

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**BENCH AT AURANGABAD**

**WRIT PETITION NO.1206/2016**

- 1 Subhash s/o Laxman Jadhav,  
Age : 57 years, Occ – Service,  
Ex-Divisional Joint Director,  
Agriculture Officer, Latur  
presently working as Director,  
Maharashtra State Horticulture &  
Medicinal Plant Board, Pune.
- 2 Dr. Tukaram s/o Santaram Mote,  
Age – 48 years, Occ – Service as  
ex – District Superintending  
Agriculture Officer, Latur.  
Presently working as District  
Superintending Agriculture  
Officer, Nanded.  
Tq. & Dist-Nanded.  
...Petitioners...

**Versus**

- 1 Vinod Nivratti Kamble,  
Age 37 years, Occ – Nil.
- 2 Prabhakar Digambarrao Deshmukh,  
Age 37 years, Occ – Nil.
- 3 Sow. Rukhminbai Balbhim Gavde,  
Age 46 years, Occ – Nil.
- 4 Sow. Sarubai Vitthal Satpute,  
Age 55 years, Occ – Nil.

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- 5 Rukhminbai Baburao Katkar,  
Age 45 years, Occ – Nil.
- 6 Sau. Ismailbee Ahamed Shaikh,  
Age 45 years, Occ – Nil.
- 7 Gayabai Shrimant Shinde,  
Age 55 years, Occ – Nil.
- 8 Sow. Sakumarbai Jaggnath Thorat,  
Age 41 years, Occ – Nil.
- 9 Sow. Gangubai Manik Birajdar,  
Age 39 years, Occ – Nil.
- 10 Sow. Putlambee Pasha Shaikh,  
Age 55 years, Occ – Nil.
- 11 Sow Azizbee Dastagir Shaikh,  
Age 57 years, Occ – Nil.
- 12 Sow. Mudrikabai Ankush Kamble,  
Age 55 years, Occ – Nil.

All R/o Nilanga, Tq. Nilanga,  
Dist. Latur.  
c/o Vinod Navrattirao Kamble,  
r/o Bank Colony, Nilanga,  
Dist – Latur.

...Respondents...

.....

Shri V.D. Salunke, Advocate for petitioners.  
Shri V.D. Gunale, Advocate for respondents.  
S/Shri T.K. Prabhakaran, V.R. Mundada, S.V. Dankh,  
Avishkar Shelke, P.V. Barde and Y.R. Marlapalle,  
Advocates acted as *amicus curiae* to assist the Court.

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**CORAM: RAVINDRA V. GHUGE, J.**

**DATE: 10.03.2016**

**ORAL JUDGMENT :**

1] Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2] Considering the conspectus of this matter, I had requested the learned Advocates practising Labour Laws to assist the Court. Accordingly, S/Shri T.K. Prabhakaran, V.R. Mundada, S.V. Dankh, Avishkar Shelke, P.V. Barde and Y.R. Marlapalle, learned Advocates have rendered their assistance in this matter.

3] By this petition, the petitioners have challenged the judgment and order dated 13.7.2015 delivered by the Industrial Court, Latur, by which the revision petition filed by the petitioners has been allowed (in fact partly) and they have been directed to address the Labour Court in the pending Criminal Complaint No.6/2011 filed u/s 48(1) of the Maharashtra Recognition of Trade Unions and Prevention of Unfair

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Labour Practices Act, 1971, as to why process should not be issued against them.

4] By this petition and considering the contentions of the respondents, an issue has been raised as to whether the remedy of revision u/s 44 of the MRTU & PULP Act, 1971 is available to the accused – respondents before the Labour Court for questioning the issuance of process.

5] The respondents contend that after the Labour Court issued process in the criminal complaint, the petitioners herein could not have preferred a Revision (ULP) u/s 44 since Criminal Writ Petition u/s 482 of the Code of Criminal Procedure, 1973 is the only remedy available.

