

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

CRIMINAL WRIT PETITION 252 OF 2020

1. Shri Sandeep s/o. Babasao Bhandare,
aged about 32 yrs, occ. Service,
Block Development Officer,
Panchayat Samiti, Barshitakli,
2. Shri Arun s/o. Pundlikrao Vidhate,
aged about 61 yrs, Occ. Chief Executive
Officer, Zilla Parishad, Akola
Dist. Akola, r/o.c/o. Zilla Parishad Akola**PETITIONERS**

...VERSUS...

Sau. Rekha w/o. Sanjay Jamnik,
aged about 38 yrs,
Occ. Service, r/o. Indira Nagar,
Barshitakli, Dist. Akola

... **RESPONDENT**

Mr. A.S. Deshpande, counsel for petitioners.

CORAM: ROHIT B. DEO, J.
DATE : 20.01.2021

ORAL JUDGMENT:

Heard Mr. A.S. Deshpande, the learned counsel for
the petitioner.

2. The petitioners are invoking extraordinary jurisdiction
under Article 227 of the Constitution of India, dissatisfied with the
judgment dated 29.2.2000, rendered by the Member, Industrial

Court, Akola in Revision ULP 2/2020, whereby the revision preferred by the petitioners is rejected and the order dated 21.9.2019, rendered by the Labour Court, Akola of issuance of process under section 48 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (“Act” for short), is confirmed.

3. Mr. A.S. Deshpande, the learned counsel for the petitioners would submit that the order of issuance of process is vitiated since Rule 94 of the Labour Court (Practice and Procedure) Rules, 1975, (“Rules” for short) is not complied with.

4. The learned counsel would submit that no process could have been issued without recording the statement of the accused under section 313 of the Code of Criminal Procedure, 1973 (“Code” for short).

5. Perusal of the memo of revision preferred by the petitioners reveals that no ground was raised on the anvil of Rule 94 of the Rules.

6. Mr. A.S. Deshpande, invites my attention to the

decision of a learned Single Judge in ***Shri Rajendra Baburao Gholap, Shri Chhatrapati Sahakari Sakhar Karkhana Ltd & another vs. Shri Dattatraya Kashinath Jamdar, 1998(1) Bom. C.R.600*** and in particular to paragraph 6, which reads thus:

"6. A Criminal Court may be moved by a complaint made to the Magistrate. Section 200 of the Code of Criminal Procedure, 1973 (or even for that matter section 200 of the Code of Criminal Procedure, 1898) provides that a Magistrate taking cognizance of an offence on complaint "shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate". It is not in dispute that these provisions were not observed by the Labour Court while taking cognizance of the complaint filed by the respondent. In the first place, there is nothing to show that the complainant was examined upon oath. Secondly, the requirement of the Labour Court signing the examination of the complainant on oath reduced to writing has also not been complied with. Both the courts below have brushed away the requirements of the statute as "technical irregularities cannot vitiate the trial". In my view, the irregularities noticed are not merely technical but affect the trial. Section 200 of the Code of Criminal Procedure, 1973 shows that under the first proviso two contingencies have been contemplated when the Magistrate need not examine the complainant and the witnesses in the manner required under the main body of the section. This, per se, suggests that in all other situations the Magistrate taking cognizance of an offence on a complaint is bound to comply with the provisions of section 200 of the Code of Criminal Procedure. The Legislature in its wisdom has provided that the machinery of criminal law ought not be swung into action unless the

complainant solemnly declares before the Magistrate the circumstances indicating the offence and the Magistrate, only upon consideration of such circumstances, is empowered to take cognizance of the complaint. I am afraid, it is not possible to brush aside the requirements of section 200 as technical irregularities, nor am I able to subscribe to the view of the Industrial Court, that because the complaint is one arising under a social benefit legislation, the statutory requirements and safeguards can be waived. The complaint, if properly entertained, might result in a conviction, if the offence is proved in accordance with law resulting in deprivation of property and/or liberty of a citizen. Merely because the offence is one prescribed in a labour statute, it would be incorrect to brush away the requirements of Criminal Procedure Code which have been incorporated as safeguards under the Act”.

7. The decision which is cited is absolutely irrelevant. It is not the case of the petitioners, either in the memo of revision or then, in the memo of petition that the complainant was not examined or that the verification statement was recorded without administering the oath.

8. The submission that no process could have been issued without recording the statement of the accused under section 313 of the Code, is noted only as a courtesy to the learned counsel Mr. A.S. Deshpande. Such, is not the import of Rule 94. In any event, the provisions of the Code can neither be diluted nor

overridden by Rules which are framed by the Industrial Court to regulate its practice and procedure. Mr. A.S. Deshapnde, agrees that the complaint under section 48 of the Act is regulated by the provisions of the Code. It is therefore, clear, that the question of recording the statement under section 313 of the Code shall arise by a later stage and not at the stage of issuance of process.

9. The petition is without substance, and is dismissed.

Judge

Belkhede RS