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

**(1) CRM No.A-166-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(2) CRM No.A-167-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(3) CRM No.A-169-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(4) CRM No.A-170-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(5) CRM No.A-176-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(6) CRM No.A-187-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)
...Applicant

Versus

Sunil Kumar Kansal
...Respondent

**(7) CRM No.A-188-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)
...Applicant

Versus

Sunil Kumar Kansal
...Respondent

**(8) CRM No.A-195-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)
...Applicant

Versus

Sunil Kumar Kansal
...Respondent

**(9) CRM No.A-197-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)
...Applicant

Versus

Sunil Kumar Kansal
...Respondent

**(10) CRM No.A-198-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)
...Applicant

Versus

Sunil Kumar Kansal
...Respondent

**(11) CRM No.A-200-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(12) CRM No.A-207-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(13) CRM No.A-215-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(14) CRM No.A-216-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(15) CRM No.A-218-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(16) CRM No.A-284-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(17) CRM No.A-285-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**(18) CRM No.A-371-MA of 2017 (O&M)**

Provident Fund Inspector (Enforcement Officer)

...Applicant

Versus

Sunil Kumar Kansal

...Respondent

**Date of decision: September 14, 2017**

**CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH**

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

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**<u>INDERJIT SINGH, J.</u>**

All the above-mentioned cases are taken up together for decision as the point for determination in all the cases is the same.



Applicant-Provident Fund Inspector (Enforcement Officer) has filed these applications under Section 378(4) Cr.P.C. seeking permission for leave to appeals against respondent Sunil Kumar Kansal, challenging the judgments dated 05.07.2016 passed by learned Sub Divisional Judicial Magistrate, Derabassi, whereby the complaints filed by the complainant-applicant were dismissed and the accused-respondent was acquitted.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is further stated that learned SDJM, Derabassi has illegally and wrongfully dismissed the complaints. The applicant shall suffer irreparable loss and injury if the special leave to appeals is not granted. It is, therefore, prayed that leave to file appeals be granted to the applicant.

As per the record, the complainant Provident Fund Inspector (Enforcement Officer) filed complaints against accused Sunil Kumar Kansal under Section 6, 6A, 14(2), 14(1), 14(1A), 14A(1) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 read with Para 3, 4 and 42(d) of the Employees Pension Scheme, 1995. The brief facts of the case as noted down in the judgment dated 05.07.2016 passed by learned SDJM, Dera Bassi, are as under:-

> *"2. Brief facts of the present complaint are that the complainant is an Inspector appointed under Section 13 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and also a public servant within the meaning of Section 21 of I.P.C. The provisions of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952(E.P.F & M.P.Act, 1952) and schemes framed hereunder apply to the establishment known as M/s Dev Spinners Ltd. Dera Bassi. The accused is the person In charge of the said establishment and is responsible for the conduct of its business. He is required to comply with all the provisions of the E.P.E. & M.P.Act, 1952 and the schemes framed there under. He further averred that under Para 8 of the Employees Deposit Linked Insurance Scheme,1976, that the accused is required to pay the Employers' share of contribution towards the Deposit Linked*

*Insurance Contributions in respect of the Employees of the said establishment together with administrative charges for every month within 15 days of the close of that month. In spite of several requests and persuasions, the accused have failed to pay the statutory dues in the manner mentioned in Para 4 above, the Employees' Deposit Linked Insurance Contributions for the following period:-*

| *Year and Month* | *Employee's Pension Fund Contribution A/C 10* | *Due date for payments* |
|---|---|---|
| *02/2008* | *8171* | *15.03.2008* |
| *03/2008* | *8171* | *15.04.2008* |
| *04/2008* | *8171* | *15.05.2008* |
| *Total* | *24,513* | |

*The accused has failed to deposit the Employees Deposit Linked Insurance Contributions amounting to Rs.1473/- and administrative charges of Employees Provident Fund amounting to Rs.30/- for the period 08/2007 to 10/2007 by the stipulated dates and thus have committed offence, which is punishable offence under Section 14(1-B),14(1) & 14(2) of the E.P.F & M.P. Act,1952. It is further averred that the accused is incharge and responsible for the conduct of business of the said establishment for the above period 08/2007 to 10/2007 and are liable to be punished. There are sufficient circumstances for the imposition of normal punishment of both imprisonment and the fine & the complainant proposes to lead evidence against the establishment during the course of trial. The sanction to file prosecution complaint has been accorded by the Regional Provident Fund Commissioner, Punjab & U.T. Chandigarh vide his sanction dated 17.7.2012. Hence, the present complaint."*

***In other connected cases, the relevant period in question is between the year 2006 to 2008.***

In order to prove the charges against the accused, complainant examined Pardeep Kumar Puri, Inspector, who deposed on the lines of complaint and proved the original sanction of prosecution Ex,C1; certified copy of covering Performa for issuance of PF number to the accused Ex.C2; certified copy of coverage letter of EPF Ex.C3; copy of inspection report Ex.C4; copy of summons issued to the accused 15.05.2008 Ex.C5; copy of letter dated 18.07.2008 sent by the accused company to the complainant

Ex.C6, copy of letter dated 20.05.2008 sent by the accused company to the complainant Ex.C7; copy of authority letter dated 11.12.2008 issued by the accused in favour of K.C.Sharma Ex.C8; copy of order dated 30.08.2011 passed by Assistant Commissioner Ex.C9; copy of forwarding letter of the order Ex.C10 and thereafter, counsel for the complainant closed his after notice evidence on 21.03.2015. Thereafter, learned counsel for the complainant tendered into additional evidence Copy of audit report along with balance sheet submitted by the accused before the PF Department as Ex.P12.

