

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

**CRIMINAL WRIT PETITION NO. 400 OF 2020**

1. Supreme Industries Limited,  
a Company deemed to be  
registered under the Companies Act, 2013  
having its registered Office at D-101, 102, MIDC,  
Ajintia Road, Jalgaon and having its  
Factory at D101, 102, MIDC,  
Ajinta Road, Jalgaon through its Director  
Mr. Anil Kashinath Kabra, Age: 54 years,  
Occu: Service, R/o. As above.
2. Bajrang Lal. S. Taparia,  
Age: 65 years, Occu: Chairman,  
R/o. The Supreme Industries Ltd.,  
Gat No. 1161/1162, Ghatkopar Link Road,  
Andheri, Mumbai (East), Maharashtra.
3. Mahavir Prasad S. Taparia,  
Age: 62 years, Occu: Managing Director,  
R/o. The Supreme Industries Ltd.,  
Gat No. 1161/1162, Ghatkopar Link Road,  
Andheri, Mumbai (East), Maharashtra.
4. Jawaharlal Motilal Totla  
Age: 62 years, Occu: Advicsory Services,  
R/o: Flat No.201, Sablok Apartment,  
Plot No. 226, Shere E Punjab, Andheri (East),  
Chakala MIDC, Chalkala, Mumbai – 400093  
Maharashtra.
5. Shivratan Jeetmal Taparia  
Age: 60 years, Occu: Executive Director,  
R/o. The Supreme Industries Ltd.,  
Gat No. 1161/1162, Ghatkopar Link  
Road, Andheri, Mumbai (East),  
Maharashtra.

6. Vijay Kumar B. Taparia  
Age: 60 years, Occu: Executive Director,  
R/o. The Supreme Industries Ltd.,  
Gat No. 1161/1162, Ghatkopar Link  
Road, Andheri, Mumbai (East),  
Maharashtra.
7. Bhupendranath V. Bhargava  
Age: 58 years, Occu: Independent Director,  
R/o. The Supreme Industries Ltd.,  
Gat No. 1161/1162, Ghatkopar Link  
Road, Andheri, Mumbai (East),  
Maharashtra.
8. Naresh N. Khandwala  
Age: 60 years, Occu: Business,  
R/o: Flat No.701, 7<sup>th</sup> Floor, Pushpanjali,  
Corner of 8<sup>th</sup> & 11<sup>th</sup> Road, Khar (West),  
Mumbai – 400052, Maharashtra.
9. Yogendra Premkrishna Trivedi  
Age: 60 years, Occu: Independent Director,  
R/o. The Supreme Industries Ltd.,  
Gat No. 1161/1162, Ghatkopar Link  
Road, Andheri, Mumbai (East),  
Maharashtra.
10. Girijesh Kumar M. Saxena  
Age: 50 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.
11. Sanjay Yashwant Prabhudesai  
Age: 50 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.
12. Satish Bhagirath Somani  
Age: 50 years, Occu: Service,

R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.

13. Suresh Chandraprakash Mantri  
Age: 50 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.

14. Anil Kashinath Kabra  
Age: 54 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.

15. Atul Bhikchand Laddha  
Age: 50 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.

16. Manish Pradip Pathak  
Age: 50 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.

17. Mahesh M. Patil  
Age: 50 years, Occu: Service,  
R/o: Gharkul Housing Society,  
Ayodhya Nagar, Jalgaon – 425001.

18. Hukumchand Nemichand Jain  
Age: 50 years, Occu: Service,  
R/o: The Supreme Industries Ltd.,  
D-101, 102, MIDC, Ajintha Road, Jalgaon.

... **PETITIONERS**

**VERSUS**

1. State of Maharashtra through Government  
Prosecutor, High Court of Bombay,  
Aurangabad Bench.

2. Senior Inspector of Police  
MIDC Police Station, District: Jalgaon.

3. Pramod Balkishan Mantri  
Age: 41 years, Occu: Agril,  
R/o: Gat No.8, Plot No.17, Shivrana Nagar,  
Taluka Jalgaon, Maharashtra.

