



said Union be added as a party to the said Complaint, on which, through order dated 14.03.2012, the said application was allowed and the said Union was admitted as a party, which caused grievance to the applicant, who preferred the instant Criminal Miscellaneous Application.

5. Learned counsel for the applicant submits that the notice was issued by the Labour Officer / Inspector to the Company under Schedule S.O. 2-A of W.P. Industrial Commercial Employment (Standing Orders) Ordinance, 1968 regarding terms and conditions of service. Per learned counsel, section 7 of W.P Industrial Commercial Employment (Standing Orders) Ordinance, 1968 prescribes penalty and procedures in case of violation of the provisions of said Ordinance. Sub-section 2 of Section 7 imposes on an employer who does any act in contravention of the Standing Order as applicable to industrial or commercial establishments penalty of fine which may extend to 100 rupees, and in case of continuing offence, with a further fine which may extend to 25 rupees for every day after the first day during which the offence continues. Per counsel, sub-section 6 of Section 7 is also relevant which provides that no Court other than a Labour Court established under Industrial Relations Ordinance, 1969 (since repealed) shall try any offence under this Ordinance. Learned counsel for the applicant thereafter referred to Section 76 of the Industrial Relations Act, 2012 which provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer shall be competent to arrest without warrant an employer or a worker for an offence under the said Act. Per Section 78, the Act provides that no Court other than a Labour Court or that of a Magistrate of the First Class as the case may be, shall try any offence punishable under this Act.

6. Per learned counsel, the Labour Court in these circumstances while having violation of the 1968 S.O. sits as a criminal Court to try contraventions of the said Standing Order, in which circumstances, Code of Criminal Procedure, 1898 will be applicable, rather Code of Civil Procedure 1908. Per counsel, no provisions existed where a Court while trying the offence punishable under Industrial Commercial Employment (Standing Orders)

Ordinance, 1968, could pass order on an application made under Order I Rule 10 CPC impleading the applicant as a party. Thus the order passed is illegal and abuse of the jurisdiction, as the remedy was available to the intervener to put his version by making an application under section 540 Cr.P.C.

9. Learned DPG as well as Assistant Director Labour Jamshoro present also supported the version put forwarded by learned counsel for the applicant.

10. In these circumstances, Complaint No.01/2012 which was instituted alleging violation of S.O. 2-A of the Industrial Commercial Employment (Standing Orders) Ordinance, 1968, punishable under section 7(2) of the said Ordinance, was lodged with the learned Sindh Labour Court which Presiding Officer is a District Judge under section 52(3) of the Industrial Relations (Revival & Amendments) Act, 2010, and section 53(1)(3) of the Act, Labour Court while trying an offence under this IRA, 2010 or the Industrial and Commercial Employment (Standing Orders) Ordinance, 1968 is to follow the summary procedure as prescribed under the Code of Criminal Procedure, 1898 (V of 1898) with the powers as are vested in the Court of a Magistrate of the first class specially empowered under section 30 of the Code of Criminal Procedure, 1898 (V of 1898). Admittedly, such offences are triable by the Labour Court sitting as a Magistrate, in relations to which Cr.P.C. would apply and provisions of C.P.C. would not apply. Accordingly, the impugned order dated 14.03.2012 which permitted intervener CBA through Order 1 Rule 10 C.P.C. application in a Criminal Complaint (No.01 of 2012) is outcome of misapplication of law, thus void and accordingly set aside. The Labour Court is directed to proceed with the Complaint and pass a speaking order preferably within a period of four months. In case, CBA wishes to be heard, it could be so permitted u/s 540 Cr.P.C. or u/s 20 of the IRA 2012.

11. The Criminal Miscellaneous Application stands disposed of in above terms.

JUDGE

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