

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) NO.507 OF 2016

Rajendra s/o Chaganlal Loya and ors

..vs..

Tulsi Agro Industries, through its Proprietor Anup Mohanlal Taori

.....
Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri S.G. Karmarkar, Counsel for the applicants.

Shri H.R. Gadia, Counsel for the non-applicant.

CORAM : V.M. DESHPANDE, J.

DATED : SEPTEMBER 4, 2017.

Heard learned counsel Shri S.G. Karmarkar for the applicants and learned counsel Shri H.R. Gadia for the non-applicant/original complainant.

Learned counsel Shri S.G. Karmarkar for the applicants challenges impugned judgment delivered by learned Additional Sessions Judge at Khamgaon, District Buldana in Criminal Revision No.10 of 2015 dated 18.11.2015 by which the Revisional Court allowed the revision and remanded the matter back to learned Judicial Magistrate First Class.

According to learned counsel Shri Karmarkar for the applicants, the Revisional Court ought not to have remanded the matter back and ought to have dismissed the entire complaint itself.

A private complaint was lodged for the offences

.....2/-

punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code against the present applicants by the non-applicant. Learned Magistrate issued process on 13.8.2013 which came to be questioned in Criminal Revision No.10 of 2015. The Revisional Court found that before issuance of process, learned Magistrate failed to record verification statement of the original complainant and even though there was no verification statement, ordered of issuance of process. Since it was mistake of law, the learned Revisional Court allowed the revision and at the same time the matter was remanded back to learned Magistrate for recording verification statement and to pass an appropriate order.

The submission on the part of learned counsel Shri Karmarkar for the applicants that entire complaint ought to have been dismissed for non-recording of verification statement. In my view, the order passed by learned Revisional Court is just. After a complaint is presented before the Court of learned Magistrate, it is open for learned Magistrate to record the verification statement and pass appropriate order either issuance of process or can postpone the issuance of process.

In this case, order of issuance of process without there being verification statement of complainant on record, it was a *non est* order. Therefore, in my view, the learned Revisional Court has not committed any mistake in remanding

matter.

In my view, no exception can be taken in order remanding the matter back. Hence, the criminal application is rejected.

JUDGE

!! BRW !!