In the statement under Section 313 Cr.P.C., the accused denied all the incriminating evidence against him and pleaded himself as innocent.

Learned SDJM, Derabassi after appreciating the evidence, acquitted the accused-respondent vide impugned judgments dated 05.07.2016.

I have heard learned counsel for the applicant and have gone through the record.

From the perusal of the judgments passed by the Court below, I find that the findings have been given as per evidence and law. The evidence has been appreciated in right perspective. In no way, the judgments can be held as perverse or against the evidence. 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.

The perusal of the record shows that only one witness has been examined by the complainant, who was not posted at that time in the area where the factory of the accused namely M/s Dev Spinners Ltd. was situated. The accused has examined himself as DW-1 and deposed that during the period in question the factory remained closed. There was no production activity in the factory premises and as such, there was no worker falling under the purview of the provident Fund at that time. He also stated that on the night of 09.09.2008, there was a major fire in the factory premises which caused heavy losses to the unit and halted the production activities as the entire records as well as machinery, building raw material and production lying in the factory was gutted and in this regard a letter was sent to the complainant on dated 10.09.2008. A DDR was also got registered on 18.09.2008 at Police Station Derabassi. It is also deposed by the accused that the Corporation Bank situated at SCO No.137-138 Sector 8-C, Chandigarh has also, vide its possession notice dated 25.02.2011, taken the physical possession of the factory premises under the provisions of Section 13(4) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest of 2002.

The complainant in the cross-examination stated that he cannot tell how many employees were working in the factory. He further submitted that in report Ex.C4, he mentioned that he has visited the above establishment number of times to verify the provident fund record, but in his cross-examination he deposed that he did not visit the premises of the accused and volunteered that Mr. Ashok Menghi has visited. He further deposed that he was not posted at that relevant time within the area of accused factory. He also deposed that Ashok Mehngi never told him that the factory is lying closed. The complainant further admitted the fact that no balance sheet of accused factory has been placed in the Court file. He further admitted there is no record of statutory inspection done by their department. He also admitted that w.e.f. November 2006 to April, 2008, their department did not receive any complaint from the employee of accused factory in respect of non deposit of PF by the accused. It is argued before learned trial court by the defence counsel that the complainant has averred that the order dated 30.08.2011 passed by the Assistant Provident Fund Commissioner/Assessing Officer under Section 7-A of the Employees Provident Fund & Misc. Provisions Act,1952, was served upon the accused through notice Ex.C10, but the accused has taken a plea that Corporation Bank, Chandigarh has taken the possession of the Company under SARFAESI Act, in February 2011, but the order has been passed on 30.08.2011. PW-1 also deposed in his cross-examination that he does not know if service of any notice/demand notice was effected upon the accused or not. He further deposed that he does not know whether department has published the notice/demand notice in the newspaper or not.

From the evidence on record, I find that the complainant has not produced any cogent evidence on record to prove the commission of offence. No evidence has been produced whether during the relevant period, the factory was running or any worker was engaged by the accused. There is nothing on the record that the complainant has visited the premises nor the complainant produced any other witness to show that any inspection was done and the factory was running at the relevant period or workers were engaged/employed by the accused. It is a criminal case and the complainant is to prove the case beyond reasonable doubt by leading cogent evidence before the Court but no records like balance sheets etc. were produced before the Court. Only enquiry report under Section Section7-A of the Employees Provident Fund & Mis. Provisions Act has been placed but this enquiry report is also not based on the statement of any witness. Rather, order of recovery etc. has been passed under Section 7-A of the above-said Act on the basis of some balance sheets, which are not produced before the Court nor proved as per law. Only on the basis of the enquiry report under Section 7-A conducted by the Assessing Officer, the accused-respondent cannot be convicted. The complainant should have produced the evidence before the criminal Court to prove the commission of offence beyond reasonable doubt.

In view of the above discussion, I find that, in no way, the findings given by learned Court below can be held as perverse or illegal. Rather, the findings have been given as per evidence and law. The impugned judgments dated 05.07.2016 passed by learned SDJM, Derabassi, are correct, as per law and evidence and do not require any interference from this Court. No ground is made out for grant of leave to appeals and therefore, all the above-mentioned applications stand dismissed.

**September 14, 2017** **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**