



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. 897 of 2018

GOVINDA SARDA
3A, SHAKESPEARE SARAI, KOKLATA-700071.

.....PETITIONER

VERSUS

1. THE STATE OF ASSAM,.
REP. BY PP, ASSAM.
2. ABANI LAL KURMI
INSPECTOR AND ASSTT. PROVIDENT FUND COMMISSIONER
ASSAM TEA PLANTATION FUND AND PENSION FUND AND DEPOSIT
LIJKED INSURANCE FUND SCHEME
CACHAR ZONE
SILCHAR.-788001.

.....RESPONDENTS

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

For the Petitioner : Mr. R.J. Das. Advocate.

For the Respondents : Mr. B. Sarma, Addl. P.P.
.....Advocate.

Date of Hearing : 07.11.2023

Date of Judgment : ***4th December, 2023***

JUDGMENT AND ORDER

Heard Mr. R.J. Das, learned counsel for the petitioner and also heard Mr. B. Sharma, learned Addl P.P., for the respondent No.1. None appears for the respondent No.2.

2. This petition, under Sections 482 of the Code of Criminal Procedure, is preferred by Shri Govinda Sarda, Director, Bhubanvally Tea Company, for quashing the C.R. Case No. 2267/2007, under section 7(2) of the Assam Tea Plantations Provident Fund Scheme Act 1955 (Assam Act X of 1955), read with para 46 of the Schemes framed there under, read with section 406 IPC, pending before the court of learned Judicial Magistrate 1st Class, Cachar, Silchar.

3. The factual background, leading to filing of the present petition, is briefly stated as under:

“On 18.06.2007, one Shri Abani Lal Kurmi, respondent No.2, in his capacity as Inspector and Assistant Provident Fund Commissioner, Assam Tea Plantation Fund and Pension Fund and Deposit Linked Insurance Fund Schemes, Cachar Zone, Silchar lodged one C.R. Case, No. 2267/2007 before the

learned Chief Judicial Magistrate, Cachar, Silchar against the present petitioner and four others, for failing to deposit provident fund of the plantation workers of Bhubanvalley Tea Estate, situated in the district of Cachar, Silchar, and the petitioner's Tea Company for being failed to make payment of employer's portion of the provident fund, amounting Rs.3,41,455/- and also the employees' portion of the provident fund contribution amounting Rs.3,41,455/-, despite deduction of the same, for the period covering 29.03.2006 to 31.10.2006, all total Rs.6,82,910/- and thereby they have violated the Assam Tea Plantations Provident Fund and Pension Fund Scheme (para 24) and also have committed criminal breach of trust. Upon the said complaint, the learned court below had taken cognizance of the offence and issued process to the accused persons. Thereafter, the learned court below had issued bailable warrant of arrest against the petitioner on being failed to appear before the learned court below."

4. Being highly aggrieved, the petitioner has preferred this present petition, under section 482 Cr.P.C. and contended to quash the proceeding on the following grounds:-

- (i) That, the learned court below had taken cognizance of the offence against the petitioner in contravention of the provision of law.

- (ii) That, continuation of the proceeding against the petitioner is an abuse of the process of law and that the complainant has not appeared before the learned court below.
- (iii) That, the complainant is no longer interested in proceeding with the case as he never appeared before the learned court on a single occasion.
- (iv) That, the petitioners company had paid the entire amount and there remains nothing to be paid.

5. Notably, the respondent No.2 had never turned up inspite of service of notice.

6. The petitioner, however, has filed an additional Affidavit bringing on record some documents.

7. Mr. R.J. Das, the learned counsel for the petitioner, besides reiterating the points mentioned herein above, submits that no offence under any of the sections mentioned in the complaint petition is ever made out against the petitioner. Referring to the allegations made in the complaint, Mr. Das submits that the petitioner's Tea Company had failed to make payment of employers portion of provident fund, amounting Rs. 3,41,455/, and also the employees portion of provident fund contribution amounting Rs.3,41,455/- despite deduction of the same, for the period covering 29.03.2006 to 31.10.2006. Referring to Annexure-IV at page 42 and 43 of the petition, Mr. Das submits that the respondent No.2 was authorized to recover a sum of Rs.

