

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 22717 of 2010 (O&M)

Date of decision : 23.8.2016

...

Shri Harjaspal Singh Juneja & another

.....Petitioner

vs.

Recovery Officer, Employee's Provident Fund Organization,

Amrtisar and others

.....Respondents

Coram: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. Riya Bansal, Advocate for the petitioners.

Mr. Rajesh Hooda, Advocate for respondents No. 1 and 2.

Mr. I.P. Singh, Advocate for respondent No.3.

...

P.B. Bajanthri, J.

In the instant writ petition, the petitioners have sought for quashing warrant of detention of civil prison dated 6.12.2010 (Annexure P-7), issued by respondent No.1.

2) The petitioner No.1 is stated to be Director of M/s Bawa Shoes Pvt. Limited, Goindwal Sahib, District Tarn Taran, which is an establishment covered under the provisions of Employees Provident Fund and Misc. Provisions Act, 1952 (for short, the EPF & MP Act). The establishment failed to deposit provident fund dues from November 2001 to January 2004, even though it was duty of the establishment to deposit provident fund under Section 6 read with para 38 of the EPF & MP Act. The establishment delayed payment

of EPF & MP dues even for the period from March 98 to October 2001. Thus, the respondent – EPF department issued a show cause notice on 18.3.2003 calling upon the establishment as to why damages under Section 14-B should not be levied on the defaults committed in delaying the payments of the aforesaid dues. After following due procedure and also giving ample opportunity of hearing to the petitioner-establishment, the competent authority proceeded to impose damages to the tune of Rs.48,07,047/- and interest amounting to Rs.16,01,490/-. In this regard, petitioner was directed to deposit the assessed amount, damages and interest with the department within 15 days, failing which the department would initiate proceedings under Sections 8 B to 8 G of the EPF & MP Act. On 23.2.2005, the Assistant Provident Fund Commissioner assessed the amount payable under Section 7A of the EPF & MP Act, for the period commencing from November 2001 to January 2004, while assessing an amount of Rs.1,73,90,305/- and the establishment was directed to deposit the said amount within a period of 15 days. When the assessed amount, damages and interest was not deposited with the department, criminal proceeding were launched under Section 406/409 IPC, under Section 14 of the EPF & MP Act, 1952. The establishment did not challenge the order dated 23.9.2004 or 23.2.2005 by filing an appeal before the Appellate Tribunal. Thus the order have attained finality. In view of facts and circumstances, the respondent-department further proceeded to initiate proceedings under Section 8 B to 8 G of the EPF & MP Act, read with Schedule 2

and 3 of the Income Tax Act, for recovery of the amount. Petitioner No.1 was arrested on 6.12.2010 in execution of certificate No. 858, 709 and 678 dated 6.4.2005, 6.4.2005 and 5.4.2006, respectively. The warrants of detention in civil imprisonment were passed by the Recovery Officer and petitioner No.1 was confined to civil imprisonment vide Annexure P-7. The petitioners aggrieved by Annexure P-7 presented this petition.

3) Learned counsel for the petitioners submitted that while passing the impugned warrants of detention in civil prison, provisions of the Act and Rules are not adhered. Respondent – department without exhausting other remedies available for recovery of the outstanding dues, as laid down in the statutes, resorted to Section 8 B (1) (b) “(b) arrest of the employer and his detention in prison” . Under Section 8 B, the respondent can resort to attachment and sale of the movable or immovable property of the establishment or arrest of the employer and his detention in prison or in appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer. In the present case, the respondents have already attached the immovable property of the establishment. Therefore, question of invoking Section 8 B (1) (b), arrest of the employer and his detention in prison may not arise. Therefore, impugned action is contrary to Section 8 B. It was further pointed out that impugned action is contrary to Section 8 G, that before impugned action is taken, notice should have been issued.

