



CNR: KAHC010016102020

NC: 2026:KHC:56096
CRL.P No. 286 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.286 OF 2020

BETWEEN:

MR PAWAN KUMAR RUIA
S/O LATE SHRI SHYAM LAL RUIA
AGE ABOUT 61 YEARS
FORMER WHOLE-TIME DIRECTOR
OF FALCON TYRES LTD
METAGALLI INDUSTRIAL AREA
MYSURU - 570016
PRESENTLY RESIDING AT
NO.5, SUNNY PARK
KOLKATA - 700019

...PETITIONER

Digitally signed
by DEVIKA M
Location: HIGH
COURT OF
KARNATAKA

(BY SRI. MANU KULKARNI, ADVOCATE)

AND:

1. STATE BY
METAGALLI POLICE STATION
KRS ROAD, METAGALLI
MYSURU - 570016, KARNATAKA
REP. BY THE STATE PUBLIC PROSECUTOR
2. THE ENFORCEMENT OFFICER
EMPLOYEES PROVIDENT FUND
ORGANIZATION, SUB REGIONAL OFFICE
BHAVISHYA NIDHI BHAVAN 2ND STAGE



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GAYATHRIPURAM
MYSURU - 570019
KARNATAKA
REP. BY MR. RAGHAVENDRA RAO

...RESPONDENTS

(BY SRI SUHAS GOWDA M, HCGP FOR R1;
SMT. NALINI VENKATESH, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 482 OF CR.PC PRAYING TO
QUASH THE IMPUGNED ORDER DATED 26.08.2015 (ANNEXURE
D) PASSED BY THE LEARNED I ACJ SENIOR AND CJM, MYSORE
TAKING COGNIZANCE OF OFFENCE UNDER SECTION 405 AND
409 OF THE IPC, AGAINST THE PETITIONER, REGISTERING A
CRL.CASE IN C.C.NO.202/2015 AND ISSUING SUMMONS TO
THE PETITIONER ON THE BASIS OF THE IMPUGNED CHARGE
SHEET DATED 02.05.2015 AND ETC.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH



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ORAL ORDER

This petition is filed praying this Court to quash the impugned order dated 26.08.2015 at Annexure-D passed in C.C.No.202/2015; quash the impugned charge sheet dated 02.05.2015 in Cr.No.236/2014 at Annexure-A; quash the FIR in Cr.No.236/2014 dated 15.12.2014 at Annexure-C and quash all further proceedings in C.C.No.202/2015 for the offences punishable under Sections 405 and 409 of IPC on the file of the I ACJ (Sr.) and CJM, Mysuru.

2. Heard the learned counsel appearing for the respective parties.

3. The factual matrix of case of the complainant in the complaint that this petitioner was appointed as a Director of Falcon Tyres Limited situated at Mysuru and he was a whole-time Director and Chairman. The allegation made in the complaint that this petitioner has not remitted the employees' share of PF contribution for the months from March 2014 to May 2014 amounting to Rs.84,43,161/-. Hence, invoked the offences under Sections 405 and 409 of IPC. Based on the complaint, police have registered the case and investigated the



matter and filed the charge sheet. While filing the charge sheet, an allegation is made against this petitioner is that to the tune of Rs.1,30,31,617/- was deducted from the salary of the employees but the same was not paid to the Employees' Provident Fund account and misused the said amount. Hence, invoked the offences under Sections 406 instead of 405 and 409 of IPC in the charge sheet. Hence, the present petition is filed before this Court.

4. The main contention of the counsel appearing for the petitioner is that in the complaint as well as in the charge sheet, the allegation is made that this petitioner being the whole-time Director and Chairman has committed the offences under Sections 406 and 409 of IPC. The counsel would vehemently contend that law is settled that an individual, who has perpetrated an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent in order to fix the vicarious liability on the petitioner. In the absence of a provision in a statute which provides for liability of a company and its Directors, there cannot be prosecution against a



particular individual. The police have proceeded independently as against the petitioner, although the company is the employer for the purpose of the Act. The counsel also vehemently contend that company has not been made as a party to the proceedings and since the petitioner is the whole-time Director and Chairman, he cannot be prosecuted in his individual capacity.

5. The counsel also vehemently contend that the company is registered under the Factories Act, 1948 and issued with a factory license. Under both these statutes, the Occupier is responsible for its day-to-day activities and compliance with the provisions of the Act and the Factories Act, 1948. Under the Factories Act, 1948, the Occupier is specifically designated by the name and designation. The counsel also would vehemently contend that, in the instant case, it is apparent on a bare perusal of the charge sheet that there is no material whatsoever to proceed against the petitioner and no specific accusation is made that this petitioner is responsible. The counsel also would vehemently contend that essential ingredients to be satisfied, in order to constitute a criminal



breach of trust that person entrusted dishonestly misappropriating or converting that property to his own use. The counsel would vehemently contend that in the charge sheet also there is no prima facie material to proceed against the petitioner. The counsel also vehemently contend that amount is also recovered through liquidation proceedings and Liquidator has deposited an amount of Rs.20 crores and already payment is made.

