

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2447 OF 2023

Amit Syngle ...Petitioner
vs.
The State of Maharashtra and Another ...Respondents

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**WITH
WRIT PETITION (ST.) NO.10557 OF 2023**

Amit Paints Limited and Another ...Petitioners
vs.
The State of Maharashtra and Another ...Respondents

Mr. Aabad Ponda, Senior Advocate a/w. Mr. Ishan Khanna, Mr. Yash Chokshi, Mr. Naren Nimbalkar, Mr. Uddeshya Singh i/b. Khaitan & Co., for the Petitioners.
Mr. Shailesh Pathak a/w. Mr. Jay Vora, for Respondent No. 2.
Mr. S.R. Agarkar, APP for the Respondent-State.

CORAM : N. J. JAMADAR, J.
DATE : JANUARY 17, 2024

ORDER

1. Rule.
2. In view of the nature of the controversy rule made returnable forthwith and with the consent of the counsel for the parties, heard finally.
3. The question of legality and correctness of the procedure

adopted by the learned Judge, Labour Court arises for consideration in these petitions in the following backdrop:

A] In the year 2013 Asian Paints Limited (APL) the petitioner No. 1 in Writ Petition (St.) No. 10557 of 2023 set up a unit at Satara for manufacturing paints and varnishes. APL was registered as an employer under the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969 (the Mathadi Act, 1969).

B] On 10th January, 2023 a Joint Enquiry Committee was constituted by Dy. Commissioner of Labour. They conducted a surprise inspection at the unit of APL. Based on the said report and exchange of correspondence, a notice was given to APL to the effect that the APL had employed 13 unregistered mathadi workers in its manufacturing unit. APL was directed to register the workers with Mathadi Board.

C] Eventually, a complaint being MHWA No. 1 of 2023 was filed by Mr. Rajesh Vithal Mate, Respondent No. 2, the Inspector appointed under the Act, 1969, against the APL, the petitioner No. 1, Mr. Amol Patil, Manager H.R and Security, the petitioner No. 2 in Writ Petition (L) No.10557 of 2023 and Mr. Amit Syngle, the Managing Director of APL, the petitioner in Writ Petition No. 2447 of 2023.

D] On 26th April, 2023, the learned Judge, Labour Court passed the following order :

“Issue notice to accused R/o. 14/06/23.”

Subsequently, it appears the learned Judge directed the petitioners to appear in person to answer the charge (Exh. P1).

4. Mr. Ponda, learned senior advocate for the petitioners, submitted that the issue of notice by the learned Judge, Labour Court to the accused is plainly not in consonance with the procedure prescribed under the Code of Criminal Procedure, 1973, to summon the accused. It was submitted that the learned Judge did not apply his mind to form an opinion as to whether the petitioners were required to be summoned, and issue the process which the learned Judge was, in law, enjoined to do. The subsequent order directing the personal appearance of the petitioners to answer the charge is thus completely illegal.

5. Mr. Pathak, learned counsel for respondent No. 2, attempted to salvage the position by submitting that the petitioners have the option to appear before the learned Judge through a pleader. The irregularity, being curable, this Court need not interfere with the impugned order in exercise of writ jurisdiction.

6. Section 17 of the Mathadi Act, 1969 provides that every offence punishable by or under the said Act (including any offence made punishable by a scheme made under the said Act) shall be tried by the Labour Court, within the local limits of whose jurisdiction the offence was committed.

7. Under section 17A a Labour Court constituted under Bombay Industrial Relations Act, 1947 (Now Maharashtra Industrial Relations Act, 1947) (MIR) for any local area, shall also be a Labour Court constituted for that area for the purpose of the Mathadi Act, 1969 and, accordingly, shall have the same powers to try any offence made punishable by or under Mathadi Act, 1969 as it has to try any offence punishable by or under BIR Act, 1947.

8. Section 17B of the Mathadi Act, 1969 prescribes that no Labour Court shall take cognizance of any offence punishable by or under the said Act, except on a complaint in writing made by an Inspector or by a person specially authorised in this behalf by the Board or the State Government.