... **RESPONDENTS**

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Mr. Dhakephalkar h/f. Mr. Satyajit R. Vakil, Advocate for Petitioners.  
Mr. Y.G. Gujarati, APP for the Respondent-State.  
Mr. Kishor C. Sant, Advocate for Respondent No.3

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**CORAM : T.V. NALAWADE &  
M.G. SEWLIKAR, JJ.**  
**DATE : 09.09.2020**

**JUDGMENT :- (Per: *M.G. Sewlikar, J.*)**

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2. This writ petition under Article 226 of the Constitution of India and under Section 482 of the Cr.P.C. is preferred seeking the relief of quashing of Crime No.105 of 2020 dated 18.02.2020 registered with MIDC Police Station, District Jalgaon for the offences punishable under Section 406, 420, 465, 467, 468, 471, 120-B read with Section 34 of the I.P.C.

3. Facts giving rise to this petition are that respondent no.3, the informant-herein, was working as a Quality Control Officer in the Quality

Control Department with the petitioner no.1-company, petitioner nos.2 to 18 are the office bearers of the petitioner no.1-company. It is alleged in the F.I.R. that petitioner nos.1 to 18 did not deposit the amount to be credited as provident fund, did not pay gratuity, bonus, did not pay minimum wages in accordance with the provisions of these Acts. He alleged that in the year 2010 he was paid Rs.3165/- less than minimum wages and in this manner an amount of Rs.3,00,700/- has been paid less to him. Respondent no.3 has lost Rs.73,720/- towards interest. The petitioners have deprived the other employees also in this manner. In the month of August-2010 salary was shown as Rs.3600/- per month. Provident fund of Rs.432/- was deducted but in the information obtained under the RTI Act show that salary of the respondent no.3 was Rs.3135/-, in this manner fabricated documents were prepared while paying the amount of provident fund. He has further alleged that in the month of April-2009 an amount of Rs.877/- towards provident fund was not deposited by the petitioners for a period of twenty seven months and in this manner amount has been misappropriated by the petitioners. In the month of August-2010, the petitioners were supposed to deposit provident fund on minimum wages of Rs.6765/- but the petitioners have deducted provident fund on basic pay of Rs.3600/-, amount of Rs.921/- was supposed to be paid towards provident fund by the petitioners but they paid

Rs.490/- per month which means an amount of Rs.431/- was paid less. In this manner the petitioners have deposited Rs.83,614/- less towards provident fund. As per the Payment of Gratuity Act the petitioners have paid Rs.24,097/- less towards gratuity. Gratuity ought to have been drawn on minimum wages but it was drawn on Rs.3600/-. In the month of August-2006, the petitioners have deducted Rs.230/- towards professional tax but it ought to have been @ Rs.175/-.

4. It is further alleged that in the account statement of the year 2009-2010 opening balance was shown as Rs.82,854/-. During this year an amount of Rs.5533/- and Rs.5351/- towards Contribution / D.R. / Refund ought to have been deposited. If this amount had been added to the opening balance, closing balance would have been Rs.93,738/- but the closing balance was shown as Rs.73,738/- and in this manner Rs.20,000/- was shown less which was misappropriated. After he tendered his resignation the respondent no.3 was paid an amount of Rs.1,18,741/- by cheque towards his provident fund but an amount of Rs.8,703/- was not paid to him towards the interest. In the Employees Provident Fund Organisation certificate, last salary was shown as Rs.3182/- but in the salary slip, salary was shown to be Rs.3600/-. In fact as per minimum wages an amount of Rs.6,210.50/- ought to have been shown but his salary was shown less than Rs.3600/- and in this manner the

petitioners had in collaboration with the concerned officers got false certificate issued. The petitioners in this manner cheated respondent no.3 for an amount of Rs.5,10,945/-. Accordingly, the F.I.R. was lodged on 18.02.2020 on the basis of which offences as aforesaid have been registered against the petitioners.

5. Heard Shri Dhakephalkar the learned senior counsel h/f. Shri Satyajit R. Vakil learned counsel for the petitioners, learned APP Shri Gujarati for the respondent-State and Shri Sant the learned counsel for the respondent no.3.

