may be recalled that section 226 requires the prosecution to state the evidence proposed, for proving the guilt of the accused. The guilt sought to be proved herein is the offence under sections 120B and 34 of Indian Penal Code. Can it be said the call details by itself is sufficient ground for proceeding against the accused. In the opinion of this court the answer should be in the negative. Thus in the considered opinion of this court, there is no sufficient ground for proceeding against the accused; the accused therefore deserves a discharge.

11. The trial court unfortunately proceeded on the legal misconception by relying upon the statement of co-accused as also on the slender evidence of mere call details connecting the two accused with conversation inter se. It thus fell in jurisdictional error in rejecting the application under section 227 of Cr.P.C. In the opinion of this Court, the case is made out for discharge as indicated above. Accordingly impugned order is quashed and set aside and the petitioners are ordered to be discharged from the offences registered at I- C.R. No. 40 of 2009 with Umargam Police Station which culminated into Sessions Case No. 71 of 2009 in the court of learned Additional Sessions Judge, Valsad. Rule is made absolute. Direct service is permitted.

Result:- Petitioners discharged.

ABC 2019 (I) 258 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.S. Supehia, J.)

Criminal Misc. Application No. 13637 Of 2016

Decided on 5 December, 2018

ROLASTAR PRIVATE LIMITED THRO' HIS HEMANT CHHAGANLAL SURATI ***- Petitioner(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***Code of Criminal Procedure, 1973 — Section 482 — Quashing of complaint — Industrial Disputes Act, 1947— Section 25T and 25U — Complaint under — Transfer of employees by company — allegation of unfair labour practice — Held, the complaint is absolutely silent on the aspect that the***

transfer amounts to unfair labour practice — all material particulars absent —Not shown as to how the offence as alleged was constituted — complaint quashed. (Para 8)

Facts:- *As per the facts The applicant - company transferred 13 of its workmen. The respondent no.2 issued a show cause notice pursuant to the complaint by Union which was replied to by the applicant stating that no unfair labour practice has been committed and the employees were transferred in a routine manner for administrative convenience as per the terms of their appointment letters. The said reply was not considered and intimation was issued for getting authorization of the Labour Commissioner for filing Criminal Complaint. The applicant again wrote a detailed reply which was also not considered and a show cause notice was issued by the Labour Commissioner. However, sanction was given and the impugned complaint was filed.*

Held:- A perusal of the impugned complaint would clarify that the same is absolutely silent on the aspect that the transfer of the concerned workmen amounts to unfair labour practice. The complaint is totally lacking in all material particulars. There is nothing produced to show as to how the offence as alleged in the complaint is constituted. (Para-8)

Counsel:- ***For Petitioner(s):*** *Mr. Yogi K Gadhia, Adv.*
For Respondent(s): *Ms. Moxa Thakker, Adv.*

Cases Referred:-

1. *Kanubhai Chunibhai Patel Vs. State of Gujarat [2016 II CLR 172], (Para-4)*
2. *State of Haryana Vs. Bhajanlal [1992(1) SCC 335].(Para-12)*

JUDGMENT

A.S. SUPEHIA, J.: - 1.0 In present application, the applicants have prayed *inter aila* that:-

"8(A)...

(B) This Hon'ble Court may be pleased to quash the impugned complaint being the Criminal Case No.1007/2015 dated 17.06.2015 filed by the respondent no.2 before the Judicial Magistrate First Class, Gandevi for the offences punishable under Section 25T and 25U of the Industrial Disputes Act, 1947.

(C) This Hon'ble Court may kindly be pleased to stay the proceeding Criminal Case No.1007/2015 dated 17.06.2015 filed by the respondent no.2 before the Judicial Magistrate First Class, Gandevi

for the offences punishable under Sections 25T and 25U of the Industrial Disputes Act, 1947 pending hearing and final disposal of the present petition.

(D).....

(E)..... "

Ms.Moxa Thakker, learned APP waives service of Rule for the respondent-State.

2.0 The brief facts leading to filing of present petition are as under:-

2.1 The applicant - company transferred 13 of its workmen vide orders dated 18.01.2014 and 15.02.2014. The respondent no.2 issued a show cause notice dated 28.02.2014 pursuant to the complaint by Union which was replied to by the applicant on 06.03.2014 *inter alia* stating that no unfair labour practice has been committed and the employees were transferred in a routine manner for administrative convenience as per the terms of their appointment letters.

2.2 The said reply was not considered and intimation was issued for getting authorization of the Labour Commissioner for filing Criminal Complaint. The applicant again wrote a detailed reply which was also not considered and a show cause notice was issued by the Labour Commissioner, Gandhinagar on 23.05.2014. The applicant replied to the same, also requested and appeared for personal hearing inter alia stating that transfer is not a change of service condition as held by Hon'ble Courts, there was no malafides etc. However, vide letter dated 10.03.2015, sanction was given and the impugned complaint was filed.

3.0 Mr.Gadhia, learned advocate for the applicants has submitted that the complaint produced at Annexure-A only mentions the formal paragraphs regarding authority given for filing the complaint, and that the accused nos. 1 & 2 have committed unfair labour practice, name of witness etc. It is submitted that even if the averments of the complaint are taken on their face value and are accepted in entirety they do not constitute the offence as alleged. Hence, as per the law laid down by the Apex Court in the case of State of Haryana Vs. Bhajanlal, the present is a fit case of invoking the inherent powers of this Court as the complaint lacks in all material particular.

