

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

Decided on: 17.09.2018

1. CRM-M No.23472 of 2018 (O&M)

M/s. Jodhpur B.K.O. through its partners and others

....Petitioners

Versus

Enforcement Officer Employees Provident Fund Organisation and
another

....Respondents

2. CRM-M No.36898 of 2018 (O&M)

M/s. Jodhpur B.K.O. through its partners and others

....Petitioners

Versus

Enforcement Officer Employees Provident Fund Organisation and
another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vishal Sodhi, Advocate
for the petitioners (in both the petitions)

ARVIND SINGH SANGWAN, J.

By way of this order, I intend to dispose of the aforesaid
two petitions as common questions of law and facts are involved for
adjudication.

Prayer in **CRM-M No.23472 of 2018** is for setting-aside
the order dated 04.01.2018 (Annexure P10) passed by the Additional
Chief Judicial Magistrate, Amritsar, dismissing the application filed by
the petitioners for discharge in private complaint No.6696 of 2012

under Sections 6, 6-A, 6C, 14, 14(1A), 14(1B), 14(2), 14A(2) read with Section 17-B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (in short 'the Act of 1952') whereas prayer in ***CRM-M No.39898 of 2018*** is for setting-aside the subsequent order dated 23.02.2018 (Annexure P-11), vide which the trial Court has framed charges against the petitioners under Sections 14, 14(2), 14-A and 17(b) of the Act of 1952 read with Paragraphs 76(b) and (d) of the Employees Provident Fund Scheme, 1952, 29(b) and (d) of the Employees Deposit Linked Insurance Scheme and para 42 of the Employees Pension Scheme, 1995.

Brief facts of the case are that the petitioners are partners of M/s. Jodhpur B.K.O. (referred to hereinafter as 'the Establishment'). The respondent No.1 i.e. the Enforcement Officer under the Employees Provident Fund Organization had filed a complaint praying for initiation of criminal prosecution of the petitioners under the provisions of Sections, 6, 6-A, 6C, 14, 14(1A), 14(1-B), 14(2), 14A (2) and 17-B of the Act of 1952. As per this complaint, it is stated that M/s. Jodhpur B.K.O., has failed to pay the employees and employers contribution to the Provident Funds in respect to the employees of the said Establishment along with the administrative charges, for every month within a period of 15 days from the close of month as required under Sections 6, 6-A of the Act of 1952 read with Paragraphs 30 and 38 of the Employees Provident Fund Schemes, 1952. It is further stated in the complaint that as per Section 6 of the Act of 1952 read with Paragraphs 7 and 8 of the Employees Deposit Linked Insurance Schemes, 1976, the

accused have further failed to pay the employers' share of contribution to insurance fund in respect of the employees of the Establishment for every month within a period of 15 days from the close of the month. It is also stated that the employers of the Establishment have failed to pay the damages by way of penalty under Section 14(B) of the Act of 1952 read with Paragraph 32-A of the Employees Provident Fund Schemes, 1952, Para 5 of Employees Pension Schemes, 1995 and as per provisions of Para 5 of the Employees Deposit Linked Insurance Scheme, 1976, on account of committing a default in payment of the contribution towards the provident fund, administrative charges, pension fund, employees deposit linked insurance, amounting to Rs.3,37,959/- from May, 1998 to April, 2004.

It is further stated that non-payment of contribution as stated above, on behalf of the Establishment, is an offence punishable under Paragraphs 42(d) of the Employees Pension Scheme, 1995 read with Section 14(1)(2)(2-A) of the Act of 1952. Similarly, on account of non-payment of Employees Linked Insurance, the Establishment has committed an offence punishable under Paragraph 29(d) of the Employees Deposit Linked Insurance Scheme read with aforesaid Sections of the Act of 1952. It is also stated that even for non-payment of interest towards the contribution of Employees Provident Fund and Miscellaneous Provisions Act, 1952, on the amount which has become due till the date of its actual payment, for non-payment, the Establishment and the employers/In-charge who are responsible for the conduct of its business, are liable to face the prosecution punishable

under the aforesaid provisions of the Act. Thus, giving all the details about the default in non-payment, the complaint (Annexure P1) was filed.

The trial Court, thereafter, summoned the petitioners. The petitioners on their appearance before the trial Court moved an application for discharge (Annexure P9). The trial Court vide impugned order dated 04.01.2018 (Annexure P10) dismissed the said application. The operative part of the order dated 04.01.2018, reads as under:-