Thus there is a violation of Section 8 G of the EPF & MP Act read

with para 5 of the 2nd Schedule of the Income Tax Act, 1961 and Rule 73 (1) of the 2nd Schedule in para 5. That apart, once the property of the petitioner – establishment is attached, question of invoking Section 8 B (b) of the EPF & MP Act would not arise. Hence the impugned warrant of detention of civil prison dated 6.12.2010 (Annexure P-7) is liable to be set aside. In support of the contention, learned counsel for the petitioners relied on decision of this Court in CWP No. 700 of 2009, decided on 24.7.2009. The said decision is relating to if any liability is to be cast on Director or Managing Director, he should have been shown in the register to the Chief Inspector of factories that such a Director was whether the owner or the occupier. Occupier under the definition of employer vide Section 2 (e) of the Provident Fund Act. Therefore, impugned action of the respondents is liable to be set aside.

4) Per contra, the learned counsel for the respondents submitted that establishment-petitioner is a chronic defaulter in respect of payment of EPF, as is evident from the past record for the period from March 1998 to October 2001 EPF amount has been paid belatedly. In the present case, EPF amount which was due of its employees from the period from November 2001 to January 2004, has not been deposited. It was legal obligation on the part of petitioner-establishment to deposit the EPF dues under Section 6 read with para 38 of the EPF & MP Act – Scheme. Failure on the part of the petitioner-establishment the respondents have proceeded to determine quantum of EPF amount, damages and interest. The EPF amount was

assessed. In this regard sufficient time was granted for the petitioner-establishment before assessment, as well as, after assessment and levying damages and interest. On 23.2.2005, an amount of Rs.1,73,90,305/- has been determined. Thereafter, for non-settlement of the above dues, damages and interest increased from time to time under Section 14 B read with Section 7 Q. Dues were assessed for the period from November 2001 to January 2004 on 23.2.2005. From February 2005 to 6.12.2010, the petitioner-establishment had sufficient time for remitting the amount. The same was not availed. Consequently, the respondent-department have no other alternative except invoking Section 8 B (b) of the EPF & MP Act, for non-payment of outstanding dues. It was further submitted that as on 11.12.2012, dues of the petitioner-establishment raised to Rs.11,41,87,649/-. The respondent-department have ascertained that the petitioner has pledged his property documents and obtained loan from the 3rd respondent – bank. Even the petitioner is in default to the Punjab and Sind Bank – respondent No.3. Respondent No.3 have filed statement of objections in which in para 5 of the reply, it is stated that they have filed suit for recovery to the tune of Rs.18 crores and it is pending consideration before DRT-II, Chandigarh. Issue regarding liability of one of the Guarantors namely, Sunil Kalra, is pending in the Hon'ble Supreme Court of India in SLP (C) 26542 of 2008.

5) It was further contended that decision of this Court passed in CWP 700 of 2009 may not hold good in view of the

Division Bench decision of this Court passed in CWP No. 8907 of 2000 decided on 22.4.2002, titled as **Mohan Lal vs. Regional Provident Fund Commissioner, Ludhiana and another**, reported in 2002 Lab I.C. 2602. This Court considered sub Section 2 (e), 8 and 8-B of the EPF & MP Act in para 10. In para 13, while considering the provisions of Employees State Insurance Act, 1948, sub-section 17 of Section 2, definition, “Principal employer” means and it was further held that EPF authorities can comply Section 8-B by resorting to one or more of the modes. In view of the Division Bench decision in the case of **Mohan Lal's case (Supra)**, there is no infirmity in the impugned warrant of detention of civil prison dated 6.12.2010 (Annexure P-7), issued by respondent No.1. Thus the writ petition is liable to be dismissed.

6) Heard learned counsel for the parties.

7) The petitioner has contended that warrant of detention of civil prison dated 6.12.2010 (Annexure P-7) issued by respondent No.1 is contrary to Section 8 B, 8 G, para 5 of the 2nd Schedule to the Income Tax Act, 1961, read with Rule 73 (1) of the 2nd Schedule in para 5. Reading of the above provisions, contention of the petitioner is that the respondents can take action against Managing Director/Director of Bawa Shoes Pvt. Limited and not against the petitioner and it was further contended that before passing the order dated 6.12.2010 (Annexure P-7) notice should have been issued. Without notice, impugned action has been taken by the respondent. It is imperative in the facts and circumstances of this case, to extract

herein Section 2 (e) and 14 A of the EPF & MP Act, 1952. The same is being reproduced hereunder:-

“2(e) “employer” means-

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause f of sub-section 1 of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

XXX XXX XXX

14A. Offences by companies

(1) If the person committing an offence under this Act, the Scheme or the Pension Scheme or the Insurance Scheme is a company, every person who at the time the offence was

committed was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section 1 where an offence under this Act, the Scheme or the Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director or Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purposes of this section, -

(a) “Company” means any body corporate and includes a firm and other association of individuals; and

(b) “Director” in relation to a firm, means a partner in the firm.”

