

(1996) 06 BOM CK 0079

Bombay High Court

Case No: Writ Petition No. 1568 of 1994 with Writ Petition No. 1569 of 1994

Mumbai Mazdoor Sabha and
Others

APPELLANT

Vs

Bennet, Coleman and Co. Ltd.
and Others

RESPONDENT

Date of Decision: June 16, 1996

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 200, 202, 203, 204
- Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 - Section 39, 40, 48

Citation: (1998) 3 LLJ 971

Hon'ble Judges: V.P. Tipnis, J; F.I. Rebello, J

Bench: Division Bench

Judgement

Tipnis, J.

As these petitions raise common questions of facts and law and as the issues are also common, they were heard together and are being disposed of by this common judgment.

2. In Writ Petition No. 1568 of 1994 filed by the Mumbai Mazdoor Sabha, a trade union, and by Mr. R. J. Mehta, President of the aforesaid trade union, against a company known as "M/s. Bennet, Coleman & Co. Ltd.", the issuance of process against petitioner no. 2 by the learned Judge of the Labour Court is sought to be quashed. Bennet, Coiemann and Company Ltd. filed complaint (ULP) No. 297 of 1994 before the Industrial Court under items 2(a), (b) & (5) of Schedule fit of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as the "Act") against the petitioners. Application for interim reliefs was also made alongwith the main complaint. Ad interim orders were passed on 16th March 1994 restraining the petitioners and others mentioned in the said complaint from holding violent demonstrations, shouting or displaying

filthy slogans, uttering filthy language against the Directors, Managers, Managerial Staff and Loyal Employee"es, etc. There was an ad interim injunction against resorting to gherao, staging demonstrations and taking out morchas to the residence of the Directors, Managers, Editors, Managerial Staff, etc. By order dated 5th May 1994, the learned Member of the industrial Court confirmed the order with some modifications.

3. Thereafter, the complainant filed Miscellaneous Criminal Complaint (ULP) No. 54 of 1994 against the petitioners and six others u/s 48 of the Act for the alleged breach of the order dated 5th May 1994 and the learned Member of the Industrial Court issued summons dated 23rd May 1994 to all the accused arraigned in the complaint. It must be made clear that the said order of issuance of summons is challenged only so far as the same is issued to petitioner no. 2 Mr. R. J. Mehta, President of the Union.

4. Although initially it was not clear as to whether the complainant is examined before issuance of process, Mr. Dharmadhikari," learned counsel appearing for respondent no. 1 - company, has produced before us a statement on oath affirmed by one Mr. Gee Varghese Pappy, who is the Deputy Chief Manager-Administration of the Company.

5. Mr. Cama, learned counsel appearing for the, petitioning-Union and the President, contended that the. learned Member erred in issuing the process mechanically and casually without application of mind as to whether any offence at all is made out so far as petitioner no. 2 Mr. R. J. Mehta, President of the Union is concerned. Taking us through the provisions of the Act, the learned counsel submitted that the provisions of the Code of Criminal Procedure are made applicable and like any ordinary Criminal Court, the learned Member of the Labour Court ought to have applied his mind as required by law. Mr. Cama contended that even taking the entire complaint and the supporting statement on oath as it is, no offence whatsoever has been made out against petitioner no. 2 and, as such, the learned Member was in error in issuing the process or summons in the matter. Mr. Cama, in that behalf, relied upon the decision of the Apex Court in [Chandra Deo Singh Vs. Prokash Chandra Bose and Another](#), .

6. Mr. Dharmadhikari, learned counsel appearing for respondent no. 1-Company, on the other hand, contended that the contents of the complaint and other material before the learned Member was enough to issue the process even as against Mr. Mehta, President of the Union (petitioner no. 2 herein). Mr. Dharmadhikari submitted that it is not as if the learned Member was required to satisfy himself regarding the truthfulness of the allegations and/or that he should have been satisfied that the accused would be convicted and then alone he could issue process. Mr. Dharmadhikari submitted that the learned Member has to be satisfied only prima facie and, in the facts and circumstances of the case, contended the learned counsel, there is no warrant to interfere in writ jurisdiction of this Court. Mr.

Dharmadhikari, in that behalf, relied upon two judgments rendered by the Apex Court, one in [Dr. S.S. Khanna Vs. Chief Secretary, Patna and Another](#), and the other in [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), .

7. We have heard the learned counsel on both the sides. We have gone through the contents of the complaint and the statements on oath submitted by the learned counsel for respondent no. 1 at the hearing.

8. It requires to be stated that under the provisions of Section 39 of the Act, no Labour Court shall take cognizance of any offence except on a complaint of facts constituting such offence made by the person affected thereby or a recognised union or on report in writing by the Investigating Officer. Thus, the position is absolutely clear that the complaint must contain the facts constituting an offence under the Act. Under the provisions of Section 40 of the Act in respect of offences punishable under the Act, a Labour Court shall have all the powers under the Code of Criminal Procedure, 1898, of a Presidency Magistrate in Greater Bombay and a Magistrate of the First Class elsewhere, and in the trial of every such offence, shall follow the procedure laid down for in Chapter XXII of the said Code of summary trial in which an appeal lies, and the rest of the provisions of the Code shall so far as may be, apply to such trial.

