

Before

THE HONORABLE HIGH COURT OF RAJASTHAN

2016

UNDER SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE, 1860

IN THE MATTER OF:

AITUC, ON BEHALF OF ITS MEMBERS - - - - - PETITIONER

V.

STATE OF RAJASTHAN AND ANOTHER - - - - - RESPONDENT

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT

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¶	Paragraph
&	And
AIR	All India Reporter
AP	Andhra Pradesh
ALT	Andhra Law Times
ALD	Andhra Legal Decision
All.	Allahabad
Anr.	Another
Bom.	Bombay
Cal	Calcutta
CCR	Current Criminal Reports
CrPC	Criminal Procedure Code
CrI.A.	Criminal Appeal
DRJ	Delhi Reported Journal
Edn. / Ed.	Edition
FIR	First Information Report
Govt.	Government
GLR	Gujarat Law Reporter
Hon`ble	Honorable
I.L.R	Indian Law Reporter

IPC	Indian Penal Code
Ker	Kerala
LLJ	Labour Law Journal
L.J.	Law Journal
Ltd.	Limited
Mr.	Mister
MLJ	Madras Law Journal
MP	Madhya Pradesh
No.	Number
HC	High Court
Ors.	Others
JNIMS	Jawaharlal Nehru Institute of Medical Sciences
Raj.	Rajasthan
Re.	Reference
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SC	Supreme Court
Sd/	Signed
UP	Uttar Pradesh
UOI	Union Of India
V.	Versus
Vol.	Volume

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STATEMENT OF JURISDICTION

The counsels representing the petitioner have endorsed their pleadings before the Hon`ble High Court of Rajasthan under Section 482<sup>1</sup> of the Code of Criminal Procedure, 1973 in which the Hon`ble Court has the jurisdiction.

The present memorandum sets forth the facts, contentions and arguments.

¹ **Section 482:** Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

STATEMENT OF FACTS

For the sake of brevity and convenience of the Hon`ble Court the facts of the present case are summarized as follows:

- Tamboora Cements is a registered and privately owned company which operates in the Indian state of Rajasthan.
- Its cement producing plant in Rajasthan employs 150 managerial level staff and 2500 workers who are engaged in various forms of manual and semi-manual labour employed on contract. Most of this labour force is illiterate and are made to affix their thumb impressions to the standard form contracts which are provided to them.
- In the year 2014, the majority of the labour force became dissatisfied with the management of the cement making plant in Rajasthan when it was suggested that their normal working shifts of 10 hours every day would be extended to 12 hours per day without any increase in the Rs160 daily wage which was provided to them.
- Sensing the dissatisfaction amongst the labour, the management decided on 15.12.2014 to summarily lay-off 200 people who were employed with the plant. They were asked to leave without notice and told not to return to the plant.
- As news of the dismissal of 200 people spread, the labourers decided that it was time for them to organise themselves into a labour union and collectively bargain with the management. For this purpose, they decided to form a trade union to take up their demands against the management. They requested Ms X, who was a well-known member of the AITUC to come to their village and help them organise.
- Ms X reached the village on the night of 31.12.2014 and met the workers of the plant. She was appalled at the working conditions prevalent in the cement manufacturing plant, as these were narrated to her by the workers. It seems that there was no system of compensation for workers who were injured during the operation of the plant. Similarly, there was no security of employment and dismissals and lay-offs were both common and arbitrary.
- Ms X suggested that the workers of the cement plant immediately become members of the AITUC to which most of the workers readily agreed. She also suggested that the workers go on a lightning strike the next day at the time they are supposed to present themselves at the plant for work. Ms X received the agreement of around 300 workers for the lightning strike. Out of these, 200 people were the ones who had been dismissed by the company some days ago.