6] There is no dispute that the Industrial Court had granted certain reliefs to the respondents herein in Complaint (ULP) No.40/1992 (new No.3/2004). On account of the purported disobedience of the directions of the Industrial Court, the respondents had filed the criminal

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complaint before the Labour Court and the Labour Court had issued process against the petitioners. It was for challenging the issuance of process dated 8.2.2011 that the petitioners preferred the Revision (ULP) before the Industrial Court.

7] The learned *amicus curiae* alongwith Shri V.D. Salunke, learned Advocate for the petitioners, have contended that the issuance of process could be challenged by the respondents – accused in revision proceedings u/s 44. If advised, they could also have preferred a Criminal Writ Petition u/s 482 of the Code of Criminal Procedure, 1973, before the High Court.

8] The Labour Court while issuing process on 8.2.2011 had passed the following order :-

“Perused contents of complaint duly verified on oath and the orders of Hon’ble Industrial Court, Latur. The complainants alleged that in contravention of order of Hon’ble Member, Industrial Court, the complainants are retrenched by the accused. There is a prima case. Hence issue process U/s 48 of M.R.T.U. & P.U.L.P. Act.”

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9] Before I delve upon the issue of maintainability of the revision proceedings, it needs to be noted that Shri Gunale, learned Advocate on behalf of the respondent – employees, has made a statement on instructions that the criminal complaint filed by the respondents before the Labour Court was with regard to the disobedience of the petitioners of the direction of the Industrial Court to give work to the respondents whenever available and that the Labour Court would not be having the jurisdiction to go into whether the work was available or not, in a criminal complaint u/s 48(1) of the 1971 Act. He, therefore, submits on instructions that this Court may conclude the issue as to whether a revision is maintainable for challenging the issuance of process by the Labour Court, notwithstanding the fact that the respondents would be withdrawing Criminal Complaint No.6/2011 with liberty to approach the Industrial Court under Item 9 of Schedule IV for the redressal of their grievances.

10] Shri Salunke, learned Advocate for the petitioners, does not oppose the withdrawal of the

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criminal complaint, but joins Shri Gunale in submitting that this Court may deal with the issue as to whether a revision was maintainable before the Industrial Court for questioning the legality and the validity of the order of issuance of process by the Labour Court u/s 48(1).

11] In the light of the above, it needs mention that Chapter VIII of the 1971 Act pertains to the powers of the Labour Court and the Industrial Court to try offences under this Act. Needless to state that a criminal complaint filed u/s 48(1) is to be considered in the light of Sections 39, 48(1) and 55 of the 1971 Act. It would, therefore, be apposite to reproduce Sections 38 to 48 and 55 thereof as under :-

**"38. POWERS OF LABOUR COURT IN RELATION TO OFFENCES -**

(1) A Labour Court shall have power to try offences punishable under this Act.

(2) Every offences punishable under this Act shall be tries by a Labour Court within the limits of whose jurisdiction it is committed.

**39. COGNIZANCE OF OFFENCE -**

No Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person

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affected thereby or a recognised union or on a report in writing by the Investigating Officer.

**40. POWERS AND PROCEDURE OF LABOUR COURTS IN TRIALS —**

In respect of offences punishable under this Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, V of 1898, of Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down in Chapter XXII of the said Code for a summary trial in which an appeal lies; and the rest of the provisions of the said Code shall, so far as may be, apply to such trial.

**41. POWERS OF LABOUR COURT TO IMPOSE HIGHER PUNISHMENT —**

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, V of 1898, it shall be lawful for any Labour Court to pass any sentence authorised under this Act in excess of its powers under section 32 of the said Code.

**42. APPEAL —**

Notwithstanding any thing contained in section 40, an appeal shall lie to the Industrial Court-

- (a) against a conviction by a Labour Court, by the person convicted;

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(b) against an acquittal by a Labour Court in its special jurisdiction, by the complainant;

(c) for enhancement of a sentence awarded by a Labour Court in its special jurisdiction, by the State Government.

