2024 INSC 597

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S).3324 OF 2024
(ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO.4965/2023)

YUGAL SIKRI & ORS. **…APPELLANT(S)**

VERSUS

STATE OF U.P. & ANR. **…RESPONDENT(S)**

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted.

FACTS

2. By impugned judgment, the High Court dismissed the petition filed by the appellants under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr. PC"). The petition was filed to quash a complaint filed in a criminal Court by the second respondent alleging the commission of an offence punishable under Section 29 read with Sections 32 and 34 of the Industrial Disputes Act, 1947 (for short, "the ID Act"). Cognizance was taken of the alleged offence on the said complaint. A perusal of the impugned judgment shows that the High Court has dismissed the petition without considering the merits of the challenge to the complaint.

SUBMISSIONS OF THE PARTIES

3. The learned senior counsel appearing for the appellants submitted that Section 29 of the ID Act is attracted when there is a breach of any settlement or award binding on the accused under the provisions of the ID Act. He submitted that there is no averment in the complaint about the breach of any particular settlement or award. He further submitted that under Section 34(1) of the ID Act, cognizance of any offence punishable under the ID Act can be taken based only on a complaint made by or under the authority of the appropriate Government. He submitted that no private person can be authorised under Section 34(1) of the ID Act to file a complaint. He pointed out that the order under Section 34 of the ID Act does not refer to any violation of Section 29 at all, and it only refers to the breach of an affidavit and the provisions of Section 9A of the ID Act.

4. On the other hand, the learned counsel appearing for the second respondent submitted that in paragraph 8 of the complaint, it is specifically alleged that an agreement was incorporated in the joint affidavit of the parties filed before the High Court of Judicature at Allahabad on 9th December 2015 and what is alleged is the violation of the said agreement. He submitted that what is stated in the affidavit is an agreement and, therefore, what was alleged was the violation of the agreement incorporated in the joint affidavit of the parties.

He further submitted that the High Court dealing with a petition under Section 482 of the Cr.PC should be very slow in interfering with the order of the issue of process.

CONSIDERATION OF SUBMISSIONS

5. Sections 29 and 34 of the ID Act are material which read thus:

> "29. Penalty for breach of settlement or award.- Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months, or with fine, or with both and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the Court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realised from him shall be paid by way of compensation, to any person who, in its opinion, has been injured by such breach."
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> .. ..
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> "34. Cognizance of offences- (1) No Court shall take cognizance of any offence punishable under this Act, or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government.
>
> (2) No Court inferior to that of 1[a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act."
>
> (underlines supplied)

6. Section 29 is applicable when any person commits a breach of any term of any settlement or award binding on him under the ID Act. Therefore, in the complaint alleging the commission of an

offence punishable under Section 29 of the ID Act, there must be a specific averment regarding the existence of a settlement or award binding on the accused under the ID Act and how the same has been breached. Settlement is defined under Section 2(p) of the ID Act.

7. Before we go into the joint affidavit relied upon by the learned counsel appearing for the second respondent, we must refer to the statement of the second respondent recorded under Section 200 of the Cr.PC on the complaint. The statement contains a vague reference to "my settlement made in 2015", the settlement for the online reporting and MTP, and the settlement of the expenses bill in an Excel sheet. Further allegations are of change of conditions of service alleging a breach of Section 9A of the ID Act. In the verification statement under Section 200 of the Cr.PC, the second respondent, has not referred to the settlement in the form of the joint affidavit dated 9th December 2015 filed before the High Court. He has not stated whether the settlements he referred therein were in writing. Apart from the said statement of the second respondent, the statement of one Rajiv Kumar Bhatnagar was also recorded under Section 202 of the Cr.PC by the criminal Court. Even in this statement, the witness does not allege a breach of the agreement incorporated in the joint affidavit dated 9th December 2015. Therefore, the learned Magistrate could not have issued a process for the

offence punishable under Section 29 of the ID Act based on the statement made by the second respondent under Section 200 of the Cr. PC. It is well-settled that the object of recording a statement of the complainant under Section 200 of the Cr.PC is to bring the truth on record.

8. Now, we come to the joint affidavit, which is relied upon by the second respondent. We have perused the said affidavit. The affidavit refers to a written memorandum of settlement dated 30th August 1996. The affidavit vaguely refers to a settlement arrived at between the parties. The memorandum of settlement dated 30th August 1996 referred to in the joint affidavit is not even referred to and relied upon in the complaint. A copy of the same has not been produced along with the complaint.

9. Section 2(p) of the ID Act reads thus:

> **"Settlement" means a settlement arrived at in the course of conciliation proceeding and includes a written agreement between the employer and workmen arrived at otherwise than in the course of conciliation proceeding where such agreement has been signed by the parties thereto in such manner as may be prescribed and a copy thereof has been sent to an officer authorised in this behalf by the appropriate Government and the conciliation officer."**

Therefore, on a plain reading of the complaint, there is no doubt that the second respondent has not been able to place on record, along with the complaint, any written settlement within the meaning of Section 2(p) of the ID Act between the parties

which is binding under the ID Act. It is not even the case made out in the complaint that there is any breach of any award by the appellants. Thus, on a plain reading of the complaint, the statement of the second respondent recorded under Section 200 of the Cr.PC and the statement of a witness of the second respondent recorded under Section 202 of the Cr.PC, we find that the second respondent made out no case of breach of any settlement.

10. Moreover, the order purportedly passed in the exercise of powers under Section 34(1) of the ID Act does not even refer to the commission of an offence punishable under Section 29 of the ID Act. The grant of authority under Section 34(1) is a condition precedent for filing a complaint under Section 34(2) of the ID Act. The authority granted under Section 34(1) must be in respect of a specific offence for which a complaint is intended to be filed. The order refers only to a violation of Section 9A of the ID Act. The complaint alleges a violation of Section 29 of the ID Act. But still, there is no reference to a violation of Section 29 in the order. Therefore, while exercising power under Section 34(1) of the ID Act of granting authority, there is a complete non-application of mind. If such authority is issued without any application of mind, the very object of providing a safeguard in the form of Section 34(1) will be frustrated. The object of the provision is to

prevent frivolous complaints from being filed. Grant of authority is not an empty formality. We are not going into the wider question of whether an authority could have been conferred on the second respondent to file a complaint. In the facts of the present case, it is unnecessary for us to go into the question.

DUTY OF THE COURT

11. The learned Magistrate should have considered the averments made in the complaint and the statements of the second respondent and his witness recorded by him before deciding whether a *prima facie* case of commission of an offence punishable under Section 29 of the ID Act is made out. He ought to have verified whether a lawful authority was granted to the second respondent to file a complaint alleging a violation of Section 29 of the ID Act. Setting criminal law in motion has serious consequences. It cannot be done casually by the learned Magistrate. Therefore, careful application of mind by the learned Magistrate was necessary before deciding to take cognizance. However, that was not done in the present case.

ORDER

12. Hence, we set aside the impugned judgment of the High Court and quash the proceedings of Complaint Case No.85479 of 2022 (CNR No.UPKN040875842022) pending in the Court of the learned Chief Metropolitan Magistrate, Kanpur Nagar, Uttar Pradesh.

Consequently, the summoning order will stand set aside. We, however, make it clear that remedies, if any, available in law to the second respondent are expressly kept open.

13. The Appeal is, accordingly, allowed.

.....J.
(ABHAY S. OKA)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
JULY 30, 2024.