“2. After hearing the contentions of ld. counsel for the parties, this Court is of the considered opinion that the prosecution no doubt filed the present complaint in the year 2012 but the same relates to the offence alleged to be committed in the year 1998 to 2004 on the ground that inspite of several notices, the accused failed to pay statutory dues under Section 7 Q and 14 B of the Employees Provident Fund and Misc. Provisions Act, 1952. It comes out that the law was set into motion in the year 1998 but the present complaint is filed when the sanction of the prosecution had been granted by Regional Provident Fund Commissioner, Amritsar on 13.3.2012. The prosecution placed on record the sanction order Ex.C7. As the accused failed to deposit the same, therefore, the prosecution was launched against the accused under the relevant sections. No doubt, the present complaint was filed by Sohan Kandayara being Enforcement Officer but no ground is made out to discharge the accused as the prosecution failed to examine him as witness. It is on record that Kiran Sharma PW1 appeared being Account Officer of EPFO office and clarified that vide authority letter Ex.C9, APFC Amritsar authorized her to make the statement as the

complainant/Enforcement Officer has been retired from the department. The witness categorically proved the final order of damages under Section 14-B alongwith interest under Section 7 Q of EPF Act, 1952 duly signed by the then APFC whose signature she identified being used to work under him. The final order is Ex.C4 on the record. The complainant also proved the recovery certificate Ex.C5. It is on the record that a Show Cause Notice to the accused for deposit the amount was duly served which is Ex.C6 on the file. From the cross-examination of PW1, nowhere comes out that the damages levied by the department were ever recovered alongwith interest from the accused. The contention of the accused that they are not the responsible person for carrying on the business is subject matter of evidence. Even Ex.C4 which is the Final order of damages clarifies that inspite of giving opportunities, the accused failed to attend the proceedings and even failed to raise any objection towards the propose of levy of damages so far. In these circumstances, the entire evidence is liable to be taken into consideration and at this stage, no ground is made out to discharge the accused. Application is accordingly dismissed.

To come up on 19.01.2018 for framing of charge.

*Announced
4.1.2018*

*(Ravi Inder Kaur)
Addl. Chief Judicial Magistrate,
Amritsar.”*

Subsequently, the trial Court vide order dated 23.02.2018 (impugned in CRM-M No.36898 of 2018) has framed the charges against the petitioners.

Counsel for the petitioners has submitted that there is a delay in filing the complaint from the alleged period of default and, therefore, the complaint is barred under Section 468 Cr.P.C. It is further

submitted that there is no provision under the Act of 1952 to launch prosecution against the petitioners.

Counsel for the petitioners has further argued that the penalties prescribed under Sections 14(1), (1A), (1B), (2), A(2) are independent and are meant to punish the Establishment when there is a default in payment, arrears or dues towards the contribution fund whereas in the instant case, there was no due pending against the petitioners as the petitioners had deposited the amount of Rs.2,84,809/- as arrears. It is further argued that the prosecution has been launched after passing of the order dated 10.08.2005 for levy of damages under Section 14-B of the Act of 1952 and even, after a Recovery Certificate dated 05.04.2016 was issued by the Assistant Provident Fund Commissioner for the recovery of damages.

Counsel for the petitioners has also submitted that in pursuance, thereof, only one notice was issued to the petitioners on 10.05.2006 and, therefore, no proper notice of show cause was issued for depositing the said amount. It is further argued that the initiation of the prosecution is barred by limitation under Section 468 Cr.P.C., as the complaint has been filed after a huge delay of 14 years.

After hearing the counsel for the petitioners, I find no merit in both the petitions. It is the case of the petitioners that petitioner No.1 is an Establishment and, therefore, a duty is cast on the Establishment under the Act and various Schemes to deposit the respective contribution within a period of 15 days of close of the month and the argument raised by counsel for the petitioners that after the assessment order was passed (Annexures P4 and P5), no notice of show

cause was given to the petitioners, is not a ground for quashing the complaint as the petitioners cannot escape their liability simply by putting it on the complainant as the recovery notice Ex.C6 is on record, which was issued after the final order and the recovery certificate Ex.C4 and Ex.C5 pertaining to the year 2005.

Though, in para No.15(d) of the petition, it is stated that the petitioners had deposited a sum of Rs.2,84,809/- clearing the dues towards the contribution fund and administrative charges, nothing is mentioned about payment of interest or penalty much less, no receipt regarding deposit of the aforesaid amount is attached and therefore, the argument raised by counsel for the petitioners that the petitioners have cleared the amount before initiation of the prosecution is not acceptable.

Further the argument raised by counsel for the petitioners that the complaint is time barred as per the provisions of Section 468 Cr.P.C. is contrary to own case of the petitioners, as stated in para No.11 that the explanation (by complainant) regarding the delay in launching the prosecution is because of delay in sanction for the prosecution and therefore, it is for the trial Court to decide it finally and the same alone cannot be a ground for quashing the proceedings, being a disputed fact as to when the Court has taken cognizance.

The trial Court has passed a well-reasoned order dismissing the application for discharge to hold that it is clear from the final order Ex.C4 and the Recovery Certificate Ex.C5, which are pertaining to the year 2005 followed by a show cause notice Ex.C6, which is pertaining to the year 2006 that the petitioners have failed to

pay the damages on contribution, administrative charges, family pension fund contribution, insurance contribution and therefore, finding no illegality or infirmity in the order dated 04.01.2018, dismissing the application for discharge as well as in the order dated 23.02.2018, framing charge against the petitioners, both the petitions are dismissed.

(ARVIND SINGH SANGWAN)
JUDGE

17.09.2018
yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No