8) Supreme Court in the case of **Standard Chartered Bank vs. State of Maharashtra 2016 (6) SCC 62** held as under :-

10. Section 141 of the Act deals with offences by companies. It reads as follows:-

“141. Offences by companies.—(1) If the person committing an offence under Section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due

diligence to prevent the commission of such offence: Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter. (2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section—

(a) ‘**company**’ means any body corporate and includes a firm or other association of individuals; and

(b) ‘**Director**’, in relation to a firm, means a partner in the firm.”

11. On a perusal of the aforesaid provision, it is clear as crystal that if the person who commits an offence under Section 138 of the Act is a company, the company as well as other person in charge of or responsible to the company for the conduct of the business of the company at the time of commission of the offence is deemed to be guilty of the offence. Thus, it creates a constructive liability on the persons responsible for the conduct of the business of the company.

12. At one point of time, an issue had arisen before this Court, whether a complaint could be held to be maintainable without making the company a party. The said controversy has been put to rest by a three-Judge Bench decision in *Aneeta Hada v. Godfather Travels and Tours (P) Ltd.* wherein it has been held that : (SCC p.688, para 58)

“58.when the company can be prosecuted, then only the persons mentioned

in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.”

It has been further held therein that there cannot be any vicarious liability unless there is a prosecution against the company. In the case at hand, the company has been arrayed as the accused No. 1 along with the Chairman and other Directors.

13. Now, we must go back in time to appreciate what has been stated in S.M.S. Pharma I (supra), wherein a three-Judge Bench answered a reference on three issues. The answers on two issues which are relevant for the present purpose are as follows: (SCC pp. 93-94, para 1)

“(a) * * *

(b) Whether a director of a company would be deemed to be in charge of, and responsible to, the company for conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary?

(c) Even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the managing directors or joint managing director

who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against.?”

14. XXX XXX XXX

15. After so stating, the Court adverted to the complaint filed under Section 138 of the Act and opined that the complaint should make out a case for issue of process. As far as the officers responsible for conducting the affairs of the company are concerned, the Court referred to various provisions of the Companies Act, 1956 and analysed Section 141 of the Act to lay down as follows: (*S.M.S. Pharma I case*, SCC pp. 98-99, para 10)

“10. ...What is required is that the persons who are sought to be made criminally liable under Section 141 should be, at the time the offence was committed, in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who were in charge of and responsible for the conduct of business

of the company at the time of commission of an offence, who will be liable for criminal action. It follows from this that if a director of a company who was not in charge of and was not responsible for the conduct of the business of the company at the relevant time, will not be liable under the provision. The liability arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible 14 for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status. If being a director or manager or secretary was enough to cast criminal liability, the section would have said so. Instead of “every person” the section would have said “every director, manager or secretary in a company is liable”..., etc. The

legislature is aware that it is a case of criminal liability which means serious consequences so far as the person sought to be made liable is concerned. Therefore, only persons who can be said to be connected with the commission of a crime at the relevant time have been subjected to action”.

16. XXX
- XXX
- XXX
- 17.XXX
- XXX
- XXX
18. XXX
- XXX
- XXX

19. After the three-Judge Bench in *S.M.S. Pharma I case* answered the reference, the matter was placed before a two-Judge Bench. The two-Judge Bench, hearing *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla* (hereinafter referred to as ‘*SMS Pharma II*’), reproduced a passage from *Sabitha Ramamurthy v. R.B.S. Channabasavaradhya* which reads as follows: *S.M.S. Pharma II case*, SCC pp. 79-80, para 24)