(2) Every appeal shall be made within thirty days from the date of the conviction, acquittal or sentence, as the case may be :

Provided that, the Industrial Court may, for sufficient reason, allow an appeal after the expiry of the said period.

#### **43. POWERS OF INDUSTRIAL COURT —**

(1) The Industrial Court in an appeal under section 42 may confirm, modify, to, or rescind any order of the Labour Court appealed against; and may pass such order thereon as it may deem fit.

(2) In respect of offences punishable under this Act, the Industrial Courts shall have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure, 1898, V of 1898.

(3) A copy of the order passed by the Industrial Court shall be sent to the Labour Court.

#### **44. INDUSTRIAL COURT TO EXERCISE SUPERINTENDENCE OVER LABOUR COURTS —**

The Industrial Court shall have

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superintendence over all Labour Courts and may,

—

- (a) call for returns;
- (b) make and issue general rules and prescribe forms for regulating the practice and procedure of such Courts in matters not expressly provided for by this Act and in particular, for securing the expeditious disposal of cases;
- (c) prescribe form in which books, entries and accounts shall be kept by officers of any such Courts; and
- (d) settle a table of fees payable for process issued by a Labour Court or the Industrial Court.

**45. POWER OF INDUSTRIAL COURT TO TRANSFER PROCEEDINGS —**

The Industrial Court may, by order in writing, and for reasons to be stated therein, withdraw any proceeding under this Act pending before a Labour Court, and transfer the same to another Labour Court for disposal and the Labour Court to which the proceeding is so transferred may dispose of the proceeding, but subject to any special direction in the order of transfer, proceed either de novo or from the stage at which it was so transferred.

**46. ORDERS OF INDUSTRIAL OR LABOUR COURT NOT TO BE CALLED IN QUESTION IN CRIMINAL COURTS —**

No order of a Labour Court or an order of

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the Industrial Court in appeal in respect of offences tried by it under this Act shall be called in question in any criminal court.

**47. PENALTY FOR DISCLOSURE OF CONFIDENTIAL INFORMATION —**

If an Investigating Officer or any person present at, or concerned in, any proceeding under this Act willfully discloses any information or the contents of any document in contravention of the provisions of this Act, he shall, on conviction, on a complaint made by the party who gave the information or produced the document in such proceeding, be punished with fine which may extend to one thousand rupees.

**48. CONTEMPTS OF INDUSTRIAL OR LABOUR COURTS —**

(1) Any person who 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 to three months or with fine which may extend to five thousand rupees.

(2) If any person, —

(a) when ordered by the Industrial Court or a Labour Court to produce or deliver up any document or to furnish information being legally bound so to do, intentionally omits to do so; or

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(b) when required by the Industrial Court or a Labour Court to bind himself by an oath or affirmation to state the truth refuses to do so;

(c) being legally bound to state the truth on any subject to the Industrial Court or a Labour Court refuses to answer any question demanded of him touching such subject by such Court; or  
(d) intentionally offers any insult or causes any interruption to the Industrial Court or a Labour Court at any stage of its judicial proceeding, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) If any person refuses to sign any statement made by him, when required to do so, by the Industrial Court or a Labour Court, he shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both.

(4) If any offence under sub-section (2) or (3), is committed in the view or presence of the Industrial Court or as the case may be, a Labour Court, such Court may, after recording the facts constituting the offence and the statement of the accused as provided in the Code of Criminal Procedure, 1898, V of 1898 forward the case to a Magistrate having

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jurisdiction to try the same, and may require security to be given for the appearance of the accused person before such Magistrate or, if sufficient security is not given, shall forward such person in custody to such Magistrate.

The Magistrate to whom any case is so forwarded shall proceed to hear the complaint against the accused person in the manner provided in the said Code of Criminal Procedure.

(5) If any person commits any act or publishes any writing which is calculated to improperly influence the Industrial Court, or a Labour Court or to bring such Court or a member or a Judge thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such Court, such person shall be deemed to be guilty of contempt of such Court.

