by the accused on 11/10/2017 under I.P.C. 193,196,199,200 and 211. The another Misc. Criminal Judicial Application No. 46 of 2017 filed under Cr.P.C., 340 as Misc. Judicial Case under section 195 under I.P.C. 191, 193, 196, 199, 200,202,206,209,464,466,467,468,469,470 as also referred to MRTU and PULP Act, 38,41 and 48 (3) and (5). In both the Misc. Judicial Criminal Application, the complainant stated that, in affidavit of reply and list of documents filed to Exh. U-11 and Exh.

U-35 in MCC No. 30 of 2012 dtd. 11/10/2017 filed with malafide intention by the accused, interfere with administration of justice and caused delay and moved burden on proceeding and harm the applicant. The complainant in person states that, the Hon'ble Court on 11/10/2017 took time to search for pending applications in so many files, due to deliberate delay and contempt on behalf of the accused in the summary trial matter. He further submits that, in spite of the accused not being entitled for any reply or submissions have been recklessly filling false affidavit and duplicate xerox copies which are already filed with two applications of list of documents on same date and time. Thereafter, he provide a list of documents which were filed by the accused alongwith affidavit. Therefore, the complainant submits that, the accused mischievously filed the same irrelevant documents twice at Exh. U-11 and Exh. U-35 without even bothering to retype the same and taking out the xerox and dumping them on the Hon'ble Court's record which ideally could have been avoiding by adding just the exhibit number Exh. U-35 to Exh. U-11, in stead to exhibit of reply to Exh. U-11 list of documents filed along with corrections. The another reason the complainant in person stated that, the accused have been served a copy of full petition in 2012 and without an affidavit in support the case is neither registered nor numbered in the Labour Court, the accused with some others are playing mischief with the court proceeding to escape the law for their wrong doing and this the reason they a re contesting and not allowing true facts pertaining to salary and account statement, to come on record, and the easiest way is to remove the affidavit and

have the entire contempts dismissed without being heard on merits.

2) In MCC No. 45 of 2017, the complainant in person alleged that, on 7/10/2017, Advocate Shrikant Pillai, Adv. R.R. Yadav and Adv. Usha Tiwari all three were present for arguments and the complainant had furnished the copy of application of 42 pages of missing documents on 7/10/2010 verified in green alongwith the accused copy in both the matters which was verbatim and identical and the accused and their Advocates neither accepts nor acknowledged the same for applicant. At the time of receipt of the documents on same day, Adv. Tiwari insisted on taking the office copy of photo I. d. of the complainant in MCC No. 30 of 2012 which was not paginated and was used for verification by the Registrar and when the complainant protested, Adv. Tiwari conveniently acknowledged as last page not received before this court. This Hon'ble Court be pleased to note that, the application of 42 pages of 7/10/2017 was for the same reasons that last page has been removed/missing from the original contempt petition i.e. affidavit in support in MCC No. 30 of 2012 and C. C. No. 2 of 2012. Further the complainant in person submits that, Adv.R. R. Yadav came to accept the copy of said 42 pages on 7/10/2017 in C. C. No. 2 of 2012 and has accepted the same with the date, however at the last minutes chose to cancel the signature and receipt of the original court copy and left their copy on 7/10/2017 to delay the matter and then alleged non receipt of the documents on time or blame the complainant or court staff.

3) In both the matters the complainant in person argued that, the accused filed the extra documents on court's record as well as cancelled their signature though they accepted the documents before the court. Here, in both the matters, I observed that, to reply to the Exh. U-11 and Exh. U-35, the accused filed their reply with supportive affidavit and also filed certain documents alongwith their reply which as per the complainant was only on record of the court. Only to delay the matter and enhance the document of court record, the accused deliberately filed these documents on record. Here, I observed that, the accused filed their reply alongwith document to Exh. U-11 and Exh. U-35. Here, when I gone through Exh. C-27, I observed that, these documents are required to be filed by the accused, when they filed their reply to Exh. U-11 and Exh. U-35. It is nothing but the copy of the Rojanama in Application (IDA) No. 33 of 2012 till disposal, copy of letter from R.B.S. to the secretary and copy of letter from complainant. All these documents prima facie discloses that, these documents are required to be produced by the accused to reply and to defend their case. In that view the complainant by his own cannot come to conclusion that, the accused just dumping the documents on court record . Here would like to mention that the parties have right to file document to support their case or defend their case. Thus, I come to the conclusion that, the accused filed the said documents in reply to Exh. U-11 and Exh. U-35 only.

4) Further, the complainant alleged that, Advocate Usha Tiwari acknowledged the documents as last page not received.

Here,when I gone through the documents filed by the complainant on 7/11/2018, I come to know that the last page of that list of documents is not the affidavit in support in MCC No. 30 of 2012 and C.C.No. 2/2012 rather it is a photo I.D. of the complainant. Therefore, there is no question arise that, the accused in future get a chance to remove that page from the proceeding. Here, I observed that, the complainant unnecessarily create a situation which increased the proceeding of the court. The complainant further alleged that, Adv. R. R. Yadav came to accept the copy of the same 42 pages on 7/10/2017. Having considered the contentions of the complainant I come to know that, the complainant failed to mentioned that which documents Advocate R.R. Yadav came to accept and cancelled his signature immediately. Only mentioning 42 pages is not sufficient. Furthermore, he failed to explain what prejudices is cause to him and what harm he cause. Therefore, merely, saying that the documents are accepted and cancelled signature is not sufficient specifically under the charges of tampering of courts record. Therefore, the question of playing fraud or tampering the documents of court's record does not arise particularly in the present two matters. Thus, I conclude that, there is no merit in both the Misc. Judicial Criminal Applications and both the applications are not maintainable under section 340 of Cr.P.C. and under 193, 196, 199, 200 and 211 and 191, 193, 196, 199, 200, 202, 206, 209, 464, 466, 467, 468, 469, 470 as also referred to MRTU and PULP Act, 38,41 and 48 (3) and (5). Hence, I proceed to pass the following order :

ORDER

- 1) It is hereby held that, both the Misc. Criminal Complaints are dismissed.
- 2) Parties should bear their own costs.

Sd/-

Date- 12/12/2017

(S.P. Kale)

Judge

Second Labour Court, Mumbai.

Written arguments filed on	: 01/11/2017
Judgment dictated on	: 12/12/2017
Judgment Transcribed on	: 12/12/2017
Judgment checked & Signed on	: 27/12/2017

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