

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 15.10.2018

1. CRR-2145-2015

D. N. Singla

...Petitioner

vs.

Provident Fund Inspector and Ors.

..Respondents

2. CRR-2146-2015

D. N. Singla

...Petitioner

vs.

Provident Fund Inspector and Ors.

..Respondents

3. CRR-2147-2015

D. N. Singla

...Petitioner

vs.

Provident Fund Inspector and Ors.

..Respondents

4. CRR-2148-2015

D. N. Singla

...Petitioner

vs.

Provident Fund Inspector and Ors.

..Respondents

5. CRR-2149-2015

D. N. Singla

...Petitioner

vs.

Provident Fund Inspector and Ors.

..Respondents

6. CRR-2150-2015

D. N. Singla

...Petitioner

vs.

Provident Fund Inspector and Ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Raj Kumar Gupta, Advocate,
for the petitioner(s).

Mr. Sanjay Tangri, Advocate,
for respondent No.1.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN,J

Prayer in these petition is for setting aside the judgments dated 29.08.2014 passed by the trial Court vide which, the petitioner was held guilty for an offence punishable under Section 14 (1-A) and 14 A of the Employees' Provident Fund & Misc. Provisions Act, 1952 (for short 'the Act') as well as the orders dated 30.08.2014 vide which the petitioner was sentenced to undergo rigorous imprisonment for a period of 06 months and to pay a fine of Rs.500/- each in all the 06 complaints and the judgments dated 26.05.2015 passed by Additional Sessions Judge, Hisar, vide which the appeals filed by the petitioner challenging the aforesaid judgments were dismissed.

Since, the common question of law is involved in all the six complaints, they are being disposed of by common judgment.

CRR-2145-2015

Brief facts of the case are that the respondent/complainant filed a criminal complaint No. 45-II dated 06.10.2009 with the allegations he was appointed as Inspector under Section 13 of the Act and is a public servant within the meaning of Section 21 of IPC. It was further contended that M/s Aravali Pipes Ltd. 5 K.M. Hansi Road, Hissar (herein after to be referred as “the said establishment”) was an establishment covered under the Act. The

code number of the said establishment is HR/7408. It was further averred that the petitioner, being General Manager (Works) and V.K.Bansal being occupier were responsible for the conduct of the business of the said establishment. They were required to comply with all the provisions of the Act. Under paragraph 4 of the Employee's Pension Scheme, 1995, the accused are required to pay the Employer's contribution to the pension Fund in respect of the employees of the said establishment for every month within 15 days of the close of the month. In spite of the several requests, the accused failed to pay the Pension Fund Contribution for the following period:-

<i>Month</i>	<i>Employees' share</i>	<i>Employer's share</i>
7/99	0	10703
8/99	0	10703
9/99	0	10703
Total	0	32109

It was further mentioned that petitioner-D.N.Singla and V.K.Bansal being Director and owner of the said establishment respectively, were in charge of the said establishment during the relevant period and they were responsible for the conduct of its business. Due to their neglect, they had failed to comply with the provisions of the Act and as such, they had committed offence under the Act. The sanction to file the above prosecution complaint was granted by the Regional Provident Fund Commissioner vide his sanction order dated 11.09.2009.

Thereafter, the trial Court summoned the petitioner to face the trial for commission of offence punishable under Section 14 (1-A) and 14 A of the Act and, thereafter, notice of accusation was served upon the petitioner and his co-accused, namely, V.K.Bansal (since deceased).

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The facts in all these five cases were identical to the facts noticed above except the month and employees' share qua which the separate complaints were filed.

In all the cases, PW1-P.D.Singhmar, retired Enforcement Officer/Accounts Officer, has appeared and stated that during the period, mentioned in the complaints, the said establishment did not deposit its contribution of provident fund of its employees and despite notice and inquiries, the contribution was not deposited. This witness, in his statement, tendered following documents:-

“Ex. P-1: Copy of allotment of Code no. for new coverage of PF.

Ex.P-2: Copy of application of the Employees' Provident Fund.

Ex.P-3: Copy of Form No.5A filled up by the employer.

Ex.P-4: Copy of summon to accused no. 1 to appear in person.

Ex.P-5: copy of bailable warrants to accused no.3.