(6) In the case of contempt of itself, the Industrial Court shall record the facts constituting such contempt, and make a report in that behalf to the High Court;

(7) In the case of contempt of a Labour Court, such Court shall record the facts constituting such contempt, and make a report in that behalf to the Industrial Court; and thereupon, the Industrial Court may, if it considers it expedient to do so, forward the report to the High Court.

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(8) When any intimation or report in respect of any contempt is received by the High Court under sub-sections (6) or (7), the High Court shall deal with such contempt as if it were contempt of itself, and shall have and exercise in respect of it the same jurisdiction, powers and authority in accordance with the same procedure and practice as it has and exercises in respect of contempt of itself.

**55. OFFENCE UNDER SECTION 48(1) TO BE COGNIZABLE -**

The offence under sub-section (1) of section 48, shall be cognizable."

12] It is, therefore, apparent that the Labour Court is empowered to try the offences punishable under this Act depending upon its jurisdiction within which an offence may have been committed. The Labour Court has the powers under the Code of Criminal Procedure, 1898, of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere. The procedure laid down in Chapter XXII of the Code of Criminal Procedure, therefore, renders the proceedings in the form of a summary trial. By Section 41, the Labour Court can impose higher punishment.

13] Quite evidently, the 1971 Act has expressly provided for an appeal u/s 42, which is to be entertained by the Industrial Court only under the three eventualities as have been reproduced u/s 42(1) hereinabove. It is, therefore, apparent that only after a complete trial and either on conviction or acquittal, the appeal could be preferred by the aggrieved party challenging the conviction or the acquittal, as the case may be. An appeal can also be filed for seeking enhancement of a sentence awarded by the Labour Court.

14] As like the provision of appeal, conspicuously, no provision has been expressly set out under Chapter VII so as to indicate that the issuance of process by the Labour Court or for that reason, any order passed by the Labour Court u/s 48(1) during the course of the trial in the criminal complaint, could be questioned before the Industrial Court either through an appeal or through its revisional powers.

15] The learned Advocates appearing as *amicus curiae* have unitedly submitted that since the 1971 Act, as

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regards the grievance about issuance of process or any order passed by the Labour Court while adjudicating upon a criminal complaint, is silent, having not provided any remedy under the Act, all such orders can be questioned u/s 44 of the Act since the Industrial Court has the power of superintendence over all Labour Courts.

16] This Court had an occasion to deal with a somewhat similar situation in the matter of *Navnath Siddhappa Koli v. Shri Siddheshwar Sahakari Sakhar Karkhana Ltd. & others* (1981 Mh.L.J., 888). The powers of the Industrial Court u/s 44 were held to be akin to its jurisdiction u/s 85 of the Bombay Industrial Relations Act (now Maharashtra Industrial Relations Act). This Court, therefore, concluded that the Industrial Court had the power to examine the legality of the order passed by an authority below it whenever the record of the case is before it.

17] Paragraph no.12 of *Navnath Siddhappa Koli* judgment (supra) reads as under:-

"12. Moreover, the grounds which were taken in the memo of revision before the Industrial Court

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do contain sufficiently the seeds of the point which was ultimately decided by the Industrial Court. In my opinion, therefore, the Industrial Court has not committed any error in the exercise of its jurisdiction when it proceeded to examine the correctness of the order passed rather than the finding given by the Labour Court. As I have already mentioned above, the order of the Labour Court was not sustainable on the finding the Labour Court itself gave. If the Industrial Court had proceeded to interfere with the finding, if there was a finding of the Labour Court in favour of the petitioner, then one could have legitimately complained that the Industrial Court has exceeded the jurisdiction vested in it. The revisional jurisdiction of the Industrial Court under section 44 of the PULP Act, which is analogous to its jurisdiction under section 85 of the Industrial Relations Act, does invest the Industrial Court with the power to examine the legality of the order passed by an authority below it whenever the record of the case is before it. In *Shree Talkies, Kamptee v. Industrial Court, Maharashtra, 1970 Lab.I.C. 1354*, the extent of the jurisdiction of the Industrial Court under section 85 of the Bombay Industrial Relations Act has been described. In passing the impugned order the Industrial Court has not overstepped the limits set by the aforesaid judgment. In the