- On 01.01.2015, at around 8:30 am, which was the usual reporting time for work, Ms X and 300 workers marched to the main gate of the plant and sat down in front of the gate. They refused to move from the same position and also did not allow the other workers, who were not striking, from approaching the gate and entering the plant premises.
- At the same time, led by Ms. X, the striking workers raised slogans and demands against the management. The effect of the entire demonstration was that work was not allowed to begin at the plant. Seeing what they perceived to be success, around 800 workers who were not previously striking also joined the strike and made a sit-in in front of the plant.
- At around 12:30 pm, at the insistence of the management, the police was called to the scene. The police arrested Ms X and transported her to the police station. They also resorted to lathi charge to clear the area around the gate of the plant and around 50 persons were taken into custody. Around 200 workers were injured in the lathi charge.
- In the evening, all 2500 members of the labour force entered into membership of the AITUC. Ms X was released by the police in the evening and upon returning to the village she informed the workers of the future course of action.
- The next morning, at around 5 am, which is beyond the normal working hours of the plant, around 1000 workers entered the compound of the plant by jumping over the boundary walls. They then proceeded to block the entry points into the plant building by a sit in. At the same time, another 1000 workers blocked the access road to the plant side by placing logs of wood and stones.
- They then proceeded to encircle the plant gate and raised slogans. It was made clear by them that no work would resume at the plant till the demands were met. Because of the blockade, around 10 managers of the plant were locked in. At the same time, no other person could enter the plant.
- The police registered an FIR against Ms X and other members of the labour force on the charges of conspiracy, trespass of property, nuisance, cheating, criminal intimidation and assault. With great difficulty, they arrested Ms X and several other workers.
- AITUC, on behalf of its members and against the management, files a S.482, Cr.P.C. petition before this Court seeking that the proceedings instituted be quashed. To which complainant/state opposed.

QUESTIONS PRESENTED

The following questions are presented before this Hon'ble court for adjudication in the instant matter:

- I. WHETHER THE HON'BLE COURT NEEDS TO EXERCISE ITS INHERENT POWER TO QUASH THE PROCEEDINGS?**
- II. WHETHER THE STRIKE WAS JUSTIFIED?**
- III. WHETHER THE CHARGES AGAINST MS. X AND OTHER WORKERS ARE SUSTAINABLE?**

SUMMARY OF ARGUMENTS

I. THE HON'BLE COURT NEEDS NOT TO EXERCISE ITS INHERENT POWER TO QUASH THE PROCEEDINGS.

Firstly, present case does not warrant invoking of such power by High Court as it is not an exceptional matter to be interfered by High Court.

Secondly, FIR was lodged on the basis of cognizable offences i.e. cheating & criminal trespass and charges are prima facie established as these are directly related to the incident.

II. THE PRESENT STRIKE WAS JUSTIFIED.

Firstly, conflict between workers and management could have been resolved through mutual negotiation which was the basic objective of the union at the time of its formation.

Secondly, method of strike was also not fair because strike was vitiated by unfair labour practice.

Thirdly, occupying the plant at second instance by all the workers was never a strike. It was a criminal act which cannot be called legal & justified strike.

III. THE PROCEEDINGS INSTITUTED CAN NOT BE QUASHED.

Firstly, act of Ms. X and the workers is an act of criminal conspiracy.

Secondly, act of occupying plant by Ms. X and the workers attracts ingredients of criminal trespass.

Thirdly, act of Ms. X and the workers constitutes public nuisance, criminal intimidation, assault, cheating.

PLEADINGS AND AUTHORITIES

I. COURT NEED NOT TO EXERCISE ITS INHERENT POWER TO QUASH THE PROCEEDINGS.

1. In the present case, petition is filed to quash the proceedings going in trial court as it is the settled principle of criminal jurisprudence that the criminal law may be set in motion by giving information to the police of a cognizable offence. However, proceedings can be said to have been instituted within the language of criminal law when actually criminal proceedings are instituted in the Court of law and not otherwise.²
2. Now, it is significant to mention that court need not to admit petition filed by AITUC to quash the proceedings. Exercise of inherent power under section 482 of Cr.P.C is exception and not the rule.³ The present case does not warrant invoking of such power by High Court as it is not an exceptional matter to be interfered by High Court.
3. As per Section 482⁴ of Cr.P.C, there are three circumstances when this power can be used- a) to give to affect an order under the code, b) to prevent abuse of the process of Court and c) to secure the ends of justice. In the present case, there is no applicability of first two circumstances. Now, it is important to understand that in the present case, Court need not to intervene in interest of justice because courts in India have laid down various conditions in which proceedings can be quashed for the interest of justice.⁵ These circumstances are:

- (1) *Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- (2) *Where the allegations in the F.I.R. and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Cr.P.C except under an order of Magistrate within the purview of Section 155(2) of the Cr.P.C;*
- (3) *Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

²Ramjibhai Morarbhay Patel v. Additional Development, (1993) 2 GLR 1713.

³State v. Bhajanlal, AIR 2004 SC 1851. See also: State of MP v. Pradeep Sharma, AIR 2014 C 626.

⁴Section 482, Code of Criminal Procedure, 1973.

⁵State of Haryana & Ors. v .Ch. Bhajan Lal & Ors.,1992 CriLJ 527, See also: State of Karnataka v. M. Devendrappa & Anr, 2002 (1) Supreme 192, Vinta Prasad Reddy. v. The State of A.P., 2003 CriLJ 2264.