1,25,98,226.78, which was due from Bhubanvalley T.E., for the period indicated in page, No.43, and in the said page the period mentioned in the complaint, finds no mention. Mr. Das, referring to an order, dated 02.01.2021, passed by learned SDJM(S) Cachar, Silchar, in page No.79 of the Additional Affidavit, submits that vide said order, the learned SDJM(S) had issued Bailable Warrant of Arrest of Rs. 5000/ against the petitioner and against the said order the petitioner had preferred a Criminal Revision Petition, No.31/2021, and in the said Revision Petition, the learned Sessions Judge had issued notice to the respondent and accordingly, the respondent had appeared and filed an Affidavit, -Annexure-7, indicating therein that it had received the arrear amount for the referred period and as such he had no interest in pursuing the case and then the learned Sessions Judge had allowed the said revision petition. Under the aforementioned circumstances Mr. Das has contended to allow this petition.

8. Per contra, Mr. B. Sharma, the learned Addl. P.P., submits that the respondent No.2 had failed to appear and contest the petition, and as such, the State has no objection in the event of allowing the petition.

9. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record. Also I have carefully gone through the Additional Affidavit and documents annexed therewith.

10. A careful perusal of the complaint lodged by the respondent No.2, Shri Abani Lal Kurmi, reveals that the present petitioner and four

others have failed to deposit the employer's portion of provident fund of the plantation workers of Bhubanvalley Tea Estate, situated in the district of Cachar, Silchar, amounting Rs.3,41,455/-, and also failed to deposit employees' portion of provident fund, amounting Rs.3,41,455/-, in the Assam Plantations provident Fund and Pension Fund Scheme for the period 29.03.2006 to 31.10.2006, within the prescribed time, inspite of deduction of the same from the salaries of the employees' of the said tea Estate, and the net amount of contribution, after all adjustment of such amount, stands at Rs. 6,82,910/.

11. But, the Annexue-4, at page 42 and 43 of the petition, reveals that the respondent No.2 was authorized to recover a sum of Rs.1,25,98,226.78, which was due from Bhubanvalley T.E. for the period indicated in page No.43, and in the said page, the period mentioned in the complaint, finds no mention. Mr. Das, the learned counsel has rightly pointed this out during hearing. It also appears from the Additional Affidavit, filed by the petitioner that in Criminal Revision Petition No.31/2021, filed by the petitioner for issuing bailable warrant of arrest of Rs. 5,000/ against him by the learned court below, the respondent No.2 had appeared and filed an Affidavit -Annexure-7, which indicates that the respondent had already received the arrear amount for the referred period and as such he had no interest in pursuing the case and then the learned Sessions Judge, Cachar had allowed the said revision petition and set aside the impugned order.

12. Thus, it appears from the discussion made herein above that the respondent No. 2 had already received the amount and as such he is not at all interested in pursuing the case pending before the learned court below. The respondent No.2 even refused to receive the notice issued by this court not to speak of contesting the petition. This being the position, allowing to continue C.R. Case No. 2267/2007, under section 7(2) of the Assam Tea Plantations Provident Fund Scheme Act 1955 (Assam Act X of 1955), read with para 46 of the Schemes framed there under, read with section 406 IPC, before the court below would be an abuse of the process of the court. And on such count, this petition deserved to be allowed.

13. In the result, I find sufficient merit in the present Criminal Petition, and accordingly, the same stands allowed. The criminal proceeding, being C.R. Case No. 2267/2007, pending before the learned court below stands quashed. The parties have to bear their own costs.

JUDGE

Comparing Assistant