Ex.P-6: Copy of final order u/s 7A of the Act dated 8.2.2007.

Ex.P-7: copy of sanction order dated 16.9.2009 for prosecuting the accused.

Thereafter, the Public Prosecutor closed the evidence in all the cases.

It is worth noticing here that accused No.3-V.K.Bansal (since deceased) confessed his guilt and the trial Court sentenced him for the period already undergone by him vide separate judgment and order of quantum dated 05.03.2014.

The petitioner contested the complaint(s) and after recording the statement under Section 313 Cr.P.C., he gave his option to lead his defence evidence. The petitioner examined DW1-Suraj Mal Yadav, time official in charge of M/s Polymas, Delhi Road, Hissar. This witness stated that he has resigned the establishment (M/s Aravali Pipes Ltd. 5 K.M. Hansi Road, Hissar) in the year 1998 from the post of Personal Officer and petitioner/accused No.2, was also an employee of the said establishment, had resigned on 29.10.1997. The other co-accused V.K.Bansal had died on 17.03.2014. This witness further stated that on declaration form, submitted by the employees who want their provident funds, were forwarded to Assistant P.F. Commissioner, Rohtak and, thereafter, P.F.Commissioner, Rohtak, released the amount by way of cheque in the account of the concerned employees

In cross-examination, this witness stated that he remained employee of M/s Aravali Pipes Ltd. From 16.05.1994 till November 1998 when the factory was closed.

Thereafter, the petitioner examined DW2-Ram Chander, LDC, office of Regional Commissioner, Rohtak who brought the summoned record. This witness stated that as per the record, petitioner/accused No.2 had resigned from M/s Aravali Pipes Ltd. on 01.11.1997 and on his request, his P.F. Contribution was paid by M/s Aravali Pipes Ltd. for the year 1997-98 i.e. upto the month of February, 1998. This witness has further stated that after resignation of the petitioner, he is not liable for any contribution of P.F. on behalf of M/s Aravali Pipes Ltd.

Petitioner, thereafter, tendered the following documents and closed his evidence.

Ex.D-1: Copy of Pf application dated 24.5.1999.

Ex.D-2: Copy of Ledger Account.

Ex.D-3: Copy of Ledger Account.

Ex.DX: Copy of Ledger Account.

Ex.DW-1/A : Copy of appointment letter of Suraj Bhan Yadav.

Ex.DW-1/B : Copy of certificate issued by accused no.3 to accused no.2.

The trial Court, thereafter, convicted the petitioner and sentenced him to undergo 06 months rigorous imprisonment and to pay a fine of Rs.500/- in all the 06 complaints.

The appeal filed by the petitioner was also dismissed and, thereafter, the petitioner has filed the present petition which is pending since 2015. The sentence of the petitioner was suspended by this Court on 22.06.2015 while admitting the revision petition.

As per custody certificate dated 15.06.2015, filed by learned State counsel, the petitioner has undergone 21 days of actual sentence out of 06 months awarded by the trial Court.

Counsel for the petitioner has raised following arguments:-

(a) that it has come in the evidence of DW2-Ram Chander, LDC, office of Regional Commissioner, Rohtak, that petitioner has resigned on 01.11.1997. For a ready reference, the operative part of the statement of DW-2 is reproduced as under:-

“DW2-Statement of Ram Chander, LDC office of Regional Commissioner office, Rohtak.

w.o.

Stated that I have brought the summoned record relating to Sh. D.N. Singla, an ex-General Manager of M/s Arawali Pipe Ltd, 5 KM stone, Hansi (Hisar). The aforesaid employee resigned from Arawali Pipes on

01.11.1997 as per our record. The contribution of PF has been paid by Arawali Pipe Ltd. for the year 1997-98 i.e upto February 1998. The form 3A and form 6A as summoned is not traceable in our record. Form 3A relates to monthly returns in which names of employee/officials of M/s Aravli Pipe ltd. are mentioned whereas form 6A relates to the annual return in which the names of employees/officials of Aravli Pipe Ltd are mentioned. Form 3A/6A are not available in our record w.e.f. 1997 onwards and I cannot bring the same. I have brought the ledger card copy of which is annexed as Ex.RX which has been given to D.N. Singla which bears the signatures of Sh. J.P.Singla Asstt. P.F.Commissioner and I identify his signatures. File of this ledger account P.F amount has been released to Sh. D.N.Singla since he has resigned from M/s Aravali Pipe Ltd. After resignation the said employee who has resigned is not liable for any contribution of PF on behalf of company.