6. Shri Dhakephalkar submitted that respondent no.3 has filed series of complaints against the petitioners. All the complaints did not fructify and as a last resort he has filed this complaint. He argued that the respondent no.3 had filed complaint on 18.03.2015 before the MIDC Police Station, Jalgaon making same grievance, again he filed private complaint bearing no.251/2015 before the Chief Judicial Magistrate, Jalgaon against the petitioners and 27 other persons under Section 405, 406, 409, 420, 463, 464, 465, 471, 477(c), 120-B read with Section 34 of the I.P.C. He argued that in the said complaint order to hold inquiry by the police under Section 202 of the Cr.P.C. is passed. He further argued that respondent no.3 again filed

complaint with the Jilapeth Police Station making same allegations against the petitioners. He further argued that on 09.04.2019 again the petitioner filed a third complaint. This shows that respondent no.3 has been making complaints against the petitioners with the intention of harassing the petitioners. He argued that the respondent no.3 was working as Quality Control Officer in Quality Control Department of the petitioners. Respondent no.3 was removed after holding inquiry on account of his absentism, the respondent no.3 requested that he should be allowed to tender his resignation and accordingly his request was acceded to and he was permitted to tender resignation. He submitted that the respondent no.3 signed the certificate that he received Rs.26,072/- towards full and final settlement of dues. At that time he did not make any complaint. He submitted that respondent no.3 started transport business and he requested the petitioners to give him some business. The petitioners, having regard to the fact that the respondent no.3 was their employee, gave him business but the respondent no.3 was not sincere and therefore they stopped him giving business, on account of which the respondent no.3 has been harassing the petitioners time and again by making false complaints. He submitted that the respondent no.3 was an Officer and therefore, he cannot claim any benefit under Minimum Wages Act. Similarly, for Payment of Bonus Act he has to approach the authorities

provided under that Act. Same is the case with the Provident Fund Act and Employees State Insurance Act. He argued that the complaint is, therefore, not maintainable and he has, therefore, prayed for the quashing of the F.I.R.

7. Shri Gujarati submitted that the petitioners have not only cheated the respondent no.3 but they have also cheated the other employees. The Investigating Officer had sought a report from the Labour Commissioner and on the basis of the report of the Labour Commissioner it is evident that the petitioners have cheated the respondent no.3 and other employees. He submitted that therefore complaint is maintainable. Shri Sant submitted that earlier complaints were filed for seeking different reliefs. In this complaint the respondent no.3 has claimed forgery committed by the petitioners. He submitted that the petitioners have misappropriated the amount by paying less provident fund, gratuity amount. They have cheated the respondent no.3 and other employees as well. He placed reliance on the case of **State of Bihar and Anr. V/s. Shri P.P. Sharma and Anr.** reported in **AIR 1991 SUPREME COURT 1260.**

8. Perused the record annexed with the petition and the investigation papers. The papers annexed with the petition show that the respondent no.3 was working as a Quality Control Officer with the petitioner

no.1-company. By letter dated 28.07.2011, the respondent no.3 was informed that his services were terminated with immediate effect. The record further shows that respondent no.3 made a communication dated 15.11.2011 to the petitioner no.1 stating therein that because of his personal problems he was not in a position to continue in service and therefore he was tendering resignation and his dues be settled. Accordingly, his resignation was accepted and an amount of Rs.26,072/- was paid to the respondent no.3 vide cheque no.149712 drawn on Axis Bank on the same day i.e. 15.11.2011. Respondent no.3 has signed an acknowledgment admitting thereby the receipt of Rs.26,072/- towards full and final settlement of his dues. This clearly shows that at the time of accepting an amount of Rs.26,072/- towards full and final settlement of amount respondent no.3 did not make any grievance.

9. Thereafter, the respondent no.3 filed a complaint on 11.03.2015 before the MIDC Police Station, Jalgaon making the same allegations as have been made in this F.I.R. MIDC Police Station vide its report dated 31.03.2015 informed the Superintendent of Police that the informant respondent no.3- herein has accepted the amount towards full and final settlement on 15.11.2011 by tendering resignation. It is further stated that Minimum Wages Act is applicable to semi-skilled and unskilled labourers and respondent no.3 was an Officer in the petitioner no.1-company. Therefore, Minimum Wages

Act is not applicable to the respondent no.3. Accordingly, complaint was disposed of and intimation was given to the respondent no.3.