3.1 Learned advocate Mr.Gadhia has submitted that the item no.1(a) of the Schedule 5 of the Industrial Disputes Act, 1947 (herein after referred to as "the Act"), relates to threatening of the workers for discharge or dismissal. The same is not even averred in the complaint. Item No.7 relates to malafide transfer under the guise of management policy. The same is also not mentioned in the complaint. Mere administrative transfer of workmen will not tantamount the same being malafide. Section 25T of the ID Act provides for prohibition of unfair labour practice and Section 25U pertains to penalty for committing such practice. As submitted, the same is not alleged in the present case.

3.2 Learned advocate Mr.Gadhia has submitted that the applicant no.2 herein is a Managing Director of the Company, who has neither signed nor authorized the appointment letters or the transfer letters. He is not looking after day to day activities nor is in charge of such affairs which relate to transfer, yet he is shown as accused in the impugned complaint.

3.3 Learned advocate Mr.Gadhia has submitted that inspite of repeated representations in person as well as in writing the Authority has in a mechanical manner filed Criminal Complaint in which JMFC has taken cognizance and issued summons to the applicants.

4.0 In support of his submissions, learned advocate Mr.Gadhia has placed reliance on the judgment of this Court passed in ***Criminal Misc. Application No.14462 of 2006 dated 01.09.2008;Kanubhai Chunibhai Patel Vs. State of Gujarat [2016 II CLR 172].***

5.0 Ms.Moxa Thakker, learned APP for the respondent- State has opposed the present application by submitting that the present applicants have in fact violated Section 25T of the I.D Act, 1947 and therefore, committed unfair labour practice which is punishable under Section 25U of the Act.

5.1 Learned APP Ms.Moxa Thakker has submitted that the respondent authorities, after considering the reply filed by the present applicants dated 06.03.2014 to the show cause notice has conveyed that the present applicants that they are liable to be prosecuted under the provisions of the Act. Thereafter, the Office of Labour Commissioner again served a show cause notice to the applicants and after receiving reply dated 07.06.2014 as well as the submissions in personal hearing dated 22.07.2014, the present criminal prosecution was filed and accordingly, a complaint was preferred before the

Judicial Magistrate First Class and the same was registered as Criminal Case No.1007 of 2015. Thus, she has submitted that no interference is required at the end of this Court.

6.0 Heard learned advocates for the respective parties.

7.0 In the judgment dated 01.09.2008, passed in Criminal Misc. Application No.14462 of 2006, this Court while examining the para materia dispute under Section 25S of the Act has observed thus:-

> "10. Unfair labour practice is defined under section 2 (ra) of the Act to mean any of the practices specified in the Fifth Schedule. The relevant practice specified in the Fifth Schedule is under clause 7 thereof, which reads as under:
>
> "S7. To transfer a workman *mala fide* from one place to another, under the guise of following management policy."
>
> 11. Examining the complaint in the background of the aforesaid statutory provisions, all that is alleged is that the petitioners have committed unfair labour practice by transferring the workmen in question from one place to another under the guise of administrative policy. However, the complaint is absolutely silent as to how the said transfer amounts to unfair labour practice. As pointed out by the learned counsel for the petitioners, the complaint is totally lacking in all material particulars. There is nothing whatsoever to show as to how the offence as alleged is constituted. In the circumstances, on the allegations made in the complaint no offence as alleged can be stated to have been made out so as to attract the provisions of section 25S of the Act.
>
> 12. The Supreme Court in the case of ***State of Haryana v. Bhajanlal, 1992 (1) SCC 335*** has laid down certain categories of cases wherein the High Court can and should exercise its inherent powers under section 492 of the Code to quash the proceedings. One of the categories enumerated therein is in case where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged. Considering the facts noted hereinabove, the present case squarely falls within the aforesaid category; hence this is a fit case for exercise of powers under section 482 of the Code.

13. As the Court is of the view that the complaint itself does not disclose any offence as alleged, it is not necessary to enter into the merits of the other submissions advanced by the learned Counsel for the petitioners as regards the interpretation of the provisions of clause (7) of the Fifth Schedule to the Act."

8.0 A perusal of the impugned complaint would clarify that the same is absolutely silent on the aspect that the transfer of the concerned workmen amounts to unfair labour practice. The complaint is totally lacking in all material particulars. There is nothing produced to show as to how the offence as alleged in the complaint is constituted. Thus, as per law enunciated by this Court in the aforesaid judgment dated 01.09.2008 on a similar issue, this Court is of the considered opinion that present case false under the categories of cases as laid down by the Apex Court in the case of ***State of Haryana Vs. Bhajanlal [1992(1) SCC 335].***

9.0 Hence, in light of afore-noted facts and observations, present application is allowed. The impugned complaint being the Criminal Case No.1007/2015 dated 17.06.2015 filed by the respondent no.2 before the Judicial Magistrate First Class, Gandevi and subsequent proceedings thereof are hereby quashed and set aside. Rule is made absolute. Direct service is permitted.

Result:- Application allowed.

ABC 2019 (I) 263 GUJ

ACQUITTAL & BAIL CASES

HIGH COURT OF GUJARAT

(A.G.Uraizee, J.)

Criminal Appeal No. 1321 of 2003

Decided on 4 December, 2018

ARJAN JETHABHAI HARIJAN ***- Petitioner(s).***

Versus

STATE OF GUJARAT ***- Respondent(s).***

Law Covered:- ***(A) Indian Penal Code, 1860 — Section 498-A — Conviction of husband — contradiction between the evidence of witnesses — contradiction regarding demanded amount — Acquittal of all the accused of the offences u/s 304-B & 306 — Cruelty —No***