(4) Where the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

4. Petitioners' case does not fall in any of the above circumstances because FIR was lodged on the basis of cognizable offences i.e. cheating & criminal trespass and charges are prima facie established as these are directly related to the incident. Now, appropriate Court should decide these charges during the criminal trial. High Court's inherent power need not to be exercised to stifle a legitimate prosecution.⁶

II. THE PRESENT STRIKE WAS NOT JUSTIFIED.

5. Strike conducted by workers on the instigation of Ms. Z was never a justified strike because conflict between workers and management could have been resolved through mutual negotiation which was the basic objective of the union at the time of its formation. However, extreme measures were taken by workers on the instigation of Ms. Z, which were never required at the first place.
6. In addition to the above, method of strike was also not fair because strike was vitiated by unfair labour practice and most importantly occupying the plant at second instance by all the workers was never a strike. It was a criminal act which cannot be called strike.

A. There was no need of strike.

7. When the law or the contract of employment or the service rules provide for a machinery to resolve the dispute, resort to strike is prima facie unjustified.⁷ The facts of the present case clearly show that the basic objective of the formation of trade union by workers was to take up the demands before management and resolve those demands through collective bargaining, meaning thereby, circumstances of the present case were such where negotiation was possible through mutual talk. Apex Court has also stated that

⁶*Didigam v. State*, 2008 CrLJ 724 SC.

⁷*Syndicate Bank and another v. K. Umesh Nayak*, AIR 1995 SC 319; *See also: State of Rajasthan and Anr. V. Mohammed Ayub Naz Appeal (Civil) 939 of 2003; K. Shyam v. The President of JNIMS (2015 - Manipur)*.

strike is a weapon which should be used as a last measure in the process of collective bargaining.⁸ However, Ms. Z instigated workers to go on lightning strike⁹ against their intention and basic objective of the union.

8. It is significant to note that despite of her instigation only 300 people agreed to go on strike. Out of these, 200 people were the ones who had been dismissed by the management some days ago. It means, in reality only 100 workers out of 2300 workers got agreed to go on strike and workers who did not go for strike initially, had this belief that strike must be the last resort and conflict can be resolved through mutual talk.
9. Thus, this clearly establishes that lighting strike was declared against the basic intention of the workers and there was possibility of settlement between workers and management through mutual talk.

B. Strike was vitiated by unfair labour practice.

10. In the present case, strike was vitiated by unfair labour practice as it is settled position of law that under the guise of right to strike, the workers should not indulge in any unfair labour practice or illegal & violent activities.¹⁰ In simple words, strike by workers is unjustified because by remaining in work premises, they practically deprived the employer of his property and also practically stopped him from carrying on his business with the help of others.¹¹
11. In the present case, 300 workers who initially went to the strike, sat on the gate of the plant and prevented other workmen from entering inside the plant, which is clearly an unfair labour practice.¹² These 300 workers succeeded in the strike only because they unlawfully occupied the entrance gate and did not let in any worker and that is why strike was vitiated by illegality.¹³
12. Later on, 800 workers joined the strike but in reality these 800 workers were just ‘dumb driven cattle’. Hon’ble Apex Court has also stated that it is necessary to distinguish those who have acted as mere ‘dumb driven cattle’, from those who have taken an active

⁸*The Management of Chandramalai Estate, Ernakulam v. Its Workmen and Anr.* AIR 1960 SC 902.

⁹*Buckingham and Carnatic Co. Ltd. v. Workers of The Buckingham and Carnatic Co. Ltd.*, AIR 1953 SC 47.

¹⁰*Midland Rubber & Produce Co. Ltd. v. Superintendent of Police.*, 1999 (1) L.L.J. 385 (Kerala HC).

¹¹*Sadul Textile Mills Ltd. v. Workmen of Sadul Textile Mills and Anr.*, AIR 1958 Raj 202; See also: *Howrah Foundry Works Ltd. v. Their Workmen*, 1955 2 Lab LJ 97.

¹²Section 25, Schedule V, Industrial Disputes Act, 1947.

¹³*Kerala Vyapari Vavasayi Ekopana, Ottappalam & Anr. v. State of Kerala and Ors*, AIR 2000 Ker 389; See also: *N. Mohamood Hajeefs The Commissioner Of Police*, (1979) ILLJ 314 Mad.

part in inciting the trouble and instigating workmen to join such a strike.¹⁴ In simple words, consent of other 800 workers was never free and they just got influenced from Ms. X and other 300 people who initially set on the strike. Therefore, joining of strike by these 800 workers is irrelevant to determine justifiability of the strike.