“24. ...7. A bare perusal of the complaint petitions demonstrates that the statutory requirements contained in Section 141 of the Negotiable Instruments Act had not been complied with. It may be true that it is not

necessary for the complainant to specifically reproduce the wordings of the section but what is required is a clear statement of fact so as to enable the court to arrive at a prima facie opinion that the accused are vicariously liable. Section 141 raises a legal fiction. By reason of the said provision, a person although is not personally liable for commission of such an offence would be vicariously liable therefor. Such vicarious liability can be inferred so far as a company registered or incorporated under the Companies Act, 1956 is concerned only if the requisite statements, which are required to be averred in the complaint petition, are made so as to make the accused therein vicariously liable for the offence committed by the company. Before a person can be made vicariously liable, strict compliance with the statutory requirements would be insisted. (*Sabitha Ramamurthy* case, SCC pp. 585-86, para 7)”

20. Thereafter the Court referred to the authority in *Saroj Kumar Poddar v. State (NCT of Delhi)* and another and noted the observations which we think it apt to reproduce: (*S.M.S. Pharma II*

case, SCC p.80, para 25)

“25... “14. Apart from the Company and the appellant, as noticed hereinbefore, the Managing Director and all other Directors were also made accused. The appellant did not issue any cheque. He, as noticed hereinbefore, had resigned from the directorship of the Company. It may be true that as to exactly on what date the said resignation was accepted by the Company is not known, but, even otherwise, there is no averment in the complaint petitions as to how and in what manner the appellant was responsible for the conduct of the business of the Company or otherwise responsible to it in regard to its functioning. He had not issued any cheque. How he is responsible for dishonour of the cheque has not been stated. The allegations made in para 3, thus, in our opinion do not satisfy the requirements of Section 141 of the Act. (Saroj Kumar Poddar Case, SCC P.697, para 14)”

21. The said observations were clarified by stating that: (*S.M.S. Pharma II case*- SCC P.80, Para 26)

“26. A faint suggestion was made that this Court in *Saroj Kumar Poddar* has laid down

the law that the complaint petition not only must contain averments satisfying the requirements of Section 141 of the Act but must also show as to how and in what manner the appellant was responsible for the conduct of the business of the company or otherwise responsible to it in regard to its functioning. A plain reading of the said judgment would show that no such general law was laid down therein. The observations were made in the context of the said case as it was dealing with a contention that although no direct averment was made as against the appellant of the said case fulfilling the requirements of Section 141 of the Act but there were other averments which would show that the appellant therein was liable therefor.”

22. The said clarification was reiterated in *Everest Advertising (P) Ltd. v. State, (Govt. of NCT of Delhi)*. In the said case, taking note of the assertions in the complaint which were really vague, the Court declined to interfere with the order passed by the High Court which had opined that the complaint did not disclose commission of offence against the accused persons.

23. Be it noted, the observations made in *Saroj Kumar Poddar (Supra)* and clarification given in *SMS Pharma II “Supra”* and *Everest Advertising (P) Ltd.* were taken note of in *K.K. Ahuja v. V.K. Vora and another*. In the said case, the Court explaining the position under Section 141 of the Act has stated thus: (*K.K. Ahuja case, SCC pp. 61-62, para 27*)

“27. The position under Section 141 of the Act can be summarised thus:

i) If the accused is the Managing Director or a Joint Managing Director, it is not necessary to make an averment in the complaint that he is in charge of, and is responsible to the company, for the conduct of the business of the company. It is sufficient if an averment is made that the accused was the Managing Director or Joint Managing Director at the relevant time. This is because the prefix “Managing” to the word “Director” makes it clear that they were in charge of and are responsible to the company, for the conduct of the business of the company.

(ii) In the case of a Director or an officer of the company who signed the cheque on

behalf of the company, there is no need to make a specific averment that he was in charge of and was responsible to the company, for the conduct of the business of the company or make any specific allegation about consent, connivance or negligence. The very fact that the dishonoured cheque was signed by him on behalf of the company, would give rise to responsibility under sub-section (2) of Section 141.

(iii) In the case of a Director, Secretary or Manager [as defined in Section 2(24) of the Companies Act] or a person referred to in clauses (e) and (f) of Section 5 of the Companies Act, an averment in the complaint that he was in charge of, and was responsible to the company, for the conduct of the business of the company is necessary to bring the case under Section 141(1) of the Act. No further averment would be necessary in the complaint, though some particulars will be desirable. They can also be made liable under Section 141(2) by making necessary averments relating to consent and connivance or negligence, in the complaint, to bring the matter under that sub-

section.

