

Filed on : 22/05/2012
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Decided on : 12/12/2017
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BEFORE SMT. S.P. KALE,
JUDGE, SECOND LABOUR COURT, MUMBAI

Criminal Complaint (ULP) No.30 of 2012
Connected Matters

In

Application (IDA) 33 of 2012

In

Notice of Motion 603 of 2011

In

Writ Petition 1457 of 2011

In

Revn. Appl. 68 of 2009 and 104 of 2009

Hon'ble Industrial Court order dtd. 18Th February 2011

In

In Original Complaint (ULP) 15 of 2003

Hon'ble 9th I/c. 2Nd Labour Court Order dtd. 16Th February 2009

and

Hon'ble 2nd Labour Court Order dtd. 10Th August 2007

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. &Ors.
404, Mani Mahal, 11/21 Mathew Road,
Mumbai-400 004.

...Company/Accused no.1

2. Shri. Tehmasp Printer

and adult Indian Inhabitant, working with its
office at : 404, Mani Mahal,
11/21 Mathew Road, Mumbai-400 004. ...Accused no. 2

3. Smt. Sindhu Loyal
and adult Indian Inhabitant, working with its
office at : 404, Mani Mahal,
11/21 Mathew Road, Mumbai-400 004. ...Accused no. 3

4. Shri. Manek Rusi Mistry
and adult Indian Inhabitant, working with its
office at : 404, Mani Mahal,
11/21 Mathew Road, Mumbai-400 004. ...Accused no.4

5. Shri. Dara Rusi Mistry
and adult Indian Inhabitant, working with its
office at : 404, Mani Mahal,
11/21 Mathew Road, Mumbai-400 004. ...Accused no.5

AND

Contempt Complaint 2 of 2012

Connected Matters

In

Application (IDA) 33 of 2012

In

In Notice of Motion 603 of 2011

In

Writ Petition 1457 of 2011

In

Revn. Appl. 68 of 2009 & 104 of 2009

Hon'ble Industrial Court Order dtd. 18Th February 2011

In

In Original Complaint (ULP) 15 of 2003

Hon'ble 9th I/C. 2Nd Labour Court Order dtd. 26Th February 2009

and

Hon'ble 2nd Labour Court order dtd. 10th August 2007

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

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office at : 404, Mani Mahal,
11/21 Mathew Road, Mumbai-400 004. ...Accused no.5

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

JUDGMENT

(Delivered & Dictated in open court on: 12-12-2017)

1. The judgment delivered in both Misc. Criminal

contempt / compliant along with all pending applications in both the matters. Both the Criminal Complaints filed by the Complainant Shri. Rohit Agarwal in person (hereinafter referred to as complainant) the some and substance of his case is that, in January-2013, he had made complaint against the accused by way of filling Complaint (ULP) No.15 of 2003 for Unfair Labour Practices, which was disposed of but the complainant in said Complaint (ULP) moved an application under Exh. U-22 and Exh. U-27 for production of certain documents. Here, as per the submissions of the complainant that, accused failed to comply that order and was produced forged and fabricated documents and in that view the accused failed to comply the order of my Predecessor passed in Complaint (ULP)No. 15 of 2003. Therefore, the accused committed offense under section 48(1),(2) and (3).

2. The accused filed their reply in both the matter and denied all the allegations in toto and submits that the accused denied that, not compliance of order dt. 21/10/2008, which was passed in Complaint (ULP) No. 15/2003. However, the accused no.2 to 5 are neither party to the original complaint, nor any direction was given to them under the said order. The accused no. 2 to 5 were not aware with the said order which was passed by my Predecessor. The accused further submits that, the complainant had also made an application (IDA) No. 33/2012 Under Section 33-C (2) of the I.D Act. The accused no.2 to 5 are neither party to the said application also nor there is any order or direction against them in the said application.

3. The accused further states that in Complaint (ULP) No. 15 of 2003 the order was passed on 21/10/2008. The accused no.1 company along with application dt.24/11/2008 had submitted the original documents which were available with the company. Thus, the accused no.1 company comply with the said order dt.21/10/2008, which was passed below Exh U-22 and Exh. U-27. Further the accused submits that by order dtd. 26/02/2009 the original Complaint (ULP)No. 15 of 2003 disposed of by this Court and at present in writ petition no.1457/2011 the Hon'ble High Court is seized of the matter. Therefore, the present complaint, making allegation in respect of documents not produced deserves to be dismissed. In the present case the summons were wrongly issued to the accused and subsequently it is quashed and set aside by Hon'ble Industrial Court. Thus, the present criminal complaints are not maintainable and deserves to be dismissed.