10. Thereafter, respondent no.3 preferred RCC No.588 of 2015 before the learned Chief Judicial Magistrate, Jalgaon in which he made similar allegations. The learned Chief Judicial Magistrate directed the concerned police station to hold inquiry under Section 202 of the Cr.P.C. and submit the report. This order was challenged by the respondent no.3 by preferring Revision Application No.178 of 2015 before the Sessions Court, Jalgaon which was dismissed by the Sessions Judge vide his order dated 13.06.2019.

11. Again on 09.04.2019, the respondent no.3 filed a private complaint before the MIDC Police Station, Jalgaon making same allegations. This complaint was forwarded by the MIDC Police Station, Jalgaon to Labour Commissioner, Jalgaon stating therein that respondent no.3 has made allegations of cheating as regards dearness allowance, bonus, provident fund and forgery by the petitioners for appropriate action. Again on 17.02.2020 the respondent no.3 filed a similar complaint before the MIDC Police Station, Jalgaon and MIDC Police Station without considering the previous record has directly registered the offence. The above record clearly show that respondent no.3 has been making complaint after complaint against the petitioners

making same allegations. The MIDC Police Station had referred his complaint to Labour Commissioner vide its communication dated 11.07.2019 for appropriate action. He has filed complaint before the Chief Judicial Magistrate and that is still pending. Thereafter, the respondent no.3 has filed this complaint. It is pertinent to note that the respondent no.3 was a Officer with the petitioners i.e. Quality Control Officer. Therefore, he cannot come within the scope of the Minimum Wages Act. So far as his grievance as regards inadequate payment of gratuity is concerned he has a remedy under the Payment of Gratuity Act. As stated above respondent no.3 accepted Rs.26,072/- towards full and final settlement on 15.11.2011. He did not make any grievance at that time nor did he make any grievance within reasonable time and for the first time in the year 2015 he made complaint before the police station. Thereafter, he kept on making complaints raising the same grievance. His complaints have been disposed of by the MIDC Police Station. Therefore, this complaint is nothing but an abuse of process of law. This complaint is, therefore, not maintainable.

12. Even otherwise the complaint is not maintainable as separate remedy is provided under the Provident Fund Act, the Payment of Gratuity Act, E.S.I. Act for the grievances raised by the respondent no.3. Under the Payment of Bonus Act in terms of Section 30 no Court take cognizance of any

offence punishable under the Payment of Bonus Act except on a complaint made by or under the authority of appropriate Government or an officer of that Government not below the rank of Regional Labour Commissioner in the case of an officer of the Central Government and not below the rank of a Labour Commissioner in the case of an officer of the State Government specially authorised in this behalf by that Government.

13. So far as Minimum Wages Act is concerned, in terms of Section 22-B of Minimum Wages Act no Court take cognizance of a complaint against any person except upon a complaint by the appropriate Government or an officer authorised by it in this behalf as sanctioned the making of the complaint. In the Employees Provident Funds and Miscellaneous Provisions Act, in terms of Section 14-AC Court can take cognizance of any offence punishable under the said Act only on a report in writing with the provisions sanction of the Central Provident Fund Commissioner or the such other officer as may be authorised by the Central Government by notification in the Official Gazette in this behalf by an Inspector appointed under Section 13. So far as the Payment of Gratuity Act is concerned in terms of Section 11 of the said Act cognizance of an offence can be taken only on a complaint made by the authority or the appropriate Government. Since separate remedies are

provided under these Acts for the reliefs claimed by the respondent no.3, the FIR is not maintainable.

14. Therefore, continuation of prosecution would be an abuse of process of law. We have gone through the authority in the case of **State of Bihar and Anr. V/s. Shri P.P. Sharma and Anr.** reported in **AIR 1991 SUPREME COURT 1260** and it is not applicable to the facts of the instant case.

15. For the reasons discussed here-in above the F.I.R. is not maintainable. Hence the following order is passed:

#### **ORDER**

- I. The petition is allowed.
- II. Relief is granted in terms of prayer clause (B). Rule is made absolute in those terms.

**[M.G. SEWLIKAR, J.]**

**[T.V. NALAWADE, J.]**