(iv) Other officers of a company cannot be made liable under sub-section (1) of Section 141. Other officers of a company can be made liable only under sub-section (2) of Section 141, by averring in the complaint their position and duties in the company and their role in regard to the issue and dishonour of the cheque, disclosing consent, connivance or negligence.”

24. XXX XXX XXX

25. XXX XXX XXX

26. In *Gunmala Sales (P) Ltd.* the Court was concerned with Directors who issued the cheques. This authority, as we notice, has to be appositely understood. The two-Judge Bench referred to *S.M.S. Pharma I* and other earlier decisions, and came to hold that: (*Gunmala Sales (P) Ltd.* Case, SCC pp. 124-25, paras 30-31)

“30. When a petition is filed for quashing the process, in a given case, on an overall reading of the complaint, the High Court may find that the basic averment is sufficient, that it makes out a case against the Director; that there is nothing to suggest

that the substratum of the allegation against the Director is destroyed rendering the basic averment insufficient and that since offence is made out against him, his further role can be brought out in the trial. In another case, the High Court may quash the complaint despite the basic averment. It may come across some unimpeachable evidence or acceptable circumstances which may in its opinion lead to a conclusion that the Director could never have been in charge of and responsible for the conduct of the business of the company at the relevant time and therefore making him stand the trial would be an abuse of process of court as no offence is made out against him.

31. When in view of the basic averment process is issued the complaint must proceed against the Directors. But, if any Director wants the process to be quashed by filing a petition under Section 482 of the Code on the ground that only a bald averment is made in the complaint and that he is really not concerned with the issuance of the cheque, he must in order to persuade

the High Court to quash the process either furnish some sterling incontrovertible material or acceptable circumstances to substantiate his contention. He must make out a case that making him stand the trial would be an abuse of process of court. He cannot get the complaint quashed merely on the ground that apart from the basic averment no particulars are given in the complaint about his role, because ordinarily the basic averment would be sufficient to send him to trial and it could be argued that his further role could be brought out in the trial. Quashing of a complaint is a serious matter. Complaint cannot be quashed for the asking. For quashing of a complaint it must be shown that no offence is made out at all against the Director.” [Emphasis supplied]

27. After so stating, the Court proceeded to summarise its conclusions, appreciated the averments made in the complaint petition and opined thus: (*Gunmala Sales (P) Ltd.* Case, SCC p. 128, para 35)

“35. ... Pertinently, in the application filed by the respondents, no clear case was made

out that at the material time, the Directors were not in charge of and were not responsible for the conduct of the business of the Company by referring to or producing any incontrovertible or unimpeachable evidence which is beyond suspicion or doubt or any totally acceptable circumstances. It is merely stated that Sidharth Mehta had resigned from the directorship of the Company on 30-9-2010 but no incontrovertible or unimpeachable evidence was produced before the High Court as was done in *Anita Malhotra* to show that he had, in fact, resigned long before the cheques in question were issued. Similar is the case with Kanhaiya Lal Mehta and Anu Mehta. Nothing was produced to substantiate the contention that they were not in charge of and not responsible for the conduct of the business of the Company at the relevant time. In the circumstances, we are of the opinion that the matter deserves to be remitted to the High Court for fresh hearing. However, we are inclined to confirm the order passed by the High Court quashing the

process as against Shobha Mehta. Shobha Mehta is stated to be an old lady who is over 70 years of age. Considering this fact and on an overall reading of the complaint in the peculiar facts and circumstances of the case, we feel that making her stand the trial would be an abuse of process of court. It is however, necessary for the High Court to consider the cases of other Directors in light of the decisions considered by us and the conclusions drawn by us in this judgment.”

28. We have referred to the aforesaid decision in *Gurmala Sales (P) Ltd.* case in extenso, as we are of the convinced opinion that the analysis made therein would squarely apply to the case at hand and it shall be clear when we reproduce certain passages from the complaint.