XXXXXXXXXX By Sh. C.P.Sharma, E.O./complainant. Nil opportunity given.”.

Counsel for the petitioner, on the basis of statement of this official witness, has submitted that once, it is proved that the petitioner has resigned on 01.11.1997 and later on his PF amount was released which was also proved by this witness, the Courts below had failed to appreciate the factual position that not only the petitioner resigned on 01.11.1997 but subsequent thereto, his contribution of PF was also returned and, therefore, the Courts below have wrongly assumed that the petitioner could not prove that he resigned on 01.11.1997.

(b). that even from the statement of PW1 it has come on record that vide Ex.P6, the order passed by Assistant Provident Fund Commissioner, the company M/s Aravali Pipes Ltd. was taken over by

Haryana Financial Corporation Branch, Hisar on 07.10.1997 and it was resorted to the company on 14.01.1998 as per the order passed by this Court and, thereafter, the possession was again given back to Haryana Financial Corporation, as per order of Hon'ble Supreme Court on 11.10.1999. Counsel has drawn strength from this order to submit that once the entire business of the company including assets and properties were taken over by Haryana Financial Corporation on 07.10.1997, all the employees left the company and the petitioner has also given the resignation in the same month. The operative part of the order (Ex.P6) is reproduced as under:-

“On 2.02.07 I have received a confirmation letter dated HFC/HSR/2007 3746 dated 24.01.07 from the office of Haryana Financial Corporation Branch Office, Hisar which confirms the factual position of this establishment that possession of the company namely M/S Aravli Pipes Ltd, Hisar was earlier taken by them on 7.10.97 which was restored to the company on 14.01.1998 as per Hon'ble High Court Orders the possession was again taken on 11.10.1999 in terms of Hon'ble Supreme Court order and the said orders of Hon'ble Supreme Court shall continue in operation”

It is, thus, submitted that from own documents of the complainant, which is completely ignored by both the Courts below, it is proved that w.e.f. 07.10.1997, the management and possession of M/s Aravali Pipes Ltd. was taken over by Haryana Financial Corporation and, thereafter, the petitioner was no more in service.

(c) that PW1 further admitted in his cross-examination that:-

“It is correct that if any officer or employee (member of the scheme in our record) company resigns

or removed from the job, he has to fill the claim form, the same is forwarded by the company in which he is official and sent to our department and after verification and on being satisfied, we release his EPF. It is correct that EPF amount of that person is paid by amount payee cheque directly to the banker of the claim in which the claimant holds the amount. Intimation to him. It is correct that letter Ex.D1 was received by our Department from Arawali Pipe Lmt. And payment of EPF was released by letter Ex.D2. On the basis of claim form the amount was released to D.N.Singla vide letter Ex.D2. I do not know whether Arawali Pipe Lmt. was possessed by HSF on 07.10.1997 for non-payment of loan amount.”

Learned counsel further submits that there was no scope for the Courts below to forum an opinion to convict the petitioner contrary to the admission of PW1, the complainant himself. Counsel further submits that this witness in clear terms had admitted that the documents Ex. D2 and D3 were issued by Regional Provident Fund Commissioner, Rohtak and, thereafter, there was no occasion for the petitioner to receive the payment of E.P.F. if he was continuing in service of M/s Aravali Pipes Ltd. after 01.11.1997.

(d.) that even DW1-Suraj Mal Yadav has stated that the petitioner has resigned on 29.10.1997 and he had seen the original letter and identify the signatures of Sh. V.K.Bansal, CMD of M/s Aravali Pipes Ltd. who had expired on 17.03.2014 and proved that letter as Ex.DW1/B.

In cross-examination, no suggestion was given to this witness that petitioner continued as an employee of M/s Aravali Pipes Ltd. after 01.11.1997.

Counsel further relied upon documents Ex.D1 dated

24.05.1999, vide which the petitioner was paid his P.F. of Rs.60277 vide cheque dated 29.04.1999 and corresponding ledger Ex.D2 in this regard. He further submits that both these documents were put to PW1 during his cross-examination and was admitted by him that these documents were issued by his office and there was no scope for the Courts below to held that the petitioner did not resign on 29.10.1997.

