

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.18 of 2013

1.S.Mohanasundaram

2.S.Saravanan

... Petitioners/Petitioners/
Counter Petitioners

Vs

S.Shankar,
Enforcement Officer,
O/O.Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.101, 100 ft. Road,
Mudaliarpeta,
Puducherry 605 004.

... Respondent/Respondent/Petitioner

Criminal revision preferred under Section 397 r/w 401 of Cr.P.C. against the order dated 25.10.2012 made in Cr.M.P.No.28 of 2012 in M.C.No.504 of 2012 on the file of the Court of District Magistrate, Puducherry.

For Petitioners : Mr.T.M.Naveen

For Respondent : Ms.V.J.Latha

सत्यमेव जयते
O R D E R

The Enforcement Officer of the office of the Regional Provident Fund Commissioner filed an application under Section 110 (f)(i)(c) of Cr.P.C. before the Executive Magistrate, Puducherry which was taken on file as M.C.No.504 of 2012 and a show cause notice under Section 111 Cr.P.C. dated 07.09.2012 was issued calling upon the petitioners to show cause as to why they should not be ordered to execute a bond for Rs.1,00,000/- with two sureties for the said sum to show good behaviour to the Government and all the citizens of India for a period of three years or such other period as may be decided. The petitioners were directed to appear before the Executive Magistrate at 10.30

a.m. on 14.09.2017 and give their explanation. It is the case of the Enforcement Officer that the petitioners are the directors of M/s.Saratha Life Style Private Limited, which is an establishment to which the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for brevity "the Act") would apply and that, they are not remitting the provident fund dues collected from the employees together with their contribution within the stipulated period. It is further alleged that they are habitually committing the said violation and therefore, they should be required to execute a bond under Section 110 Cr.P.C. On receipt of the show cause notice, the petitioners appeared before the Executive Magistrate and filed an application in M.P.No.28 of 2012 in M.C.No.504 of 2012 for dismissing the petition filed by the Enforcement Officer on the ground that they are not defaulters and that, they have paid all the dues. After hearing either side and perusing the records, the Executive Magistrate, Puducherry, by the order dated 25.10.2012, has rejected the case of the petitioners and has directed them to execute the bond for Rs.1,00,000/- with one surety on or before 01.11.2012. Challenging the order dated 25.10.2012, the petitioners are before this Court.

2.Mr.Naveen, learned counsel for the petitioners submitted that the petitioners are not habitual offenders as required under Section 110 of the Code, inasmuch as not even once, they have been charged by the Department under Section 14 of the Act which defines the offences and the punishments under the Act.

3.Per contra, Mrs.V.J.Latha, learned counsel for the Department produced records to show that the petitioners were chronic defaulters and therefore, the Executive Magistrate was perfectly justified in passing the order impugned.

4.This Court gave its anxious consideration to the rival submissions.

5.Section 110(f) (i) (c) of Cr.P.C. reads as follows :

"110. Security for good behaviour from habitual offenders

When an Executive Magistrate receives information that

there is within his local jurisdiction a person who

(f) habitually commits, or attempts to commit,

or

abets the commission of

(i) any offence under one or more

of the

following Acts, namely:

(a)

(b)

(c) the Employees' Provident Funds
and Family

Pension Fund Act, 1952 (19

of 1952);"

6.A reading of the above provision shows that, for invoking Section 110(f)(i)(c) of Cr.P.C., a person should have committed the offence under the the Act more than once.

7.Section 14 of the Act is the penal section which defines the offences and prescribes the punishments for them. Under Section 14-AB of the Act, an offence relating to default in payment of contribution by the employer punishable under the Act shall be cognizable. In other words, not all offences under the EPF Act are cognizable and only an offence relating to default in payment of contribution by the employer alone is cognizable. Under Section 14(2-A) of the Act, contravention or default in complying with any provision of the Act is punishable with imprisonment which may extend to six months. Under Section 14-AC of the Act, no Court shall take cognizance of any offence punishable under the Act, 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 other words, the Police cannot file a final report under the Act and a prosecution can be launched only on the report filed by the Inspector appointed under Section 13 and that too, with the previous sanction of the Commissioner.

8.Admittedly in this case, the Department has not launched any prosecution against the petitioners under Section 14 of the Act for the alleged default. Therefore, the petitioners cannot be categorized as offenders much less, habitual offenders under Section 110(f)(i)(c) of Cr.P.C. for requiring them to execute a bond for good behaviour. In such view of the matter, this petition is allowed and the impugned order dated 25.10.2012 passed by the District Magistrate, Puducherry in Cr.M.P.No.28 of 2012 in M.C.No.504 of 2012 is set aside.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya

To

1.District Magistrate,
Puducherry.

2.Enforcement Officer,
O/O.Regional Provident Fund Commissioner,
Employees Provident Fund Organisation,
No.101, 100 ft. Road, Mudaliarpeta,
Puducherry 605 004.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.K.P.Jotheeswaran, Advocate Sr.No.83065
+1 cc to M/s.V.J.Latha, Advocate Sr.No.82132

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KJ(CO)
CSL/28.12.2018



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