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instant case the Industrial Court has found, and in my opinion rightly, that the order of the Labour Court was wholly unsustainable in the absence of the finding that the order passed by the respondent was "for patently false reasons." In other words, the order of the Labour Court is found to be without jurisdiction. I have , therefore, no hesitation in holding that the Industrial Court was fully justified in passing the order by which it set aside the order of the Labour Court."

18] This Court once again considered a similar situation in the matter of *Satish J. Mehta & others v. The State of Maharashtra & others (1991 II CLR 547)*. The contention of the employee was that since Sections 42 and 44 of the 1971 Act give a remedy to the aggrieved petitioner, who had challenged the issuance of process by the Labour Court, a Criminal Writ Petition u/s 482 of the Code of Criminal Procedure was not maintainable. This Court while negating the contention of the employee to the extent of the challenge to the maintainability of the Criminal Writ Petition has observed in paragraph no.9 as under :-

"Thus, it is clear that unless there is final

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order of conviction or acquittal or an order of enhancement of sentence by the Government, no appeal is maintainable before the Industrial Court. Hence no appeal would lie before the Industrial Court if a person is aggrieved by issuance of process for an offence under Section 48(1) of the Act. It is true that Section 44 of the Act of 1971 gives Industrial Court power of superintendence over the Labour Court. But this is enabling power and not a remedy for the party. Therefore, submission of Shri Prabhakaran that the writ petition is not maintainable will have to be rejected."

19] This Court had, therefore, considered the remedy u/s 44, but had not specifically dealt with an issue as to whether the remedy u/s 44 could be said to be available to a person aggrieved by the issuance of process. Nevertheless, the above conclusion does have a semblance that the remedy u/s is available to an aggrieved person.

20] In the matter of *Mohamad M. Alam v. Western India Automobile Association, Mumbai & another* (2002 (1) **Mh.L.J.**, 40), this Court dealt with an order passed by the Court u/s 48. It was specifically canvassed before

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this Court that the order passed by the Labour Court issuing process, could not be a subject matter of a revision u/s 44 as the said revision was not maintainable. The judgment of this Court in the case of *Satish J. Mehta* (supra) was cited. Negating the said contention, this Court concluded in paragraph no.4 of *Mohamad M. Alam* judgment (supra) that the Industrial Court is vested with the power of superintendence over the Labour Court. Though an efficacious remedy of appeal after completion of the trial is available u/s 42, the order of issuance of process could be questioned u/s 44 of the 1971 Act since it is an enabling power.

21] The observations of this Court in paragraph no.4 of *Mohamad M. Alam* judgment (supra) read as under:-

"4. The learned counsel appearing on behalf of the petitioner sought to submit that against the order passed by the Labour Court issuing process, a revision under Section 44 of the MRTU and PULP Act was not maintainable. Reliance was sought to be placed on a Judgment of the learned Single Judge of this Court in *Satish J. Mehta and Ors. v. The State of Maharashtra and Anr.*, reported in **1991 Vol. II CLR 547**. There is no substance in the first submission which has been

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urged on behalf of the petitioner : Under Section 44 of the MRTU and PULP Act, 1971 the Industrial Court has been vested with superintendence over the Labour Court. In the decision of the learned Single Judge of this Court in *Satish J. Mehta v. The State of Maharashtra* (supra), a petition under Section 482 of the Code of Criminal Procedure 1873 was filed by the employer upon an order passed by the Labour Court in pursuance of a complaint under Section 48 of the MRTU and PULP Act, 1971, in which the workman had alleged that the employer had failed to abide by an order passed by the Industrial Court. One of the objections which was raised to the maintainability of the petition, under Section 482 of the Code of Criminal Procedure, 1973, was that an employer has an efficacious remedy of an appeal under Section 42 or of a revision under Section 44 of the Act. This was repelled by the learned Single Judge, who noted that under Section 42 an appeal could lie to the Industrial Court only against an order of conviction by a Labour Court, by the person convicted; against an acquittal by a Labour Court in its special jurisdiction, by the complainant; and for the enhancement of a sentence awarded by a Labour Court, at the behest of the State Government. Insofar as the revisional jurisdiction under Section 44 was concerned, the learned Single Judge held that