4. Having considered the rival contentions of the both the parties the following points came before me to decide the present criminal complaints, which are mentioned herein below with findings and reasons thereon:

Sr. no.	POINTS	FINDINGS
1.	Whether the present complaint is maintainable or not ?	In the negative.
2.	What order ?	As per final order.

REASONS

5. The present Criminal Complaints filed by the Complainant in person. His contention is that, in original Complaint (ULP)no.15/2003 my predecessor passed an order dtd. 21/10/2008 on Exh.U-22 and U-27, wherein it was held that the respondent company is directed to produce the certain documents but they failed to comply the order dtd. 21/10/2008. He further argued that, the documents which were produced by the company were forged and fabricated and to that effect the accused committed offense u/s. 48(1), (2) and (3) of the MRTU and PULP Act. On the other side, the accused submitted that, to comply the said order the accused no.1 company had submitted the original documents which were available with company on 24/11/2008. This issue insist me to look into original Complaint (ULP) No. 15/2003 wherein, I observed that, the company produced the documents as per the direction given in the order dt. 21/10/2008.

6. The complainant, moved another application at Exh. U-32 under section 195 of Cr.P.C., for the forged and fabricated documents submitted by the respondents, which was rejected by my Predecessor and the some and substance of order of my Predecessor is that, it is to be noted that, these documents are merely produced, no evidence has been led on its production. The author of the documents is not examined by the respondents and these documents are not proved. The court has not based its findings on these documents. The case is decided on the other evidence adduced by the parties and therefore, there is no need to

lodge any complaint under section 195 of Cr. P.C. The application deserves to be rejected and accordingly the application was rejected.

7. Thus, in the above mentioned facts and circumstances, and documents on record I thought it fit, to consider the provisions laid down under MRTU & PULP Act regarding chapter- IX and specific provisions under section 48 of the said chapter. Section 48(1) deals that, “any person to 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, shall, on conviction be punished with imprisonment which may extend for 3 months or with fine which may extend to five thousand rupees.” Here, the complainant in Contempt Complaint No. 2/2012 alleged that the accused no.1 fails to comply with the order of my Predecessor dtd.21/10/2008 and to that effect he filed the contempt petition before this court. Here, to that extend under Section 48 (1) of the said Act itself is very clear that the contempt procedure filed against the person who fails to comply with any order of the court under Section 30 subsection 1 or sub section 2 of this Act shall be punished. Here the entire proceeding before me clearly discloses that in Complaint (ULP) No.15 of 2003 my Predecessor was not passed any order under clause (b) of sub section 1 or sub section2 of section 30 of this Act. Furthermore, the accused no.1 company as per order dt. 21/10/2008 complied the documents. Subsequently, the complainant filed another application under section 195 of the Cr.P.C. alleged that, the forged and fabricated documents filed by

the accused no.1 company. The said application was rejected by my predecessor by order dtd. 26/2/2009 in Complaint (ULP) No. 15 of 2003. Therefore, in that view I conclude that, there is no such order under clause (b) of subsection 1 or sub section 2 of section 30 of MRTU & PULP Act, which was not complied by the accused. Therefore, in my view the complaint under section 48(1) as well as under section 48(2) and (3) are not maintainable. The complainant at a time of dictation interrupted and submitted that the order dt. 21/10/08 is not complied and false and fabricated and documents were produced by the accused.

8. Here, as per section 48(1) only the order passed under section 30 (1) and sub clause (b) of sub section 1 or sub section 2 of section 30 which clearly mentioned that the order includes the interim order including any temporary relief or restraining order as it deems just and proper (including directions to the persons to withdraw temporarily the practice complained of, which is an issue of such a proceeding), pending final decision. Here I categorically mentioned that in Complaint (ULP) No. 15 of 2003 which was decided and disposed of on 10/08/2007 and now at this stage the complaint (ULP)No.15/2003 is not pending before me rather it was finally decided and disposed of by my predecessor. In that view, in Complaint (ULP) No. 15 of 2003 neither the final order passed by my Predecessor nor any interim relief granted to the complainant which was not complied by the accused and to that effect the accused failed to comply the order passed by my Predecessor. Therefore, I conclude that, in the light of section 30,

sub clause (b) of sub section 1 and 2 the present contempt and criminal proceeding are not maintainable.

