IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM No.M-16424 of 2017 (O&M)

M/s Hind Security Agency and another

...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar

...Respondent

(2) CRM No.M-16426 of 2017 (O&M)

M/s Hind Security Agency and another

...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar

...Respondent

(3) CRM No.M-16428 of 2017 (O&M)

M/s Hind Security Agency and another

...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar

...Respondent

(4) CRM No.M-16432 of 2017 (O&M)

M/s Hind Security Agency and another

...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar

...Respondent

(5) CRM No.M-16438 of 2017 (O&M)

M/s Hind Security Agency and another

...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar

...Respondent

(6) CRM No.M-16440 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

(7) CRM No.M-16441 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

(8) CRM No.M-16442 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

(9) CRM No.M-16559 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

(10) CRM No.M-16560 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

(11) CRM No.M-16581 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

(12) CRM No.M-16582 of 2017 (O&M)

M/s Hind Security Agency and another
...Petitioners

VERSUS

Enforcement Officer, EPFO Amritsar
...Respondent

Date of Decision: May 10, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vivek Salathia, Advocate
for the petitioners.

****

INDERJIT SINGH, J.

This order shall dispose of all above-mentioned cases as the point for determination in all the cases is the same.

The above-mentioned petitions have been filed by petitioners under Section 482 Cr.P.C. for quashing of complaints bearing No.202/2015, 203/2015, 198/2015, 206/2015, 200/2015, 199/2015, 204/2015, 197/2015, 201/2015, 207/2015, 205/2015 and 208/2015 all dated 11.03.2015/ 13.03.2015 titled as 'Enforcement Officer vs. M/s Hind Security Agency under Sections 6, 6A, 6C, 7Q,14, 14(1A), 14(1B), 14(2), 14A(2) and 17B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for brevity the Act), and summoning orders dated 11.03.2015 passed by learned Chief Judicial Magistrate, Amritsar and all the subsequent proceedings arising therefrom.

Learned counsel for the petitioners argued filing of the complaints at this stage is not maintainable. He further argued that these complaints can be filed by the respondent after passing of the assessment order and if the amount is not paid and default is committed, whereas in the present case, assessment order has already been passed and the amount, as per annexures, has already been received by the respondent. He next argued that the sanction order to prosecute has been given after the recovery of the amount.

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

From the record, I find that Enforcement Officer, Employees Provident Fund Organization has filed the complaints against M/s Hind Security Agency and Ranjit Singh alleging that under Section 6 of the Act read with paragraphs 30, 32A and 38 of the Employees Provident Fund Scheme 1952, the accused is required to pay the Employees' & Employers contributions to the Provident Fund 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. It is also stated that under Section 6A of the Act read with paragraphs 3, 4 & 5 of the Employees' Pension Scheme, 1995, the accused is required to pay Employer's share of contributions to the Employees' Pension Fund in respect of the employees of the said establishment for every month within 15 days of the close of month. Under Section 6C of the said Act read with paragraph 7 and 8, 8(1), 8-A of the

Employees' Deposit Linked Insurance Scheme, 1976, the accused is required to pay the Employers share of contributions to Insurance Fund in respect of the employees of the said establishment for every month within 15 days of the close of month. Further, interest charged under Section 7Q of the Employees' Provident Funds and the Miscellaneous Provisions Act, 1952 on any amount due under the Act from date on which the amount has become so due till the date of its actual payment and such non-payment is punishable under Sections 14(1), 14(2) and 14 (2A) of the Act. In spite of several notices, the accused failed to pay Provident Fund Contributions to the Regional Provident Fund Commissioner, Amritsar in manner specified. It is also in the complaint that the accused have thus committed offences under Sections 14(2) and 14-A of the Act read with paragraph 76(b) and (d) of the Employees Provident Fund Scheme, 1952.

