



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

CRIMINAL WRIT PETITION NO.46 OF 2024

[Narsimha S/o Pandurang Khandekar ..Vs.. Suresh S/o Rajaramji
Dhole]

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Mr J. B. Kasat, Advocate for Petitioner.

CORAM : M. W. CHANDWANI, J.

DATE : 2nd APRIL, 2024.

. Notices were served to the respondent, but nobody appears on behalf of him, even the matter was adjourned twice with a hope that the respondent will appear but, the respondent chose not to appear.

2. Heard Mr J. B. Kasat, learned counsel for petitioner.

3. By the present writ petition, the petitioner challenges Clause No.3 of the operative order dated 10.07.2023 passed by the learned Industrial Court, Nagpur, in Revision Application (ULP) No.12 of 2017.

4. Mr Kasat, learned counsel for petitioner, vehemently submitted that the respondent had filed a complaint bearing Criminal Complaint (ULP) No.6 of 2016, before the learned Labour Court, Wardha, alleging non-compliance of the order dated 31.01.2005 passed by the learned Industrial Court, Nagpur in Complaint (ULPN) Nos.1064 to 1608 of 1994 and 1174 of 1994. The learned Labour Court, Wardha issued process on the complaint of respondent against the petitioner,

a retired employee. The order of issuance of process was challenged before the learned Industrial Court at Nagpur in Revision Application (ULP) No.12 of 2017. By the impugned order, the said application came to be allowed and the order passed by the learned Labour Court in Criminal Complaint (ULP) No.6 of 2016 was quashed and set aside. However, by Clause No.3 of the operative order dated 10.07.2023, the Industrial Court directed the Labour Court at Wardha, to proceed with the Criminal Complaint (ULP) No.6 of 2016 finally on merit. Being aggrieved with the Clause No.3 of the operative order, the present writ petition came to be filed.

5. Perusal of the impugned order as well as order of the learned Labour Court, Wardha, show that the respondent was complaining the non-compliance of the order dated 31.01.2005 passed by the learned Industrial Court, Nagpur, in Revision Application (ULP) No.12 of 2017 alleging that the petitioner, while working as a District Manager, in connivance with the Managing Director of Maharashtra State Seeds Corporation Limited, Akola, issued an advertisement on 23.10.2015, calling the applications for appointment on vacant post available with them without absorbing the respondent as directed in the order dated 31.01.2005. The learned Labour Court issued the process by its order dated 07.12.2016, and therefore, the revision application came to be filed before the learned Industrial Court at Nagpur.

6. Perusal of the impugned order also goes to show that the learned Industrial Court, Nagpur, found that the order is not according to the law and has been passed mechanically without considering the factual and legal aspect and set aside the said order. However, the Industrial Court simultaneously directed to proceed with the criminal complaint finally on merit. The operative order of the learned Industrial Court, Nagpur, is as under :

“ORDER

(1) The Revision Petition is allowed.

(2) The impugned order dated 07.12.2016 in Criminal U.L.P No.6/2016 is hereby quashed and set aside.

(3) The Learned Labour Court is directed to proceed with the Criminal U.L.P.No.6/2016 finally on merits, without compelling the personal presence of the Petitioner, with assistance of Advocate for Petitioner.

(4) Record and Proceedings be sent back to the concerned Labour Court.

(5) No order as to costs.”

7. Axiomatically, when once the impugned order of the learned Labour Court dated 07.12.2016 in Criminal (ULP) No.6 of 2016 is set aside, then there is no question of directing the Labour Court to proceed with the matter finally on merit. Once the order of issuance of process has been set aside, there is no eventuality without further passing of the

order of issuance of process, whereby the learned Labour Court, Wardha, can proceed in the complaint filed by the respondent, as directed by Clause No.3 of the operative order. Therefore, Clause No.3 of the impugned order is set aside.

8. The criminal writ petition is disposed of in terms of prayer Clause (A).

(JUDGE)