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while it is true that Section 44 gives the Industrial Court power of superintendence over the Labour Court, "this is an enabling power and not a remedy for the party". In the circumstances, it was held that the petition under Section 482 of the Code of Criminal Procedure, 1973, was maintainable. The judgment of the learned Single Judge does not advance the case of the petitioner, because it has not been held that a revision against an order passed by the Labour Court issuing process would not be maintainable before the Industrial Court. The question which arose was with regard to the maintainability of the petition under Section 482 of the Code of Criminal Procedure, 1973 and it was held that Section 44 of the MRTU and PULP Act, 1971 confers only an enabling power upon the Industrial Court. The, petition under Section 482 was held to be maintainable before this Court. There is, therefore, no merit in the first submission."

22] In the matter of *Vishwanath Ramkrishna Patil v. Ashok Murlidhar Sonar & another* (2006 (5) Mah.L.J., 671), while considering the availability of a remedy to challenge the issuance of process, this Court concluded that a Criminal Writ Petition u/s 482 of the Code of Criminal Procedure would be a remedy available to an

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aggrieved party. However, it would be difficult to curtail this remedy merely because a revisional remedy is available. In paragraph no.11 of the said judgment, this Court concluded that, considering the facts and circumstances in the case of *V.K. Jain v. Pratap V. Padode* (2005 (3) Mh.L.J., 778) and *Saket Gore v. Aba Dhavalu Bagul* (2005 ALL MR (Cri), 2514), it would be appropriate for the parties to even file a revision application against the order of issuance of process.

23] Before parting with this case, I find it necessary to refer to the judgment of the Hon'ble Supreme Court in the matter of *Pepsi Foods Ltd. & another v. Special Judicial Magistrate & others* (1998 Cri.L.J.,1), with regard to the fetters on the Courts issuing process under the Criminal Law. It would be apposite to refer to the observations of the Hon'ble Apex Court in paragraph nos.28, 29 and 30 as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. it is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into

motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

29. No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. It was submitted before us on behalf of the State that in case we find that the High Court failed to exercise its

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jurisdiction the matter should be remanded back to it to consider if the complaint and the evidence on record did not make out any case against the appellants, If, however, we refer to the impugned judgment of the High Court it has come to the conclusion, though without referring to any material on record, that "in the present case it cannot be said at this stage that the allegations in the complaint are so absurd and inherently improbable on the basis of which no prudent man can ever reach a just conclusion that there exists no sufficient ground for proceedings against the accused." We do not think that the High Court was correct in coming to such a conclusion and in coming to that it has also foreclosed the matter for the magistrate as well, as the magistrate will not give any different conclusion on an application filed under section 245 of the code. The High Court says that the appellants could very well appear before the court and move an application under Section 245(2) of the Code and that the magistrate could discharge them if he found the charge to be groundless and at the same time it has itself returned the finding that there are sufficient grounds for proceeding against the appellants. if we now refer to the facts of the case before us it is clear to us that not only that allegation against the appellants make out any case for an offence under Section 7 of the