Learned counsel for the petitioner argued that mere default itself, is not punishable but these payments are subject to Section 7A of the said Act. I have gone through the provision of Section 7 of the Act, which provides as under:-

> "*1[7A. Determination of moneys due from employers.—[(1) The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—*
> *(a) in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute; and*
> *(b) determine the amount due from any employer under any provision of this Act, the Scheme or the [Pension] Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.]*
>
> *(2) The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of Civil Procedure,*

> *1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—*
> *(a) enforcing the attendance of any person or examining him on oath;*
> *(b) requiring the discovery and production of documents;*
> *(c) receiving evidence on affidavit;*
> *(d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860).*
> *(3) No order shall be made under sub-section (1), unless [the employer concerned] is given a reasonable opportunity of representing his case.*
> *[(3A) Where the employer, employee or any other person required to attend the inquiry under sub-section (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.]*
> *[(4) Where an order under sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show-cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry: Provided that no such order shall be set aside merely on the ground that there has been an irregularity in the service of the show-cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer. Explanation.—Where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that the appellant has withdrawn the appeal, no application shall lie under this sub-section for setting aside the ex parte order.*
> *(5) No order passed under this section shall be set aside on any application under sub-section (4) unless notice thereof has been served on the opposite party.]]*

It is nowhere argued by learned counsel for the petitioner that in the present case there was any dispute regarding the applicability of this Act to an establishment of the petitioner. It is also not argued that there was any dispute regarding determination of the amount. No provision has been shown that complaint cannot be filed till the enquiry is completed under Section 7A of the Act or after amount paid by the employer. In the present case, as per complainant, notices were given but amount was not deposited. As per the case of the respondent-complainant, the amount was recovered by attaching the account of the present petitioners etc. as per Annexure P-4 on 20.01.2015. The sanction to prosecute the petititoner has been given on 02.02.2015 and complaints were filed in March 2015. In my view when the amounts are not paid as per Section 6, 6A, 6B of the Act etc., it is punishable under Section 14A of the Act. Section 14 of the Act provides as under:-

> *"**14. Penalties.** (1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act, the Scheme, the Pension Scheme or the Insurance Scheme or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to one year, or with fine of five thousand rupees, or with both.*
>
> *(1A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause a of sub-section 3 of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to three years but –*
>
> *(a) which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;*
>
> *(b) which shall not be less than six months and a fine of five thousand rupees, in any other case:*
>
> *Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.*
>
> *(1B) An employer who contravenes, or makes default in complying with, the provisions of section 6C, or clause a of sub-section 3A of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but*

which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees:

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term.

(2) Subject to the provisions of this Act, the Scheme, the Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to four thousand rupees, or with both.

(2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or noncompliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees.

***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.

***14AA. Enhanced punishment in certain cases after previous conviction** - Whoever, having been convicted by a court of an offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme, commits the same offence* *shall be subject for every such subsequent offence to imprisonment for a term which may extend to five years, but which shall not be less than two years, and shall also be liable to a fine of twenty five thousand rupees.*

14AB. Certain offences to be cognizable *- Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable.*

14AC. Cognizance and trial of offences *– (1) No Court shall take cognizance of any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed under Section 13.*

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or the Pension Scheme or the Insurance Scheme.

14B. Power to recover damages *- Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of section 15 or subsection 5 of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.*

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

14C. Power of court to make orders *- (1) Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations* *required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17, the court may, in addition to awarding any punishment, by order in writing require him within a period specified in the order which the court may, if it thinks fit and on application in that behalf from time to time, extend, to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed.*

(2) Where an order is made under sub-section (1), the employer shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the court, but if, on the expiry of such period or extended period, as the case may be, the order of the court has not been fully complied with, the employer shall be deemed to have committed a further offence and shall be punished with imprisonment in respect thereof under section 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with."

The above-stated provisions showing the penalty nowhere state that the payment has to be made after enquiry under Section 7A of the Act. When the default in complying with the provisions of Section 6(C) etc. has been made, it is punishable under Section 14 of the Act.

At this stage, there is nothing on the record from which it can be held that filing of the complaints and passing of the summoning orders amount to abuse of process of law or miscarriage of justice.

Therefore, finding no merit in all the petitions, the same are dismissed.

May 10, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

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