9. The Ld. Advocate for the accused argued that, both the complaint (ULP) and Application (IDA) long back disposed of and the connected matter is sub-judice before the Hon'ble High Court. She further argued that the section 48 (2) and (3) are not applicable in respect of disposed of proceeding, rather section 48(2) and (3) are applicable to the running proceeding only. The complainant repeatedly contented that the accused has no say in the present matter. The Ld. Advocate for the accused contented that a complaint under section 48 of the MRTU & PULP Act can be filed against any person who fails to comply with any order of the court. In the present case the respondent no.2 to 5 were not made party in Complaint (ULP) No. 15 of 2003, therefore the present criminal complaint is not maintainable against respondent no.2 to 5. To support her contention, she relied on the judgment between N.J.Lawankar and other V/s. Anil Devidas Garad & Ors. reported in 2007 (5) Mh.L.J-214 wherein it was held that, "complaint under section 48 (1) is not maintainable against the person who is not party to original complaint could not made a party to criminal complaint." The simple reasons for this the order binds those were parties to proceeding to comply the order and not a person who is not party.

10. Further, she relied on Wazirkhan Sherkhan v/s Proprietor M/s. Shrikrishna Gyanodaya Cottage Industries,

Nagpur reported in 1979 Mh.L.J- 325 wherein it was held that, sub section 5 of section 48 of the said Act, does not seem contemplate a Civil Contempt and the acts and misconduct referred to therein clearly fall within the category of criminal contempt. On this legal submission I conclude that in the present case it appears that in Complaint (ULP)No. 15 of 2003 the accused no. 2 to 5 were not made party and therefore as per the settled position of law the present criminal contempt is not maintainable against the accused no. 2 to 5. Unless, therefore, it can be established that, accused no. 2 to 5 are to be held liable or they were acted against the order of this court, in my opinion there cannot be any question of they been held responsible criminally. Thus, in the said MRTU and PULP Act, there is no provision which makes the director of the company liable for the act of company in relation to a provision under any section of the MRTU & PULP Act. There is no statutory provision of deeming fictions which will operate against them.

11. Here, the complainant requires to be argued but the complainant repeatedly contended that the accused have “no say” in the present matter. While after going through the proceeding I observed that, it is required to allow the accused to their say and therefore under my discretion, I allowed the accused for their submissions. Here, the complainant failed to distinguish the citation filed by the accused as well as he failed to distinguish the provision under section 30 (1) and (2) of sub clause (b) and section 48(1), (2) and (3) of the MRTU and PULP Act. The complainant further relied on the Judgment which is filed below Exh.U-39 on section

340 and 344 of the Cr.P.C. wherein I observed that, the citations filed by the complainant are not useful in the present matter.

12. Furthermore, when I gone through the prayers in both the matters, this court has limited jurisdiction to try the matters. Prima faice there is neither non compliance of any order under sub clause-(b) sub section 1 or sub section 2 of section 30 of the said Act, nor under section 48(2) and (3) by any of the accused. In view of above facts and circumstance, I do agree that the Complaint (ULP)No. 15 of 2003 was already disposed of but in the said matter the complainant filed the present complaint against the accused for non compliance for order dt..21/10/2008 which accordingly my predecessor held that, it was complied by the accused and the application made by the complainant under section 195 of Cr.P.C. for forged and fabricated documents filed by the accused no.1 was already rejected. Therefore, my predecessor in his order at Exh.U-32 in complaint (ULP)No. 15/2003 clearly held that the case was decided on the other evidence adduced by the parties and not only the documents produced by the accused. Thus, such a document is just a piece of evidence produced and not proved by author of those documents and the effect of such piece of documents on the broad concept of administration of justice is minimal. In such a circumstances, the court may not consider it expedient in the interest of justice to make a complaint. Therefore, I do not found any legal issue is involved in the present complaint as looking into the prayers of the complainant. Thus, as per section 48(1) (2) and (3) there is no offence committed by the accused and there is no

issue regarding the non compliance of any order of the court by the accused. Thus, both the present complaints are not maintainable , because all the issues which are raised by the complainant in the present complaints were already decided by my Predecessor. Hence, the Criminal Complaint(ULP)No.30/2012 and the Contempt Complaint No 2/2012 is not maintainable in the eye of law. Therefore, I proceed to pass following order:

ORDER

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

Mumbai
Dt: 12-12-2017

Sd/-
(S.P. Kale)
Judge,
Second Labour Court, Mumbai.

Argued on	: 02/12/2017
Judgment dictated on	: 12/12/2017
Judgment Transcribed on	: 12/12/2017
Judgment checked & Signed on	: 27/12/2017

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