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Act and also that there is no basis for the complainant to make such allegation. The allegations in the complaint merely show that the appellants have given their brand name to "Residency Foods and Beverages Ltd." for bottling the beverage "Lehar Pepsi". The complaint does not show what is the role of the appellants in the manufacture of the beverage which is said to be adulterated. The only allegation is that the appellants are the manufacturer of bottle. There is no averment as to how the complainant could say so and also if the appellants manufactured the alleged bottle or its contents. His sole information is from A.K. Jain who is impleaded as accused No.3. The preliminary evidence on which the 1st respondent relied in issuing summon to the appellants also does not show as to how it could be said that the appellants are manufacturers of either the bottle or the beverage or both. There is another aspect of the matter. The Central Government in the exercise of their powers under Section 3 of the Essential Commodities Act, 1955 made the Fruit Products Order, 1955 (for short, the "Fruit Order"), It is not disputed that the beverage in the question is a "fruit product" within the meaning of clause (2)(b) of the Fruit Order and that for the manufacture thereof certain licence is required. The fruit Order defines the manufacturer and also sets out as to

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what the manufacturer is required to do in regard to the packaging, making and labeling of containers of fruit products. One of such requirement is that when a bottle is used in packing any fruit products, it shall be so sealed that it cannot be opened without destroying the licence number and the special identification mark of the manufacture to be displayed on the top or neck of the bottle. The licence number of manufacturer shall also be exhibited prominently on the side label on such bottle [clause (8)(1)(b)]. Admittedly, the name of the first appellant is not mentioned as a manufacturer on the top cap of the bottle. It is not necessary to refer in detail to other requirements of the Fruit Order and the consequences of infringement of the Order and to the penalty to which the manufacturer would be exposed under the provisions of the Essential Commodities Act, 1955. We may, however, note that in *The Hamdard Dawakhana (WAKF) Delhi & Anr. vs. The Union of India & Ors.* [**AIR 1965 SC 1167 = (1965) 2 SCR 192**], an argument was raised that the Fruit Order was invalid because its provision indicated that it was an Order which could have been appropriately issued under the Prevention of Food Adulteration Act, 1954. This Court negatived this plea and said that the Fruit Order was validly issued under the Essential Commodities Act. What we find in the

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present case is that there was nothing on record to show if the appellants held the licence for the manufacture of the offending beverage and if, as noted above, the first appellant was the manufacturer thereof.

30. It is no comfortable thought for the appellants to be told that they could appear before the court which is at a far off place in the Ghazipur in the State of Uttar Pradesh, seek their release on bail and then to either move an application under Section 245(2) of the Code or to face trial when the complaint and the preliminary evidence recorded makes out no case against the. it is certainly one of those cases where there is an abuse of the process of the law and the courts and the High Court should not have shied away in exercising its jurisdiction. Provisions of Articles 226 and 227 of the Constitution and Section 482 of the Code are devised to advance justice and not to frustrate it. In our view High Court should not have adopted such a rigid approach which certainly has led to miscarriage of justice in the case. Power of judicial review is discretionary but this was a case where the High Court should have exercised it."

24] In the light of the above, I do not find any merit in the contention of Shri Gunale that a revision

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u/s 44 of the 1971 Act was not maintainable. Considering the law as is laid down in the above referred judgments, I am of the view that an order of issuance of process in a criminal complaint filed u/s 48(1) r/w Sections 39 and 55 of the 1971 Act can be questioned before the Industrial Court by a revision u/s 44. Consequentially, any order passed by the Labour Court during the adjudication of a criminal complaint and prior to the final judgment being delivered, can be a subject matter of revision u/s 44. Once the judgment of the Labour Court is delivered in the said criminal complaint, an appeal would be maintainable u/s 42 before the Industrial Court challenging the conviction or the acquittal or for seeking enhancement of sentence awarded by the Labour Court.

25] Having answered the issue as above, this petition is disposed of in the light of the statement made on instructions by Shri Gunale, with liberty to file a complaint under Item 9 of Schedule IV before the Industrial Court for the redressal of the grievances of the respondents, provided the Criminal (ULP) No.6/2011 is

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withdrawn by the respondents within a period of four weeks from today. Only after the criminal complaint is withdrawn by the respondents, they shall be at liberty to file a complaint invoking Item 9 of Schedule IV and with any other Items as they may deem fit and proper before the competent Court.

**(RAVINDRA V. GHUGE, J.)**