C. Occupying the plant by the workers was an illegal act instead of strike.

13. All the workers on the instigation of Ms. X decided to occupy the plant. Such act was an illegal act instead of strike because the main ingredient of the strike is cessation of work and peaceful protest; occupying the work place and staying there unlawfully is not a part of strike.¹⁵ In a case where dismissed workmen were staying on premises and refused to leave, it was held that it does not amount to stay in strike but an offence of criminal trespass.¹⁶ US Supreme Court also held that employees have the right to strike but they have no license to commit acts of violence or to seize their employer's plant.¹⁷
14. In the present case workers entered into the premises by jumping the boundary walls of the plant at 5 am, which clearly establishes that their intention was to enter deep into the plant against the will of the management and occupy it. Further, they proceeded to block the entry points, meanwhile other 1000 workers blocked the access road towards the plant which confirms that their intention was to occupy the place for very long time and they did not want any outsider to enter into the plant.
15. Finally, it is given that with great difficulty, Ms. X and other workers were arrested, meaning thereby, heavy force would have been used by workers to prevent arresting which does not happen in strike because it is a peaceful cessation of work.¹⁸
16. On the basis of above submissions, it can be safely concluded that strike conducted by workers on the first day was not justified because there was no urgency to fulfill the demands of workers and also, workers instead of going for dispute resolving machinery, provided by law, directly went for the strike.

III. OFFENCES CHARGED AGAINST MS. X AND THE WORKERS ARE SUSTAINABLE.

¹⁴*General Navigation Railway Company Ltd. v. Their Workmen*, MANU/SC/0122/1959.

¹⁵*Coimbatore District Central Co-operative Bank v. Coimbatore District Central Co-operative Bank Employees Association and Anr.*, 2008 (3) ALT 1 (SC); See also: *Howrah Foundry Works Ltd. v. Their Workmen*, 1955 2 Lab LJ 97.

¹⁶*Mysore Machinery Manufactures v. State*, AIR 1966 P. 51.

¹⁷*NLRB v. Fansteel Metallurgical Corpon*, (1939) 306 US 240.

¹⁸*Punjab National Bank Ltd., v. Their Workmen*, (1959) 2 LL.J SC; See also: *Jay, Engineering Works v. State o/W.B.*, AIR 1968 Cal 407, *Delhi Stock Exchange Association Limited v. Delhi Stock Exchange Karamchari Union and Ors*, 2000 (55) DRJ 681, 2000.

17. It is humbly submitted before this Hon`ble court that Ms. X and the workers are liable under Ss.120-B, 447, 290, 506, 352 and 417 of I.P.C, 1860, thus, proceedings cannot be quashed.

A. Act of Ms. X and the workers is an act of criminal conspiracy.

18. In the present case, act of Ms. X and the workers amounts to criminal conspiracy under S. 120-B of I.P.C as their act satisfies the ingredients of criminal conspiracy which are: two or more persons agreeing to do or cause to be done i) an illegal act; or ii) an act which is not illegal by illegal means.
19. The aforementioned proposition can be established through the given facts. It is given that 1000 workers entered into premises of the plant by jumping over the boundary walls and another set of 1000 workers blocked the access road towards the entrance of plant, meaning thereby, act of the workers was well planned under the leadership of Ms. Z. It is a settled position of law that if two or more persons commit a well-planned offence then such act amounts to criminal conspiracy.¹⁹ Thus, Ms. Z along with workers committed criminal conspiracy to further commit offences of criminal trespass, criminal intimidation, assault, public nuisance and cheating.

B. Act of occupying plant by Ms. X and the workers attracts ingredients of criminal trespass.

20. In the present case, the act of occupying plant premises by the workers at the instigation of Ms. X also amounts to criminal trespass under S. 447 of I.P.C as it satisfies the ingredients of criminal trespass, which are: 1) entering into another`s property; 2) with an intent to intimidate or insult or annoy. In a case where striking workmen after having entered the factory premises, remained there beyond working hours, threatened their co-workers and prevented them from carrying out their duties by obstructing them, it was held that it is unlawful and will fall within section 441 of I.P.C.²⁰
21. The above proposition can be affirmed through the given facts. Ms. X and the workers entered the plant premises at 5am, which is beyond the normal working hours of the plant, meaning thereby, their intent was not to make their demands but were to occupy

¹⁹*Mohd. Khalid v. State of West Bengal*, 2002 (2) ALD (Cri) 610.

²⁰*Chelpark Co., Ltd., v. The Commissioner of Police, Madras*, 1968 (1) MLJ 458.

the premises unlawfully and commit other offences.²¹ It is a settled position of law that intention in the cases of criminal trespass has to be gathered from the facts and circumstances of each case.²² It is imperative to note that the intention of Ms. X and the workers was to intimidate and annoy the management by occupying the premises and not allow them to enter inside and let them work. Hence, it can be said that Ms. X and the workers have committed criminal trespass.

