

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5013 OF 2014

Atmaram Balkrishna Zhankar. ... Petitioner.
Versus
Vikram Laxmi Saboo & ors. ... Respondents.

Mr. Niranjan Mundargi i/b. S.K. Legal Associates, advocate for
Petitioner.

Mr. Subodh Desai, advocate for respondent Nos. 1 and 2.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 25, 2015

P.C.:

1 Heard the learned Counsel for the Petitioner and the learned
Counsel for the respondent. Perused the papers.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The Petitioner herein happens to be original complainant in R.C.C. No. 202 of 2013. The complainant had filed a complaint before the Judicial Magistrate First Class, Sinner alleging therein that he runs a private company in the name and style of Marvel Industries Ltd. at M.I.D.C. Malegaon, Taluka Sinner. That the accused Nos. 2 and 3 happen to be directors of the company. That the accused persons were in control of the affairs of the business of the company. That the company has about 250 labourers. The company was running in profitable condition. There was an agreement between the labour union and the company in respect of increment of their wages for 2011-2013. Other issues were also agreed upon. That the accused persons had inspired confidence of the labourers and had induced them to reduce the work by contending that the machinery is old and therefore, machinery does not give necessary output. The labourers were informed that new machinery will be installed. The accused persons have not brought new machinery in the company at Sinner.

4 It is alleged that on 31/1/2012 without giving any prior notice accused in connivance with the labourers of the said company had called off the work. That the accused persons had told the labourers not to come for work. The complainant was informed by the accused Nos. 1 to 3 that due to financial stringencies, unit at Sinner was closed down and therefore, they have told the labourers not to come for work. The accused persons who happen to be the directors of the company had not paid the salary to the labourers and therefore, they have filed a complaint for unfair labour practice before the Industrial Court which was registered as Complaint(ULP) No. 6 of 2012.

5 The learned Court by an order dated 6th March, 2012 had directed the company to pay wages forthwith to the labourers. It is alleged that the accused Nos. 1 to 3 had instigated the labourers and stalled functioning of the said unit. It is also alleged that the machinery from the said unit was removed with the help of the labourers and was installed elsewhere.

6 Upon perusing the complaint, the learned Magistrate has arrived at a conclusion that “It, prima facie, appears that accused might have committed offence punishable under Section 406, 420, 424 read with Section 34 of the Indian Penal Code and scope to proceed ahead. So, issue process against accused under Section 204 of Criminal Procedure Code, 1973 for these offences.”

7 The accused being aggrieved by the issuance of the process have filed Criminal Revision Application No. 92 of 2014 challenging the order of issuance of process. The learned Revisional Court after considering the submissions of both the sides and after perusing the papers had allowed revision application and has quashed and set aside the order dated 28/11/2013 passed in R.C.C. No. 202 of 2013 and dismissed the complaint made in R.C.C. No. 202 of 2013. Hence, this Writ Petition by the original complainant.

8. Upon perusal of the record of the proceedings, it is clear that there is non-compliance of Section 202 of the Code of Criminal

Procedure, 1973, as the complaint was filed at Sinner, whereas the accused persons were, at the relevant time, residing at Mumbai. The learned Magistrate ought to have complied with the provisions under Section 202 of the Code of Criminal Procedure, 1973 as the accused were living beyond the jurisdiction of the said Court.

9 Section 202 of the Code of Criminal Procedure, 1973 contemplates as under :

“202. Postponement of issue of process.

(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of

Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.”

10 The learned Counsel for the respondents submits that in view of this, the complaint itself deserves to be quashed.

11 Secondly, upon perusal of the order passed by the learned Magistrate issuing process, it is clear that the learned Magistrate has not recorded the subjective satisfaction for issuing process. The learned magistrate has presumed that in all probabilities, the accused might have committed offence. At the stage of issuance of process, what is contemplated is the application of a judicial mind to arrive at a conclusion that prima facie, the complainant has made out a case for issuing process. No such finding is recorded. It is true that the learned Magistrate need not record the reasons for arriving at a substantive satisfaction, but atleast a finding has to be recorded that a prima facie case has been made out.

12 The learned Revisional Court has rightly arrived at a conclusion that the provisions under Section 202 (1) of the Code of Criminal Procedure, 1973 has not been complied with. The learned Revisional Court has also considered the factual aspect as to whether removal of the machinery from one unit on account of non functionality can make the accused persons liable for an offence punishable under Section 406 of the Indian Penal Code. It is an admitted position that the said machinery was not entrusted with the accused, but was a property of the company, which was being managed by the accused persons. The workers had shifted the said machinery and hence, prima facie, it cannot be said that the offence punishable under Section 406 of the Indian Penal Code would be attracted.

13 The Revisional Court has also considered as to whether offence punishable under Section 415 of the Indian Penal Code is attracted. The learned Revisional Court has rightly arrived at a conclusion that there is no material on record to show that the complainant and the

workers with him delivered any property to the accused persons or that they were induced to do or omit to do something. It is also rightly considered that non-payment of salary or such other dues of the complainant and the workers is not the ingredient covered under Section 415 of the Indian Penal Code. There is nothing on record to indicate that the salary was not paid due to some fraudulent motive or dishonest inducement on the part of the accused persons.

14 The reasons assigned by the Revisional Court do not call for any interference and hence, the Petition being sans merits deserves to be dismissed.

15 The Petition being sans merits stands dismissed. Rule is accordingly discharged. Writ Petition stands disposed of.

(SMT. SADHANA S. JADHAV,J)