

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 105 OF 2006

1. Narayan s/o Vitthalrao Gurme  
age 44 years, occ. Government Service  
r/o Tq. Agriculture Office, Ahmedpur  
Dist. Latur.

2. Balaji s/o Marotirao Somare  
age 45 years, occ. Agriculture officer  
r/o Agriculture Office,  
Ahmedpur, Tq. Ahmedpur  
Dist. Latur

Petitioners

Versus

1. The State of Maharashtra

2. Gunaji s/o Bhujang Kamble  
Age 52 years, occ. Labour work  
r/o Khandali, Tq. Ahmedpur  
Dist. Latur.

Respondents

Mr. V.D. Godbharale, advocate for the petitioners.  
Mr. A.R. Kale, APP for the State.  
Mr. N.R. Shaikh, advocate for respondent No. 2.

**CORAM : N.B. SURYAWANSHI, J.**

**DATE : 6<sup>th</sup> December, 2019.**

**JUDGMENT :**

1. By this petition, petitioners challenge the order of issuance of process, passed by the learned Judicial Magistrate First Class, Ahmedpur in RCC No. 179/2005 on 01.09.2005 and

order dated 17.01.2006 passed by the learned Revisional Court in Criminal Revision No. 45/2005 thereby dismissing the revision petition for want of merit.

2. Few facts as are necessary for consideration of this writ petition are as follows :-

The Nala bunding work was undertaken by the Taluka Agricultural Office, Tq. Ahmedpur, Dist. Latur. Labours were employed for the said work. On 14.03.2005, respondent No. 2, who was one of the labours at the said work, along with some other labours, filed an application alleging that no proper payment was made to them and an enquiry in that behalf may be conducted. It is also alleged that on asking about the same to the accused persons, they were threatened that they have to accept that much salary only, else they would face dire consequences. Some documents are placed on record by the petitioners which, according to petitioners, reflect that full salary was paid to the labours.

3. Though the complainants approached police, no case was registered by the police hence the complainant filed private

complaint which was numbered as RCC No. 179/2005 for offence punishable under section 3(1)(x) of the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sections 323, 504, 506 r/w section 34 of the Indian Penal Code. On 22.08.2005, after examining five witnesses in support of the private complaint, the learned trial Court was pleased to issue process against accused No. 1 for offence punishable under section 4 of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and against accused Nos. 2 to 7 for offence punishable under sections 3(1)(x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, and section 323, 504, 506 r/w section 34 of the Indian Penal Code.

4. Present petitioners – original accused Nos. 2 and 3, being aggrieved by the order of issuance of process, filed Criminal Revision Petition No. 45/2005. Vide order dated 17.01.2006, the learned revisional Court was pleased to dismiss the revision for want of merit. Hence the present petition.

5. For the present, this Court is not inclined to enter into the merits of the case. However, on going through the order passed by the learned revisional Court, it is clear that when the

revision was heard, the learned counsel representing the petitioners, was not present. The learned Sessions Court has observed that the impugned order was perused carefully and no irregularity, ambiguity, perversity or illegality was found in it. It is further observed that, it appears that the revision petitioners are not interested in proceeding with the matter.

6. Taking into consideration the fact that petitioners were not heard in the revision and they did not have an opportunity of presenting their case on merit, the impugned order dismissing the revision is unsustainable. The learned Sessions Court ought to have given an opportunity of hearing to the learned counsel for the petitioners and thereafter ought to have decided the matter on merits. Mere observation perused the impugned order and no illegality or perversity is found, does not reflect application of mind by the learned revisional Court to the merits of the case. In that view of the matter, criminal writ petition deserves to be allowed. Hence the following order :-

#### **ORDER**

1) Criminal Writ Petition is partly allowed, the impugned order passed by the learned revisional Court in Criminal Revision No.

45/2005 is hereby quashed and set aside.

2) Criminal Revision No. 45/2005 is restored and the learned Sessions Judge shall decide the revision within eight weeks from the date of receipt of writ of this Court. The parties to appear before the learned Sessions Court on 23.12.2019 and cooperate in hearing.

3) Rule made absolute in the above terms, there shall be no order as to costs.

**( N.B. SURYAWANSHI, J. )**

dyb/