C. Act of Ms. X and the workers constitutes public nuisance, criminal intimidation, assault, cheating.

23. It is humbly submitted that act of Ms. X and the workers have caused public nuisance, criminal intimidation, assault, cheating in the instant case.

i) Ingredients of public nuisance are attracted.

24. Ms. X and the workers have caused public nuisance under S. 290 of I.P.C as the ingredients of it are satisfied, which are: 1) an act which causes danger or annoyance; 2) to the people in general who dwell or occupy property in the vicinity.

25. The above proposition can be established through given facts and circumstances. Ms. X and the workers have placed logs of wood and stones on the access road to the plant, encircled the entry gate of the plant, which has resulted into a blockage, thus, leading to danger and annoyance to the ten persons blocked inside the plant and also other people who wanted to access the road to the plant. It is a settled position of law that there is no sine qua non that a public nuisance should injuriously affect every member of the public within its range of operation and it is sufficient that it should affect people in general who dwell in the vicinity.²³ Therefore, the acts of Ms. X and the workers have caused public nuisance

ii) Ingredients of criminal intimidation are attracted.

26. In the instant case, act of Ms. X and the workers has caused criminal intimidation under S. 503 of I.P.C as the ingredient of it i.e., causing the person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat is satisfied.

²¹Kerala Vyapari Vavasayi Ekopana, Ottappalam &Anr. v. State of Kerala and ors, AIR 2000 Ker 389. See also: N. Mohamood Hajee v. The Commissioner of Police, (1979) ILLJ 314 Mad.

²²Rajinder v. State of Haryana, (1995) 5 SCC 187.

²³Prevention of Environment and Sound Pollution v. Union of India., AIR 2005 SC 3136; See also: K.T. Hing v. I.N. Silas, AIR 1930 Cal 713.

27. The above proposition can be established through the facts that, on the day of incident in question, ten people were locked in by the act of workers and at the same time no one could enter the plant, meaning thereby, though the ten managers tried to go outside the plant but were not allowed to go outside. This fact clearly establishes that workers did not allow the managers to do an act which they were legally entitled to do, thus, satisfying the essential ingredient of criminal intimidation.

iii) Ingredients of assault are attracted.

28. In the present case, act of Ms. X and the workers has caused assault under S. 351 of I.P.C on the ten managers who were locked inside the plant premises. It is given that the workers entered the compound of the plant by jumping over the boundary walls, thus, creating an apprehension, which is the main ingredient of S. 351, in the mind of the ten managers that they might get beaten up or injured by the gestures of workers i.e., jumping over the boundary walls and blocking the whole plant premises as their intent was never to make their demands but was to commit an illegal act of occupying the plant premises and take a revenge of the previous day beating by the police on the insistence of management.

29. United States Supreme Court²⁴ observed that, the seizure and holding of the buildings by workers is in itself a wrong apart from any acts of sabotage as ousting of the owner from lawful possession is similar to an assault upon the officers of an employing company.

iv) Ingredients of cheating are attracted.

30. In the present case, act of Ms. X has caused cheating under S. 417 of I.P.C against the workers. This proposition can be established through the given facts. Ms. X on 02/02/2015 has made workers believed that they were going for strike, just like the previous day, however, she actually misled the workers and induced them to cause criminal trespass, nuisance, criminal intimidation, acts which they would not have done if they had not been misled by Ms. X and this act has caused harm to their body, mind and reputation. It is a settled position of law that whoever misled any person and make him believe which is not true is said to cause deception to that person and the act will amount to cheating.²⁵ Thus, act of Ms. X against the workers is an act of cheating.

²⁴NLRB v. Fansteel Metallurgical Corpon, (1939) 306 US 240.

²⁵G.V. Rao v. L.H. Prasad, AIR 2000 SC 247; See also: Nasib Singh. v. State of Punjab, CRM No-14992 (2011)

PRAYER FOR RELIEF

Wherefore, in light of the facts stated, issues raised, authorities cited & arguments advanced, may this Hon'ble High Court of Rajasthan may be pleased to *adjudge & declare that*:

1. Charges mentioned in FIR are prima facie established.
2. Proceeding instituted against Ms. X and other workers is not quashed.
3. Petition is dismissed.

AND

Pass any other order that it may deem fit in the interest of justice, equity & good conscience.

All of which is most humbly prayed.

On behalf of

STATE OF RAJASTHAN AND ANOTHER

Counsels for the Respondent

Sd/