6. The counsel also produced the documents to that effect along with memo dated 25.09.2026 i.e., the copy of interlocutory application filed by operational creditor/EPFO in respect of M/s. Falcon Tyres Limited under Sections 42 and 60(5)(c) of Insolvency and Bankruptcy Code, 2016 read with Rule 11 of National Company Law Tribunal Rules, 2016 in C.C.(IB) No.14/BB/2017 as Document No.1 and also relies upon Document No.2 i.e., copy of interim order dated 16.03.2022 on I.A.Nos.430/2020, 317/2021, 40,83/22 in CP(IB) No.14/BB/2017. The counsel relied upon Document No.3 i.e., copy of interim order dated 02.06.2023 and so also, Document No.4 copy of the order dated 19.03.2024 and



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clarificatory order dated 03.04.2024 passed by the Calcutta High Court in WPA 655/2018 as document No.5 that the same may be taken note of while passing the order.

7. Per contra, learned counsel appearing for respondent No.2 would submit that it is not in dispute that this petitioner is a whole-time Director and Chairman and he was also in-charge of the company and the amount was deducted from the employees, but not paid to the PF account. The counsel also brought to notice of this Court that when this petitioner is managing the affairs and in-charge of the affairs of the company, he cannot escape from the liability. The counsel also brought to notice of this Court that in Annexure-B, complaint, specific allegations are made against this petitioner that very conduct and act of the petitioner attract Sections 405 and 409 of the Indian Penal Code.

8. The counsel also vehemently contend that the principles laid down in the judgments referred by learned counsel appearing for the petitioner in the case of **S. K. ALAGH vs. STATE OF UTTAR PRADESH AND OTHERS** reported in **(2008) 5 SCC 662** and so also, **SUNIL BHARTI MITTAL vs.**



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CENTRAL BUREAU OF INVESTIGATION reported in **(2015) 4 SCC 609** regarding vicarious liability is unknown to criminal law and there cannot be any prosecution against an individual, in the absence of company being a party to the proceedings and those judgments will not come to the aid of petitioner.

9. The counsel also vehemently contend that liability for alleged offences under Sections 406 and 409 of the Indian Penal Code cannot be imposed on petitioner by relying upon the judgment of **EMPLOYEES' STATE INSURANCE CORPORATION vs. S. K. AGGARWAL AND OTHERS** reported in **(1998) 6 SCC 288, S. V. RAMASWAMY vs. STATE OF KARNATAKA AND OTHERS** in **CRL.P.NO.3056/2013** dated **15.03.2019, M/S. INDUS FILA LIMITED AND ANOTHER vs. STATE OF KARNATAKA AND ANOTHER** in **CRL.P.NO.208/2016 & CONN. PETITIONS** dated **17.06.2019, C. VALLIAPPA AND OTHERS vs. STATE OF KARNATAKA AND ANOTHER** in **CRL.P.NO.1068/2018** dated **27.03.2019, M.R. B.K.NARAYAN vs. STATE OF KARNATAKA AND ANOTHER** in **CRL.P.NO.2529/2021** dated **14.06.2021, I.R.RAO AND**



OTHERS vs. STATE OF KARNATAKA AND OTHERS passed in **CRL.P.NO.5320/2009** dated **22.07.2013** and so also the judgment in the case of **MR. VISHWAS B.R. vs. STATE OF KARNATAKA** passed in **CRL.P.NO.5076/2022** dated **26.07.2023**, **SANJAY BABUBHAI SHAH vs. STATE OF MAHARASHTRA & ANR** reported in **2011 SCC Online Bom 2186**.

10. The counsel would further contend that ingredients of alleged offence under Section 405 of Indian Penal Code are not made out and relies upon judgment of the Apex Court in **SARDAR SINGH vs. STATE OF HARYANA** reported in **(1977) 1 SCC 463**. The counsel also contend that petition under Section 482 of Code of Criminal Procedure, 1973 is maintainable even when a discharge application is filed and relies upon judgment of the Apex Court in **ANAND KUMAR MOHATTA AND ANOTHER vs. STATE (NCT OF DELHI), DEPARTMENT OF HOME AND ANOTHER** reported in **(2019) 11 SCC 706**.