(e). that in the statement, recorded under Section 313 Cr.P.C., it was nowhere put to the petitioner that he was in-charge of M/s Aravali Pipes Ltd. relating to his particular period for which the complaint has been filed and, therefore, in the absence of any specific question put to him, the petitioner was not afforded proper opportunity to lead his defence evidence in order to rebut the evidence which has come against him. Statement of the petitioner reads as under:-

“Statement of accused D.N.Singla, General Manager (works), Jindal Strips Colony, Hisar

W.O

Q1 It has come into evidence against you that you alongwith your co-accused V.K.Bansal (who had already confessed) are in charge of and responsible for the conduct of business of the establishment M/s Aravali Pipes Ltd. and you are required to comply with all the provisions of said Act, the scheme (the pension scheme or the insurance scheme) in respect of the said establishment. As per Ex.P1 (coverage performa) and Ex.P3 (form 5-A, ownership return). To comply the same you are required to pay the employers contribution together with employees contribution every month within 15 days of closure of that month, but inspite of several requests you have failed to comply the Act by depositing the aforesaid contribution which was assessed under section 7A as per Ex.P6 (order under section 7A). What

you have to say in this regard?

Ans. It is incorrect. PFI has made false case against me.

Q2. Why the witnesses have deposed against you and why the case has been registered.

Ans. I had left the job and I have no responsibility. A false case has been registered and witnesses have deposed falsely.

Q3 Do you want to lead defence evidence?

Ans Yes.

RO&AC

Recorded in open Court under my supervision and dictation.

(f). that the complainant has failed to produce on record any notice or inquiry conducted by the Department to hold that the company or the petitioner were given any notice or opportunity of hearing to defend their case and the allegations made in the year 1998 whereas the complaint (s) has been filed in the year 2009 i.e. after a long period of more than 10 years and, thereafter, the complaint has been filed beyond the period of limitation prescribed under Section 468 of Cr.P.C. as maximum punishment provided under Sections 6, 14 (1-A) and 14 A of the Act is 01 year and, therefore, the complaint was filed after a lapse of period of limitation.

In reply, counsel for respondent No.1/complainant has submitted that the petitioner has failed to placed on record his resignation letter or the order passed by M/s Aravali Pipes Ltd. (Accused No.1) to except his resignation w.e.f. 01.11.1997. He further submits that both the Courts below have recorded a finding that the petitioner was in-charge of the company and, therefore, he was rightly convicted by the Courts below.

Learned counsel further submits that co-accused of the petitioner, namely,

V.K.Bansal, has confessed his guilt and he was sentenced to undergo imprisonment already undergone by him. It is further argued that both the courts below have rightly held that the petitioner was the responsible person in default in the payment of share of the Employees Provident Fund Contribution and he failed to prove that he has resigned w.e.f. 01.11.1997. Learned counsel further argued that it has been held by Hon'ble Supreme Court in **Bhagirath Kanoria vs State of M.P., 1984 AIR (SC) 1688** that the offence under the Provident Funds Act is continuing offence and each day when the responsible person failed to comply with the obligation to pay the contribution to the fund, they commit a fresh offence and, therefore, the law of limitation will not apply. He further argued that accused-V.K.Bansal (since deceased) had confessed his guilt on 05.03.2014 and, therefore, the guilt of the present petitioner is also proved.

In reply, learned counsel for the petitioner has relied upon 1995 SCC (L&S) 195 titled as **Regional Provident Fund Commissioner and others vs. K.Mohammed** to argue that the Hon'ble Supreme Court while deciding the case, with reference to the proposition of law laid down in **Bhagirath Kanoria's case (supra)** though has held that the offence under the Employees Provident Fund Act is continuing offence, however, considering the fact that the offence was committed way back in 1973, it was held that no useful purpose will be served to continue the prosecution after the lapse of a long time and dropped the proceedings.

Learned counsel further argued that in the instant case, the petitioner is facing the prosecution since 2009 and one of the co-accused has also died, alternatively, the petitioner be granted benefit of probation as he is the only earning member in the family and his wife and father are

suffering from paralysis and confined to bed and has to take care of his three children.

