

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM No.A-883-MA of 2013
Date of decision: July 25, 2016**

Provident Fund Inspector

...Applicant

Versus

M/s Arya Bhatta Co. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Gaurav Tangri, Advocate
for the applicant.

Mr.Rahul Deswal, Advocate
for the respondents.

INDERJIT SINGH, J.

Applicant-Provident Fund Inspector has filed this application under Section 378(4) Cr.P.C. seeking permission for leave to appeal against respondents M/s Arya Bhatta Co., Kuldeep Singh and Jaipal challenging the impugned judgment dated 16.08.2013 passed by learned Addl. Chief Judicial Magistrate, Jhajjar, whereby the accused-respondents were acquitted.

It is mainly stated in the application that accompanying appeal is being filed which is likely to succeed on the grounds taken therein. It is further stated that applicant shall suffer irreparable loss and injury, if the special leave to appeal is not granted to the applicant. It is, therefore, prayed that leave to appeal be granted.

As per the record, the complainant Provident Fund Inspector

filed a complaint against accused M/s Arya Bhatta Co., Kuldeep Singh and Jaipal under Sections 14(1-A) and 14A of the Employees Provident Funds and Misc. Provisions Act, 1952. The brief facts of the case as noted down in the judgment passed by learned ACJM, Jhajjar are as under:-

“Complainant Provident Fund Inspector filed this complaint seeking prosecution of the accused for commission of offences under Sections 14(1-A) and 14A of the Employees' Provident Fund and Misc. Provisions Act, 1952 (here-in-after to be referred the Provident Fund Act). The allegations in brief are that brick kiln in the name and style of M/s Arya Bhatta Company was run by Shri Kuldeep Sing and Shri Jaipal being partner. The brick kiln is an establishment within the meaning of Provident Fund Act. The brick kiln M/s Arya Bhatta Company has been allotted code number HR/20246. The accused no.1&2 being incharge of the said establishment were required to comply with the provisions of Provident Fund Act. The accused No.1&2 were required to pay the employees and employer contribution to the Provident fund and within 15 days of the close of every month. In spite of several requests, the accused failed to pay the said contribution for the month of July 2001, August 2001 and September 2001. In that manner the accused committed the offences punishable under Section 14(1-A) & 14-A of the Provident Fund Act.”

Learned Magistrate, after appreciating the evidence, acquitted the accused-respondents vide impugned judgment dated 16.08.2013.

Notice of motion was issued and learned counsel for the respondent appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record, especially the judgment passed by learned Magistrate.

From the perusal of the judgment passed by the Court below, I find that the reasonings have been given while appreciating the evidence in right perspective and as per law. Nothing has been pointed out as to which material evidence has been misread and which material evidence has not

been considered by the Court below. Learned counsel for the applicant has

not pointed out as to how the findings given by the Court below are perverse or against the evidence. It is admitted that the punishment can be given under the aforesaid section if the accused has committed the offence and the accused has engaged 20 or more than 20 persons. There is no cogent evidence on record to prove the fact that accused have employed more than 20 persons in the brick kiln. As per the case of the complainant, Sh.Dilbag Singh Dalal, the then Enforcement Officer, has visited the brick kiln establishment on 15.03.2000 and found 66 employees as working/employed at M/s Arya Bhatta Company, brick kiln establishment. He is the only person who visited the establishment but he was not examined as a witness in the complaint to prove this fact that accused had employed more than 20 persons. The PWs examined by the complainant have not visited the brick kiln and have no personal knowledge regarding the same.

Learned counsel for the applicant relied upon the coverage proforma Ex.P2 but that proforma was filled up by Sh.Dilbag Singh Dalal, the then Enforcement Officer, on the basis of information collected from Munshi namely Man Singh. Man Singh Munshi has not been examined, who has given the information, on the basis of which this coverage proforma has been filled up. There is also no evidence on record to connect Man Singh with the brick kiln that he was employed as Munshi with the accused.

Learned counsel for the applicant further relied upon the enquiry report under Section 7A of the Provident Fund Act. I have gone through the enquiry, which is Ex.P6. There is no finding in this report/order

that more than 20 persons are working on the brick kiln. Except

information collected by Dilbag Singh Dalal, there is no other persons, who has any knowledge that there were more than 20 persons at the brick kiln. The mere fact that enquiry/order Ex.P6 has not been challenged, which is under Section 7A of the Provident Fund Act, will not prove the case of the complainant beyond reasonable doubt.

In view of the above discussion, I find that the impugned judgment dated 16.08.2013 passed by learned ACJM, Jhajjar, is correct, as per law and evidence and does not require any interference from this Court. No ground is made out for grant of leave to appeal and therefore, the present application stands dismissed.

July 25, 2016
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

No