9. Section 17B of the Act, 1969 thus envisages taking cognizance of the offence punishable by or under the Mathadi Act, 1969 and

contains interdict against taking such cognizance except on a complaint in writing made by an Inspector or by a person specially authorised in this behalf by the Board or the State Government. Plainly when a complaint is made before the Labour Court, the later is enjoined to pass order of taking cognizance.

10. Section 17G of the Act, 1969 is in the nature of residuary provision and reads as under:-

Other relevant provisions of Bombay Industrial Relations Act to apply and to be followed :- Except as otherwise provided in this Act, in the trial of an offence punishable by or under this Act by the Labour Court, for hearing and disposal of any appeal or reference by the Industrial Court, and in other respect, the provisions of section 85, 85A, 110 and 118B and other relevant provisions of the Bombay Industrial Relations Act, 1946 (Bom.XI of 1947) shall, so far as may be, apply, and be followed by these Courts and the parties concerned.

11. Under section 83 of the MIR Act, 1947, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1973, of a Metropolitan Magistrate in a metropolitan area and a Judicial Magistrate of the first class elsewhere and in the trial of every such offence shall follow the procedure laid down in Chapter XXI of the said Code for a summary trial and the rest of the provisions of the

said Code shall, so far as may be, apply to such trial.

12. Section 262 of the Code of Criminal Procedure, 1973, subsumed in Chapter XXI under the caption “Summary Trials”, in turn, provides that in trials under the said Chapter the procedure specified in the Code, 1973 for the trial of summons-case shall be followed except as provided in the said Chapter.

13. If the provisions of Mathadi Act, 1969, MIR Act, 1947 and the Code, 1973 are considered in juxtaposition, it becomes evident that once a complaint is filed alleging commission of offences under the Mathadi Act, 1969, the Labour Court is enjoined to take cognizance of the offence and then follow the procedure prescribed in the Code. It is trite taking of cognizance and issue of a process by a Magistrate is not an empty formality. The order of issue of process cannot be equated with “notice to accused”. Though elaborate reasons are not required to be recorded, the order of issue of process must indicate application of mind.

14. A useful reference, in this context, can be made to a recent pronouncement of the Supreme Court in the case of **Lalankumar Singh and Others vs. State of Maharashtra**¹ wherein the Supreme

¹ 2022 SCC OnLine SC 1383.

Court, inter alia, observed as under:-

35] The impugned orders are liable to be quashed and set aside on another ground also.

36] Perusal of the order passed by the learned Single Judge of the High Court would itself reveal that the learned CJM has not even cared to pass a formal order of issuance of process. It will be relevant to refer to the following part of the judgment and order of the learned Single Judge of the High Court:

“...Though, it is true that on the certified copy produced by the petitioners there is no such formal order but copy of Roznama (daily notings of the proceeding) shows that such order was made on 30-3-2009. The Roznama dated 30-3-2009 reads as follows :

- (i) Complaint filed by Vilas Vishwanath Dusane.
- (ii) Copy of list of documents containing 44 document.

Order was made on Exhibit 1 (of issue process). Take entry in register of criminal cases and issue summons against accused. List the matter for appearance of accused on 18-6-2009.

This record is sufficient to infer that the order of issue process was made and after that summons were issued against accused to ask them to appear in the Court.”

37] It could thus clearly be seen that the learned Single Judge of the High Court held that though there was no formal order of issuance of process, the record was sufficient to infer that the order of issue process was made.

38] The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given

therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal vs. Central Bureau of Investigation. (2015) 4 SCC 609

15. The procedure adopted by the learned Judge, Labour Court, is thus legally unsustainable. Resultantly, the order of issue of notice and the subsequent proceedings taken by the learned Judge, Labour Court, deserve to be quashed and set aside.

Hence, the following order.

ORDER

- 1] The petition stands partly allowed.
- 2] The order dated 26th April, 2023 of issuing notice to the petitioners and the subsequent proceedings and orders passed by the learned Judge, Labour Court, Satara stand quashed and set aside.
- 3] The learned Judge, Labour Court, Satara shall pass a fresh order on the complaint in accordance with the provisions of law.
- 4] Rule made absolute to the aforesaid extent.
- 5] No costs.

(N. J. JAMADAR, J.)