

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

2 CRIMINAL APPLICATION NO. 1691 OF 2016

THE PROVIDENT FUND INSPECTOR
VERSUS
M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD
AND OTHERS

...

3 CRIMINAL APPLICATION NO. 1694 OF 2016

THE PROVIDENT FUND INSPECTOR
VERSUS
M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD AND OTHERS

...

4 CRIMINAL APPLICATION NO. 1703 OF 2016

THE PROVIDENT FUND INSPECTOR
VERSUS
M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD AND OTHER

...

5 CRIMINAL APPLICATION NO. 1704 OF 2016

THE PROVIDENT FUND INSPECTOR
VERSUS
M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD AND OTHER

...

6 CRIMINAL APPLICATION NO. 1705 OF 2016

THE PROVIDENT FUND INSPECTOR
VERSUS
M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD AND OTHER

...

7 CRIMINAL APPLICATION NO. 1706 OF 2016

THE PROVIDENT FUND INSPECTOR
VERSUS

M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD AND OTHER

...

8 CRIMINAL APPLICATION NO. 1707 OF 2016

THE PROVIDENT FUND INSPECTOR

VERSUS

M/S BELGANGA SAHAKARI SAKHAR KARKHANA LTD AND OTHER

...

In all the matters:

Advocate for the Applicant	:	Shri K.B. Chaudhary
Advocate for Respondent No.4	:	Shri Nilesh N. Desale
Advocate for Respondent No.5	:	Shri S.V. Chaudhari
Advocate for Respondent No.6	:	Shri D.B. Thoke

...

CORAM : P.R. BORA, J.

DATE : November 09, 2017

PER COURT :

1. Since the subject matter of all these applications is same and all these applications are preferred by one authority i.e. the Provident Fund Inspector, Jalgaon, I heard common arguments in all these applications of the respective Counsel appearing for the parties. The applicant – authority had filed the complaint before the Judicial Magistrate, First Class, at Chalisgaon against the respondents under the provisions of the **Employees' Provident Funds and Miscellaneous Provisions Act, 1952** (hereinafter referred to as the 'Act'). In all the aforesaid complaints, it was the allegation of the applicant - authority against the respondents that, they have

committed an offence under the provisions of the aforesaid act on account of their failure in giving benefits of the provident funds, family pension, TDLI and other benefits to the members working in their establishment. It was also alleged that, the respondents since failed in submitting the statutory returns and make necessary payments to the Office of the Provident Fund Commission, they have committed the offence as prescribed under Section 14 (1A), 14(2), 14 (2A), 14A (1) and 14A(2) & 14AA of the said Act. The Learned Magistrate however dismissed all the aforesaid complaints vide the impugned Judgment and order passed on 31st July, 2015.

2. I have carefully perused the impugned order. Though it was sought to be canvassed by Shri. K.B. Chaudhary, learned Counsel appearing for the applicant - authority that, though certain documents were not placed on record, from the material which was placed on record and when there was no specific denial for the allegations as were made in the complaint, the Magistrate ought not have dismissed the complaints filed by the applicant authority, I am not convinced with the submissions so made. On perusal of the impugned order, it is revealed that, the applicant - authority had not placed on record material documents so as to substantiate the allegations made against the respondents therein. Having regard to

the nature of the offences as were alleged against the respondent, it need not be stated that, the commission of the said offence could not have been proved by the applicant - authority without there being documents on record to support the said contention. The learned Magistrate has in many words observed that, no such documents are placed on record by the applicant - authority. In para 29 of the Judgement, the learned Magistrate has observed that, the applicant - authority has not placed on record the information in the Form No.5/A, which was the basic information so as to prove the complicity of the accused in commission of the alleged crime. In the Form No.5/A, the names of the responsible Officers of the Company are to be submitted to the Provident Fund Authorities, so that, in the event of any breach the said Officers are to be held responsible and the necessary action is to be initiated against them. As has been observed by the learned Magistrate, the said material information was not filed before the Court. As has been further observed by the learned Magistrate, the complainant did not produce any information to show that, any inspection under the provisions of law was conducted wherein the fact that there were 398 labourers was noticed by the applicant - authority. As has been further observed in para - 32 of the impugned Judgment, the applicant - authority had also failed in proving the statutory notice under Section 7A. It is

further observed by the learned Magistrate that, though the applicant authority had referred to certain orders to substantiate its contention that the respondents had committed breach of the statutory compliances and thus were liable for the penal action, no such correspondence record was produced before the Court.

3. After having perused the order passed by the learned Magistrate, it does not appear to me that, the learned Magistrate has committed any error in dismissing the complaints filed by the applicant - authority. Even if the entire material is considered as it is, it does not appear to me that, any other decision could have been arrived at than recorded by the learned Magistrate. In the circumstances, I see no reason for allowing the present applications. Hence, the following order.

ORDER

- i) All the criminal applications stand rejected.

(PR. BORA, J.)