9. Thus, there is no manner of doubt that unless the complaint discloses facts constituting an offence, the Labour Court cannot take cognizance and, secondly, while trying the offences punishable under the Act, the Labour Court is enjoined to follow the provisions of the Code of Criminal Procedure as far as may be. Under the circumstances, there is no manner of doubt in our mind that before issuing process as required by the provisions of Section 200 of the Code of Criminal Procedure, the Magistrate is obliged to examine on oath the complainant and witnesses present, if any. Under the provisions of section 203 of the Code of Criminal Procedure, the learned Judge of the Labour Court trying the offence may postpone the issue of process against the accused and may either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. The provisions of Section 203 of the Code of Criminal Procedure provide that if, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) u/s 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for the same. Section 204 provides that if in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be a summon case, he shall issue his summons for the attendance of the accused.

10. In as much as under the Act, specific offences are defined and in view of the provisions of Sections 39 and 40 of the Act, we have no doubt that the learned Judge

of the trial Court trying the offence under the Act has to follow the aforesaid applicable provisions of the Code of Criminal Procedure.

11. The Apex Court in its decision in [Chandra Deo Singh Vs. Prokash Chandra Bose and Another](#), has observed in para 8 as under :-

"For determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is "sufficient ground for proceeding" and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry".

After referring to several cases, the Apex Court further observed :-

"In all these cases, it has been held that the object of the provisions of S. 202 is to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath. The Courts have also pointed out in these cases that what the Magistrate has to see is whether there is evidence in support of the allegations of the complainant and not whether the evidence is sufficient to warrant a conviction. The learned Judges in some of these cases have been at pains to observe that an enquiry under S. 202 is not to be likened to a trial which can only take place after process is issued, and that there can be only one trial. No doubt, as stated in Sub-section (1) of S. 202 itself, the object of the enquiry is to ascertain the truth or falsehood of the complaint, but the Magistrate making the enquiry has to do this only with reference to the intrinsic quality of the statements made before him at the enquiry which would naturally mean the complainant itself, the statement on oath made before him by persons examined at the instance of the complainant".

12. The Apex Court in [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), observed that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction which is a very limited one. It is further observed that the scope of the inquiry u/s 202 is extremely limited - only to the ascertainment of the truth or falsehood of the allegations made in the complaint - (i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. The Supreme Court has also enumerated certain cases in which the order of the Magistrate issuing process against accused can be quashed and set aside and

the very first of such cases mentioned is as under :-

"Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused".

13. Judged in the light of the aforesaid provisions of law and having gone through the complaint and the statement on oath in support thereof by the complainant in both these petitions, we are of the clear view that even if all the allegations are accepted, no offence whatsoever is made out so far as petitioner no. 1 before us is concerned.

14. In Writ Petition No. 1568 of 1994, the Complaint is No. 54 of 1994. In the aforesaid complaint, so far as petitioner No. 2 herein is concerned, he is arraigned as accused no. 2 and in the entire complaint, the only allegations made so far as he is concerned is as under :-

"3. The Accused No. 2 is the President of the Accused No. 1 Union and has been named as such in the present complaint, as the violation of orders of injunction of the Honourable Industrial Court is at his instance".

Thereafter, on 13.5.1994 at the instance of accused no. 2 at about 1 p.m. about 30 workmen, including gravure and suspended employees assembled about 5 to 6 feet from the main gate near the portico. It is an agreed position that beyond this, there is absolutely no reference in the complaint to petitioner no.2. Statement on oath by one Mr. Gee Varghese Pappy does not improve the matter.

The only allegation is that all the actions were at the instance and with the active support of petitioner no. 2. It is pertinent to note that in this complaint or in the statement on oath, it is not even remotely suggested that petitioner no. 2 was physically present at the place or near about.

15. Taking all the allegations in the complaint and also in the statement on oath into consideration, we are of the clear opinion that no offence of defiance of the order of injunction as against petitioner no.2 is made out. If that is so, we are of the opinion that the facts and circumstances of the case are covered by the case referred to of the Apex Court which we have quoted in the earlier part of this judgment.

16. So far as Writ Petition No. 1569 of 1994 is concerned, the complaint involved therein is complaint no. 57 of 1994. In the said complaint, also, reference to petitioner no. 2 is in identical terms as was in complaint no. 54 of 1994. The statement on oath of one Mr. Dhawan also does not improve the matters.

17. Under the aforesaid circumstances, in our opinion, the learned Member of the Labour Court was in error in issuing process against petitioner no. 2 in both these cases.

18. In the result, both the petitions succeed. The order dated 23.5.1994 of issuance of process against Mr. R. J. Mehta, President, Mumbai Mazdoor Sabha, by the learned Member of the Labour Court in Miscellaneous Criminal Complaint (ULP) No. 54 of 1994 is hereby quashed and set aside and the rule is made absolute. with costs, accordingly, in Writ Petition No. 1568 of 1994. The order dated 9th June 1994 of issuance of process by the learned Member of the Labour Court, Bombay, in Miscellaneous Criminal Complaint (ULP) No. 57 of 1994 so far as Mr. R. J. Mehta (petitioner no. 2) is concerned, is also quashed and set aside and the rule is made absolute with costs in the aforesaid terms in Writ Petition No. 1569 of 1994.