

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 949 OF 2021

Mr.Vinod Suresh Taware and others. ... Petitioners.

V/s.

The State of Maharashtra and another. ... Respondents.

Mr.Amol Gatne for the Petitioner.

Mr.K.V.Saste, APP for the Respondent- State.

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CORAM : NITIN JAMDAR AND
N.R. BORKAR, JJ.

DATE : 18 July 2022.

P.C. :

Heard the learned counsel for the Petitioners and the learned APP for the State. Respondent No.2 has been served twice but none appears for him for more than a year. By order dated 13 June 2022, it was clarified that if none appears for Respondent No.2, the Court will proceed to hear the matter on merits.

2. The Petitioners, 26 in number, are the employees of the Malegaon Sahakari Sakhar Karkhana Ltd., Malegaon, district- Pune. They are working on different posts. Respondent No.2 has lodged the FIR against the Petitioners on behalf of the said Karkhana. In the FIR, Respondent No.2 has stated that he was working as

Managing Director. On 1 November 2019, as per the decision of the Board of Directors, promotion orders in favour of the employees were drawn. He had signed the orders and kept the same in the cupboard in his chamber. He went on leave on 4 March 2020 and when he returned from leave on 6 April 2020, he did not find the promotion orders. When he enquired with the staff, he was told that they have not taken the orders. Suspecting 31 employees including 26 Petitioners that they have taken away these promotion orders, an FIR was lodged with Baramati Police Station, Pune under section 379 read with section 34 of the Indian Penal Code. The learned counsel for the Petitioners submitted that the averments in the FIR are entirely absurd. The promotion orders were issued as stated in the FIR in favour of the Petitioners. There is no averment that they have forged the promotion orders. The learned counsel submitted that not only these allegations are absurd but they are malafide as a counterblast to Complaint (ULP) No.90/2020 filed by the Petitioners making grievance that the orders of promotion are not being given effect to. The learned counsel submits that the FIR is lodged only because there is a change in the management and only with a view to defeat the proceeding taken by the Petitioners under the labour laws. As stated above, Respondent No.2 has chosen not to remain present in spite of repeated notices being served.

3. The averments in the FIR show that the promotion orders were issued on 1 November 2019 as per the resolution of the

Board of Directors. In the ULP Complaint filed in the Industrial Court on 24 July 2020, the employees have relied upon the promotion orders dated 18 November 2020. The proceedings in the Industrial Court were filed on 24 July 2020. On 11 August 2020, a reply was filed in the Industrial Court. The Industrial Court took note of the resolution dated 1 November 2019 promoting the Petitioners and granted ad-interim order not to change the service conditions of the Complainant. On 11 August 2020, a reply was filed by the Respondent Karkhana stating that the promotion orders are fabricated and never been issued. Thereafter, on 26 August 2020, the FIR was lodged with the above-mentioned contentions. Not only there is a mismatch between the stand taken before the Industrial Court and in the FIR but it has to be noted that as per the affidavit no promotion orders were issued at all. Further in the FIR, it is asserted that the promotion orders were issued but stolen by the Petitioners. On the basis of it, the allegations in the FIR are absurd. Only after the Petitioners filed the ULP Complaint in the Industrial Court based on the promotion orders and ad-interim order was granted based on the same that the FIR is lodged. Also if the promotion orders were stolen as contended in April 2020, the FIR was lodged on 26 August 2020 which has not been explained. It fortifies the case of the Petitioners that the FIR is malafide and lodged only after the proceedings in the Industrial Court. As regards authenticity of the promotion orders or otherwise, on the merits of the Petitioners claim regarding promotion, the same is being

considered in the proceeding before the Industrial Court. The FIR is nothing but an abuse of process of law to pressurize the Petitioners to give up their demands.

4. Considering these facts, a case is made out to grant relief in favour of the Petitioners in this petition and to exercise extraordinary jurisdiction of this Court. Accordingly, writ petition is allowed in terms of prayer clause (AA) which reads thus:

“(AA) That this Honourable Court be pleased to issue a writ certiorari or writ in the nature of certiorari or any other appropriate writ, direction and order under Article 226 of the Constitution of India, 1950 and under section 482 of the Criminal Procedure Code, 1973 quashing and setting aside the entire proceedings of R.C.C. No 244/2021, which is pending before the learned 6th CJJD & JMFC, Baramati, including the charge sheet.”

(N.R. BORKAR, J.)

(NITIN JAMDAR, J.)