29. Prior to that, we may profitably refer to a two-Judge Bench decision in *Tamil Nadu News Print & Papers Ltd. v. D. Karunakar*. In the said case, the Court has referred to the decision rendered in *S.M.S. Pharma I Supra* and, thereafter, taken note of the averments made in the complaint. Be it noted, in the said case it had been averred in the complaint petition that the accused Nos. 2 to 9

were Directors and were in day to day management of the accused company and in that context the Court has opined as follows: (*Tamil Nadu News Print case, SCC p. 81, para 14*)

“14. Upon perusal of the complaint, we find that an averment has been made to the effect that Accused Nos.3 to 10 were in fact, in-charge of the day-to-day business of Accused No.1-company.”

30. We have referred to these decisions as they explicitly state the development of law and also lay down the duty of the High Court while exercising the power of quashing regard being had to the averments made in the complaint petition to attract the vicarious liability of the persons responsible under Section 141 of the Act.

31. XXX XXX XXX

32. The aforesaid averments, as we find, clearly meet the requisite test. It is apt to mention here that there are seven accused persons. Accused No.1 is the Company, accused Nos.2 and 3 are the Chairman and Managing Director respectively and accused Nos.6 and 7 were signatory to the cheques. As far as the accused Nos.4 and 5 were concerned, they were whole-time Directors and

the assertion is that they were in charge of day to day business of the Company and all of them had with active connivance, mischievously and intentionally issued the cheques in question.

33. Thus, considering the totality of assertions made in the complaint and also taking note of the averments put forth relating to the respondent Nos. 2 and 3 herein that they are whole-time Director and Executive Director and they were in charge of day to day affairs of the Company, we are of the considered opinion that the High Court has fallen into grave error by coming to the conclusion that there are no specific averments in the complaint for issuance of summons against the said accused persons. We unhesitatingly hold so as the asseverations made in the complaint meet the test laid down in *Gunmala Sales (P) Ltd.*”

9) In view of Section 2 (e) and 14 A of EPF & MP Act, 1952, read with decision of the Supreme Court decision (Supra) and judgment in CWP No. 700 of 2009 titled as Vijay Aggarwal vs. The Recovery Officer, Employees Provident Fund & Misc. Provisions Act, 1952, Chandigarh and another, is distinguishable, Section 14 A of EPF & MP Act, is not discussed. Thus EPF Department action against petitioner is in order.

10) Reading of the warrant of detention of civil prison dated 6.12.2010 (Annexure P-7), it is evident that Section 8 B (b) has been invoked. This is permissible as held by this Court in the case of *Mohan Lal's case (Supra)*. In para 18 of the judgment it was held that Section 8 B (1) of the Act are alternative modes and not exclusive of each other and it is open to the Recovery Officer to resort to one or more of the modes. Section 8 B (1) (b) do not provide for issuance of show cause notice. The department have already exercised power under Section 8 B (1) (a) i.e. objection and sale of movable or immovable property of the establishment. Exercising the aforesaid provision do not prohibit the department to invoke Section 8 B (1) (b) in view of Division Bench decision of this Court. Therefore, contention of the petitioner that there is a violation of Section 8 B, 8 G and 2nd Schedule to the Income Tax Act, 1961, is not tenable.

11) Learned counsel for the petitioners submitted that EPF dues is Rs.1,73,90,305/- as on 6.4.2005. Property worth about 3 crores and odd had been attached. Therefore, impugned action is bad and arbitrary. Perusal of the records reveals that as on 6.4.2005 EPF dues, damages and interest was Rs.1,73,90,305/-. However, the same was not deposited by the petitioner. Consequently, from time to time damages under Section 14 B and interest has increased from time to time. As on 11.12.2012, balance to be recovered is Rs.11,41,87,649/-. Moreover, the property attached by the department is pledged with the 3rd respondent – bank. The petitioner has availed loan from the 3rd respondent bank. For about Rs.18 crores dues' dispute with the

respondent No. 3 is pending consideration before the DRT-II, Chandigarh. Impugned action herein is in accordance with **Mohan Lal's case (Supra).**

12) In view of these facts and circumstances the impugned action of the respondent-department in issuing warrant of detention of civil prison dated 6.12.2010 (Annexure P-7) issued by respondent No.1 is in order.

13) The petition stands dismissed.

August 23, 2016
chugh

(P.B. Bajanthri)
Judge

Whether speaking / reasoned

Yes / No

Whether reportable

Yes / No