IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 383 OF 2014

(Hemsingh s/o Raghubeersingh Bharana & Ors. vs. The State of Maharashtra thr. P.S.O., P.S. Umred, District - Nagpur & Anr.)

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI &
P.N. DESHMUKH, JJ.
JUNE 08, 2015.

Heard Shri Shukla, learned counsel for the applicants and Ms. Mehta, learned APP for respondent No.1 and Shri Verma, learned counsel for respondent No. 2.

The facts show that salary for the period from April 2013 to November 2013 was paid after deducting Provident Fund contribution but part of the amount of Rs.7,83,521/- deducted has been deposited with Respondent No. 2 on 10.01.2014 and balance amount has been deposited subsequently.

According to Shri Shukla, learned counsel, dispute with workers was going on, therefore, the management was constrained to approach the Industrial Court to obtain interim orders. He submits that though the salary sheets showing payment of salary were prepared and in it Provident fund deduction was also mentioned, actual disbursement of salary was made in January 2014 only and deduction of Provident Fund could be done in January 2014, therefore, there is no delay in payment. He states that in this situation, when relations between the employer and employees were not cordial and court litigations were going on, the hyper technical approach of Respondent No. 2 is causing serious prejudice to the petitioners. The entire deducted amount with interest and damages is already paid and, therefore, this Court should quash and set aside the prosecution instituted by Respondent No. 2.

Shri Verma, learned counsel, submits that actual disbursement of salary for the period from April 2013 to November 2013 in January 2014 has not been pleaded and pointed out. According to him, the material on record demonstrates regular payment of salary and, therefore, regular deduction of Provident fund contributions. As the amount deducted has not been made over to Respondent No. 2 within time, an offence under Section 405 of IPC punishable under Section 406 of IPC has been committed and, therefore, prosecution must be allowed to continue. He further states that the amount deducted for the period from April 2013 to September 2013 was paid on 10.01.2014 and the amount deducted thereafter has been paid on later date.

The learned APP supports the arguments of Shri Verma, learned counsel for respondent No. 2.

Shri Shukla, learned counsel is disputing this. According to him, the facts pointed out by Shri Verma, learned counsel are incorrect. He is also seeking adjournment to place on record the necessary documents to substantiate his contentions.

After hearing respective counsel, we find that this Court on 08.07.2014 issued notice in the matter and at that time granted stay of coercive action. The petitioners could have pointed out to this Court the documents or registers revealing payment of salary actually in the month of January 2014 to substantiate their stand that till then they could not have effected any deduction towards Provident fund. That has not been done. As such, we are not inclined to adjourn the matter.

However, as during all this period, interim orders were operating, we grant time of two weeks to the applicants to produce salary payment registers before Respondent No. 2. If Respondent No. 2 is satisfied that no deduction was made by the employer before actual date of disbursement of salary, it will be open to Respondent No. 2 to take further necessary steps in the matter.

We, accordingly direct the applicants to produce necessary record before Respondent No. 2 within two weeks. If such records are produced before Respondent No. 2 within the said period, Respondent No. 2 shall proceed further and complete the exercise within a period of next six weeks.

With these directions and keeping all rival contentions open, we dispose of the matter.

JUDGE **JUDGE**

*GS.