11. Learned counsel appearing for respondent No.2 relies upon judgment of Calcutta High Court in **AJAY JALAN &**



ORS. vs. THE STATE OF WEST BENGAL & ANR. in **CRR NO.3406/2015** dated **27.04.2018**, wherein the Calcutta High Court distinguished with regard to ***ANEETA HADA vs. GODFATHER TRAVELS AND TOURS PRIVATE LIMITED's*** case reported in (2012) 5 SCC 661 of the Apex Court and counsel brought to notice of this Court that the company in question was not impleaded as an accused in the instant case and the Calcutta High Court made an observation that no reason to differ with the conclusion arrived at by this Court in ***Sajjan Kumar Jhunjuwala's*** case that non-inclusion of the company does not affect the case in any way i.e., the offences under Sections 405 and 406 and distinguished the judgment of the Apex Court, that too with regard to principles laid down by the Apex Court in the judgment of ***Aneeta Hada's*** case and so also, discussion was made in the said judgment in respect of Section 141 of NI Act and also considering Section 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 which also relates to offences by companies but the instant case relates to the offences under Sections 406/409 of the IPC and the declaration made in Form 5A shows the



petitioners to be owners and persons responsible for the conduct of the business of the establishment and an observation is made that it can be taken note of in mitigating circumstances if payment is made and the same cannot absolve the liability.

12. The counsel also relied upon judgment of Apex Court in **RAJNEESH AGGARWAL vs. AMIT J. BHALLA** reported in **(2001) 1 SCC 631** and the counsel brought to notice of this Court that subsequent payment will not absolve the criminal liability, even if such payment is made. So far as the criminal complaint is concerned, once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the Court trying the offence. Hence, counsel contends that these judgments comes to the aid of respondent No.2 to contend that there cannot be any quashing.

13. Learned High Court Government Pleader appearing for respondent No.1/State would submit that specific allegations are made against the petitioner in the complaint at



Annexure-B that amount was deducted, but not paid to PF account. Hence, there cannot be any quashing.

14. Having heard learned counsel appearing for petitioner, learned High Court Government Pleader appearing for respondent No.1 and learned counsel appearing for respondent No.2, the Court has to take note of contents of complaint at Annexure-B dated 05.09.2014, wherein offences are invoked against the petitioner under Sections 405 and 409 of the Indian Penal Code for committing criminal breach of trust in respect of Provident Fund contributions deducted from the wages of employees of M/s. Falcon Tyres Ltd, Mysore, but the same was not paid to the PF account. In the complaint, no doubt, in paragraph No.2 mentioned that M/s. Falcon Tyres Limited, KRS Road, Metagalli, Mysore is an establishment which is covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes framed thereunder, the said Act and the Schemes were applicable to the said Establishment from 01.09.1978 under the Code No.KN/MYS/6707, but mentioned the name of present petitioner. Hence, the very complaint itself is very clear that



this petitioner is working as whole-time Director and also Chairman representing M/s. Falcon Tyres Limited. The very complaint itself is also very clear that said Act and the Schemes were applicable to the said Establishment. When such averment is made, hence it is clear that the amount was deducted from the wages of employees of M/s. Falcon Tyres Ltd, Mysore, but not paid, though it comes within the ingredients of Sections 405 and 409 of Indian Penal Code as invoked.

15. The very principles laid down in the judgment referred supra by learned counsel appearing for petitioner in **S.K. Aggarwal's** case and the judgment in **Sunil Bharti Mittal's** case and other judgments which have been relied upon by learned counsel for petitioner, this Court also considered the same issue by co-ordinate benches with regard to not making company as accused and when the company is not made as an accused, there cannot be any prosecution against the petitioner whether he is a Managing Director/Director/whole-time Director or a Chairman and company must be made as an accused and all these issues were taken note of by this Court and when the company is not



made as a party and though learned counsel appearing for the petitioner would contend that it will not attract Sections 405 and 406, the same cannot be accepted, when the amount was dishonestly used by the petitioner. Though this Court made an observation that allegation against the petitioner attracts the ingredients of the offence under Sections 405 and 406, but in the absence of company being a party to the proceedings, there cannot be any prosecution and also there cannot be any vicarious liability and the same is unknown to criminal law as held by the Apex Court in ***Aneeta Hada's*** case and the said judgment is very clear that, in the absence of company a party to the proceedings, there cannot be any prosecution.

16. When such being the material on record, when the foundational defect is found in the prosecution against the petitioner and the very contention that specific allegations are made against this petitioner in individual capacity as contented by learned High Court Government Pleader for respondent No.1/State and learned counsel appearing for respondent No.2 cannot be accepted. The judgments which have been relied upon by learned counsel appearing for respondent No.2-



complainant i.e., judgment of Calcutta High Court will not come to the aid of petitioner distinguishing Sections 406 and 409 of Indian Penal Code and in view of the judgment in ***Aneeta Hada's*** case, law is settled by the Apex Court, in the absence of company being party to the proceedings, there cannot be any prosecution against either a Chairman/Director or Managing Director. The other judgment in the case of **RAJNEESH AGGARWAL** referred supra, the Apex Court held that subsequent payment will not absolve the criminal liability, even if such payment is made and no dispute in this regard. But in the absence of the company as a party, there cannot be any prosecution. Hence, I am of the opinion that there cannot be any vicarious liability and proceedings against the petitioner without arraigning the company as party.

17. In view of the discussion made above, I pass the following:

ORDER

The criminal petition is ***allowed*** and quashed.

Sd/-
(H.P.SANDESH)
JUDGE