



CNR: KAHC010293882019

NC: 2026:KHC:47575
CRL.P No. 6900 of 2019

**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 1ST DAY OF SEPTEMBER, 2026
BEFORE**

**THE HON'BLE MR. JUSTICE RAVI V HOSMANI
CRIMINAL PETITION NO. 6900 OF 2019**

BETWEEN:

M/s. RAISED ON DENIM INDIA
NO.144/1, KODICHIKKANAHALLI
MAIN ROAD, BOMMANAHALLI,
BEGUR HOBLI,
BENGALURU - 560 068.
REP BY ITS PRORIETOR
KAMAL KEDIA,
S/O OM PRAKASH KEDIA,
AGED ABOUT 54 YEARS,
NO.Q64, DIAMOND DISTRICT,
AIRPORT ROAD,
BENGALURU - 560 008.

...PETITIONER

(BY SRI A V RAMAKRISHNA, ADVOCATE)

AND:

1. R.SURESH BABU
ENFORCEMENT OFFICER,
EMPLOYEES PROVIDENT FUND ORGANIZATION,
SUB-RGIONAL OFFICE,
BOMMASANDRA,
BHAVISHYANIDHI BAVAN,
ANNAPOORNESHWARINAGAR COMPLEX,
NO.43/1, 6TH MAIN, SINGASANDRA,
BENGALURU - 560 068.
2. STATE OF KARNATAKA
BY MADIWALA POLICE STATION,
REP BY STATE PUBLIC PROSECUTOR,

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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HIGH COURT OF KARNATAKA,
HIGH COURT BUILDING,
BENGALURU - 560 001.

...RESPONDENTS

(BY SMT.NANDITA HALDIPUR, ADVOCATE FOR R1;
SRI MAHESHA P., HCGP FOR R2)

THIS CRL.P IS FILED U/S 482 CR.PC PRAYING TO QUASH THE ORDER DATED 24.09.2018, PASSED BY THE IV A.C.M.M., AT BENGALURU IN C.C.NO.48/2019 THEREBY TAKING COGNIZANCE OF THE OFFENCE P/U/S 406 AND 409 OF IPC AND ISSUANCE OF SUMMONS AGAINST THE PETITIONER AND ALL FURTHER PROCEEDINGS IN THE SAID CASE.

THIS PETITION, COMING ON FOR *ADMISSION*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:
CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging order dated 24.09.2018 passed by IV ACMM, Bangalore, in CC no.48/2019, taking cognizance of offences punishable under Sections 406 and 409 of Indian Penal Code, 1860 (**IPC**), as well as for quashing of entire proceedings, this petition is filed.

2. Sri AV Ramakrishna, learned counsel for petitioner submitted that petitioner was arraigned as accused in a complaint filed by respondent no.1 on 18.03.2015 stating that Sri Kamal Kedia, proprietor of 'M/s Raised on Denim' concern had for period



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of September, 2014 to December 2014 failed to remit employees share of Provident Fund contribution despite having deducted same from employees salaries and thereby committed offences under Sections 406 and 409 of IPC. Said complaint was registered as Crime no.511/2015. However, after investigation, respondent no.2-police filed 'B' report. Against 'B' report, respondent no.1 filed protest petition as per Annexure 'E'. It was submitted that protest petition was required to be in nature of a complaint as defined under Section 2(d) of CrPC, but protest memo filed was without any material particulars. Despite same, learned Magistrate passed impugned order taking cognizance of offences punishable under Sections 406 and 409 of IPC against petitioner. Challenging same this petition was filed.

3. It was submitted that even though protest petition was not in form of a complaint, order of learned Magistrate taking cognizance would be contrary to law. Besides same, it was submitted that even prior to filing of complaint in question, petitioner was issued with a notice under Section 7-A of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**) and within two weeks of same i.e. on 21.03.2015,



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Provident Fund dues as claimed were remitted. Therefore, it was submitted that there was no dishonest intention or misappropriation or conversion for own use which was one of essential ingredients for constituting offence of criminal breach of trust defined under Section 405 of IPC. Therefore continuation of proceedings against petitioner would be illegal. It was submitted Section 409 of IPC would be available only against public servant, banker, merchant or agent of which would not apply to petitioner. On above grounds sought for quashing of entire proceedings.

4. Smt.Nandita Haldipur, learned counsel for respondent no.1-complainant on other hand would oppose petition. It was submitted that though late remission of employees PF deduction was admitted, fact that PF dues of employees was deducted and retained by employer could not be denied or effaced. It was submitted that High Court of Calcutta in case of **Ajay Jalan and Ors. v. State of West Bengal and Anr.** reported in **2018 SCC Online, Calcutta 1367** had held that deduction and retention would constitute offence, inviting liability and later remission could not be a ground for quashing. On said ground sought for



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dismissal. Insofar as Section 409 learned counsel fairly submitted that same would not apply to case of petitioner.

5. Sri Mahesha P, learned HCGP for respondent no.2 would adopt submission of counsel for respondent no.1.

6. Heard learned counsel. Perused impugned order and material on record.

7. This petition is by accused challenging order taking cognizance as well as for quashing of entire proceedings for offences punishable under Sections 406 and 409 of IPC. Main grounds of challenge are petitioner not answering description of a public servant, banker, merchant or agent to whom Section 409 would apply and insofar as Section 406 of IPC absence of dishonest misappropriation on account of late remission as well as error committed by learned Magistrate in taking cognizance of offence based on a protest memo after filing of 'B' report.

8. As rightly submitted, petitioner is proprietor of M/s Raised on Denim firm. There is no dispute about firm having deducted employees contribution to Provident Fund for period from



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September to December, 2014, and failing to remit it within time prescribed under EPF Act. It is also not in dispute that petitioner remitted dues claimed on 21.03.2015, which is within two weeks of filing of complaint in question as well as issuance of notice under Section 7-A of EPF Act. Section 406 of IPC provides for punishment for offence defined under Section 405 of IPC and for which prosecution would require to establish 'dishonest misappropriation'. Though, explanation to Section 405 provides for deeming default in payment of contribution after deduction to be with dishonest in nature, mischief sought to be addressed by said explanation appears to be cases where default continues and not to a case where it is cured. More so, as in present case immediately after issuance of notice. Such meaning can be discerned from fact that provision uses words "dishonest" and "misappropriation" in tandem. Remission would take away thrust of allegation of "misappropriation". Though in **Ajay Jalan's** case, late payment is observed not to absolve employer of liability. It is held so for want of any law on aspect and not apply to facts in present case.



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9. For above conclusions, without need for considering remaining contention i.e. whether an order of taking cognizance on a protest petition which is not in conformity with Section 2(d) of CrPC, petition would succeed.

10. Consequently, petition is **allowed**, order dated 24.09.2018 passed by IV ACMM, Bangalore, in CC no.48/2019 and entire proceedings therein stand quashed.

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 Sl No.: 11