

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE P.D.RAJAN

THURSDAY, THE 30TH DAY OF JULY 2015/8TH SRAVANA, 1937

CRL.A.No. 831 of 2006 ()

AGAINST THE ORDER IN CC 83/2004 of J.M.F.C.,PEERUMEDU

APPELLANT(S):

**STATE-REPRESENTED BY THE ENFORCEMENT
OFFICER, EMPLOYEES PROVIDENT FUNDS, 2ND MILE
PALLIVASAL (PO), IDUKKI DISTRICT.**

**BY ADVS.SRI.N.N.SUGUNAPALAN (SR.)
SMT.T.N. GIRIJA, SC, EPF ORGANISATION**

RESPONDENT(S):

- 1. M/S.KOLICKANAM ESTATE,
VANDIPERIYAR-REPRESENTED BY MANAGER
KOLICKAANAM ESTATE, VANDIPERIYAR.**
- 2. SRI.S.M.SHARMA, DIRECTOR,
M/S.RAM BAHADUR THAKUR LTD., SAMUDRAMAHAL,
25TH FLOOR, DR.ANNIE BESANT ROAD,
WORLI, BOMBAY.**
- 3. SHRI.P.K.SINGH,
MANAGER, KOLICKANAM ESTATE,
VANDIPERIYAR.**

R2 & R3 BY ADV. SRI.JOSEPH KODIANTHARA

**THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30-07-2015, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

STK

P.D. RAJAN, J.

Crl.Appeal 831 of 2006

Dated this the 30th day of July, 2015

JUDGMENT

The appellant is the defacto complainant in C.C.83/2004 of Judicial First Class Magistrate Court, Peermade challenges the discharge of the accused under Section 245(1) Cr.P.C. The appellant is the Enforcement Officer, Employees' Provident Fund, alleged that respondents 1 to 3 were committed offence under Section 76(d) of the Employees' Provident Fund Scheme 1952 (r/w Section 14-A and 14(1-A) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act'). First respondent is the estate owned by M/s.R.B.T. Ltd. Company which was established within the meaning of the above Act. The 2nd and 3rd respondents are in-charges of the first respondent responsible for the conduct of its business. As per Rule 30 and 38 of Employees' provident Fund Scheme 1952, they are required to pay employees' share as well as the

employer's contribution to the Provident Fund every month. They failed to remit the employees share, employers share and administrative charges for the month of July 1997. In this context, the above prosecution was launched against the respondents.

2. The learned magistrate examined PW1 and admitted Exts.P1 to P4 in evidence. Respondents contended that sufficient grounds were not made to frame charge against the respondents. Since the firm is not made a party, and A1 is only a proprietary firm, prosecution against them will not lie. The second and third respondents are Directors of the estate. Since, the estate is not made as a party, there is no liability to respondents 2 to 3.

3. It is admitted by the appellant that M/s.R.B.T.Ltd. is not arrayed as a party in this proceedings. A2 is the Director and A3 is the Manager of M/s.R.B.T. Ltd., Bombay. First respondent is the property owned by the company. The learned magistrate observed in Ext.P2 that the name of third respondent is also mentioned as the

Manager along with one D.Dogra. In Ext.P1 the name of D.Dogra was seen struck and corrected as P.K.Singh. No documents were produced in the trial court to show that the corrections were made from the office of Provident fund Commissioner. Ext.P3 series also show that notice was issued to D.Dogra. The name of third respondent was subsequently added. No materials were produced in the trial court to show that A3 was the Manager of the first respondent. In this circumstance, no grounds were furnished to proceed against the respondents 1 to 3. No materials were produced in this appellate stage also to show that A1 to A3 were the representatives of M/s.R.B.T. Ltd. Company.

4. Several directions were issued to the appellant to take steps against first respondent. On 31.10.12 this court gave chance to cure the defects and directed to take steps against the respondents within 10 days. Subsequently in Crl.M.A.8190/12 filed to permit appellant to serve notice to R1 by afixture, which was implemented through C.I. of Police, Kumily, notice was

not returned after service. It is presumed that, there is proper service of notice on the respondent. The trial court was of the view that no grounds were made out to frame charge against the respondents and they were discharged. I find no illegality in the order passed by the trial court and accordingly this appeal is dismissed.

STK

Sd/-
P.D. RAJAN,
JUDGE

//TRUE COPY//

P.A. TO JUDGE