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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.421 OF 2001

Ashok s/o Gulab Vaswani,
Age 48 years, Occ. Business,
Managing Director of
Spectrum Alkyd & Resins Ltd.,
Aurangabad, R/o 204,
"Panchdhara" Offyari Road,
Varshwa, Andheri (West), Mumbai ... PETITIONER

VERSUS

- 1) The State of Maharashtra
(Copy to be served on Public
Prosecutor, High Court of
Judicature of Bombay,
Bench at Aurangabad)
- 2) Director General of Police,
Maharashtra State,
Shahid Bhagatsing Marg,
Mumbai (M.S.)
- 3) The Deputy Inspector General
of Police, Behind Old High Court
Building, Aurangabad,
District Aurangabad
- 4) The Commissioner of Police,
Mill Corner, Aurangabad,
District Aurangabad
- 5) The Assistant Provident Fund
Commissioner, Sub-Regional
Office, Behind Cidco Bus Stand,
Cidco, Aurangabad
- 6) The Inspector of Police,
M.I.D.C. Police Station,
Waluj, Aurangabad (M.S.) ... RESPONDENTS

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((2))

Shri H.A. Joshi, Advocate holding for
Shri J.N. Singh, Advocate for petitioner
Shri P.G. Borade, A.P.P. for State

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CORAM: T.V. NALAWADE AND
 SUNIL K. KOTWAL, JJ.

DATED: 11th July, 2017.

ORAL JUDGMENT (PER T.V. NALAWADE, J.):

1. This petition is filed for relief of quashment of F.I.R. No.93/2001, registered in M.I.D.C. Waluj Police Station for offence punishable under Sections 406 and 409 of the Indian Penal Code. Both the sides are heard.

2. The petitioner is Managing Director of one Company. It was noticed that, the Employees' contribution towards provident fund for the month of April and May 2001, which was deducted from the salary, was not deposited with the fund and thereby the offence is committed. Show-cause-notice was issued. The submission of the petitioner is that, within the period of show-cause-notice, the amount was deposited.

3. Learned counsel for the petitioner took this Court through the provisions of Sections 14-A and 14-B of the Employees' Provident Fund Act, 1952. It is submitted that, under the special provisions like provisions of Section 14-A(3), the cognizance of the matter can be taken by the Court upon complaint made by public servant of the concerned Department

and so, it was not possible to register the crime on the basis of F.I.R. This Court has carefully gone through that provision. That provision is in relation to penalty as mentioned in the Act itself and for those offences, the complaint needs to be given by the public servant and then the Court is expected to take the cognizance.

4. In the present matter, the crime is registered under Sections 406 and 409 of the Indian Penal Code. This Court has also carefully gone through the provisions of Section 405 of the Indian Penal Code, in which criminal breach of trust is defined. Explanation No.1 added to the Section in the year 1993 shows that whenever such incident takes place, the presumption is available against the employer that the amount was entrusted with the employer and that he has committed the offence of criminal breach of trust. Thus, it can be said that the crime can be registered even under Section 406 of the Indian Penal Code if there is such default on the part of the employer. This Court sees no reason to interfere in the matter and give relief of quashment of the F.I.R. The petition stands dismissed. Rule stands discharged.

(SUNIL K. KOTWAL)
JUDGE

(T.V. NALAWADE)
JUDGE