After hearing learned counsel for the parties, I find merit in the present petitions for the following reasons:-

(a). Firstly, both the Courts below have failed to appreciate the statement of DW2-Ram Chander, LDC, in office of Regional Commissioner, Rohtak, who has, in clear and unequivocal terms has stated that the petitioner resigned from M/s Aravali Pipes Ltd w.e.f. 01.11.1997 and, thereafter the complainant's office released the P.F.amount to the petitioner and after the petitioner has resigned, he is not liable for contribution of P.F. on behalf of the company. Both the courts below have wrongly put the onus on the petitioner/accused that he has failed to prove the relevant record as DW2 has stated that form 3A and form 6A pertaining to the petitioner is not available in his office. The position would have been different if this witness belongs to some other office but in the instant case, DW2 is none else than the employee of the complainant itself and, therefore, if the record is not traceable, an adverse inference cannot be drawn against the petitioner/accused and rather the same should be drawn against the complainant.

(b). Even it has come in the evidence on complainant itself as admitted by PW1 that vide Ex.P6 M/s Aravali Pipes Ltd was taken over by Haryana Financial Corporation on 07.10.1997 and restored back to company on 14.01.1998 as per the order passed by the High Court and then again was taken over by the Haryana Financial Corporation as per the order of Hon'ble Supreme Court on 11.10.1999, therefore, once the management of the company was taken over by Haryana Financial Corporation, the

petitioner could not be held liable for the offence in the intervening period as it is clear from the office order Ex.P6 which has not been considered by both the Courts below. The complainant has failed to lead any cogent evidence that after the Haryana Financial Corporation had taken over M/s Aravali Pipes Ltd, its employees including the petitioner continued to work with Haryana Financial Corporation as no witness of this Corporation was summoned to prove this fact.

(c). Even otherwise, PW1, i.e. complainant's own witness, has admitted that if an employee resigns, his employee provident fund is released and in case of the petitioner, a request vide Ex.D1 was received from M/s Aravali Pipes Ltd. and employee provident fund was released in favour of the petitioner vide letter Ex. D2. Once it is own case of the complainant that employee provident fund of the employee was released, only after he resigned and the petitioner was given his due employee provident fund, it demonstrates that the petitioner was no more in service of M/s Aravali Pipes Ltd during the disputed period as both Ex.D2 and D3, regarding releasing the employee provident fund, were issued by the Regional Provident Fund Commissioner, Rohtak/complainant's office. Both the Courts below have ignored the statement of DW1-Suraj Mal Yadav, who has deposed that the petitioner resigned on 29.10.1997 and this witness has proved the signatures of V.K.Bansal, the then CMD of M/s Aravali Pipes Ltd who issued the request letter Ex.DW1/B and no suggestion was given to this witness that in the relevant period, the petitioner was an employee of M/s Aravali Pipes Ltd.

(d). Even in the statement of the petitioner, recorded under Section 313 Cr.P.C., no specific question was put to him that he was in-

charge of M/s Aravali Pipes Ltd relating to the period (in all the six complaints) qua which, these complaints were filed and, therefore, in the absence of any such evidence, in view of the well settled proposition of law that if the incriminating evidence is not put to the witness while recording his statement under Section 313 Cr.P.C., no proper opportunity could be provided to him to lead his defence evidence in absence of the same.

(e). In view of the judgment of Hon'ble Supreme Court in **Regional Provident Fund Commissioner'***case (supra)*, considering the fact that the petitioner has faced agony of protracted trial and prosecution for the last more than 11 years and also considering the fact that the petitioner has already undergone 21 days of actual sentence, as per custody certificate, the prosecution of the petitioner, which is not proved, is otherwise liable to be dropped.

In view of the above, the present petitions are allowed.

The impugned judgment of conviction dated 29.08.2014 and order of sentence dated 30.08.2014 passed by the trial Court as well as the judgment dated 26.05.2015 passed by Additional Sessions Judge, Hisar, are set aside.

A photocopy of this order be placed on the file of the other connected cases.

(ARVIND SINGH SANGWAN)
JUDGE

15.10.2018

smriti/*Waseem Ansari*

Whether speaking/reasoned : Yes

Whether Reportable : Yes