

IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTON

Present:- The Hon'ble Justice Manojit Mandal

C.R.R. No. 17 of 2019

Pawan Kumar Verma & another

V

The State of West Bengal & another.

For the petitioners	: Mr. Moyukh Mukherjee, Adv.
For the State	: Mr. Aditi Shankar Chakraborty, Adv. Mr. Arun Sarkar, Adv.
For the Opposite party No. 2	: Mr. Avijit Tewary, Adv.
Heard on	: 26.08.2019
Judgment on	: 28.08.2019

Manojit Mandal, J.:- The instant case arises out of an application under Section 482 of the Criminal Procedure Code, 1973.

2. By filing such application petitioners sought for quashing of proceeding being G.R. No. 444 of 2015 arising out of Jorebunglow Police Station Case No. 126 of 2015 dated 20.11.2015 under Section 406/409 of the Indian Penal Code now pending before the Court of the learned Chief Judicial Magistrate, Darjeeling.

3. Grievances of the petitioners may briefly be stated as follows:-

On the basis of a written complaint lodged by one Pasang Doma Dukpa, Enforcement Officer, Sub Regional P.F Office, Darjeeling, Jorebunglow Police Station Case No. 126 of 2015 under Section 406/409 of Indian Penal Code was started. It was alleged in the said written complaint that a tea estate named and styled as M/s. Kalej Valley Tea Estate had deducted a sum of Rs.8,96,571/- from the member's share of Provident Fund contributions from the wages of the employees, and that the said amount deducted from the employees was not remitted to the Provident Fund Account which was maintained by the State Bank of India.

4. After completion of investigation, the Investigating Authority submitted charge-sheet being charge-sheet No. 27/2016 dated 30.04.2016 under Section 406/409 of the Indian Penal Code before the learned Court of Chief Judicial Magistrate, Darjeeling. Learned Chief Judicial Magistrate, Darjeeling by order dated 05.05.2016 took cognizance of the offences and issued warrant of arrest against the petitioners. The allegations made in the complaint, even if taken in its entirety do not reflect the essential ingredients of the offences as alleged. The petitioners filed an application under Section 438 of the Criminal Procedure Code and said application for pre-arrest bail was allowed by learned Sessions

Judge, Darjeeling. The petitioner No. 2 surrendered before the Court of learned Chief Judicial Magistrate, Darjeeling and was released on regular bail.

5. Said Tea Estate has made the complete outstanding payment to the Assistant Provident Fund Commissioner, Darjeeling and the payment regarding the same has also been acknowledged by the Employees Provident Fund Organization. Continuation of such proceeding will thus, amount to abuse the process of Court and as such, the present application was filed with the prayer for quashing of the proceeding under reference.

6. Learned counsel appearing for the petitioners submitted that the petitioners are completely innocent and in no way connected with commission of any offence. He further submitted that there is no material available before the learned Court of Magistrate so as to justify further proceeding of the case.

7. Learned counsel appearing for the petitioners in support of his contention relies on a judgment of the Hon'ble Apex Court reported in *1995 Supp (4) Supreme Court Cases 580 (Adoni Cotton Mills Ltd. & others V. Regional Provident Fund Commissioner & others.)*. In the said judgment, it was held by the Hon'ble Apex Court as follows:-

"We do not think it is necessary for us to go into the details of the High Court's judgment or the contentions raised on behalf of the appellants. The prosecution was initiated in respect of certain offences alleged to have been

committed in 1976, about 15 years back. We are informed that two of the appellants have subsequently died. The offence alleged is the failure to deposit the amounts under the enactments for a short period of four months immediately following the discharge of the appellant-company from the receivership. During the pendency of these appeals, this Court granted stay of further proceedings by way of prosecution on condition that the appellants deposited an amount of Rs.40,000/- and furnished a bank guarantee for a sum of Rs.60,00/- to the satisfaction of the Registrar of the High Court within a period of six weeks. We are informed that the sum of Rs.40,000/- has been deposited and that the bank guarantee for Rs.60,0000/- has also been furnished. We are also informed that the amount in respect of which there was default would also be in the region of about Rs.90,000/-. Taking into account all these circumstances, we are of the opinion that this is a case in which the proceedings by way of prosecution need not be pursued provided the amounts deposited in Court and secured by the bank guarantee are paid over to the Regional Provident Fund Commissioner for credit to the appropriate accounts. Learned counsel appearing for the appellants stated before us that they have no objection to the first respondent withdrawing the amount of Rs.40,000/- deposited in the court and are also willing to have the first respondent encash the bank guarantee of Rs.60,000/- already furnished."

8. The next judgment relied upon by learned counsel for the petitioners is reported in **(2006) 4 CHN 701 (Air Transport Corporation V. State of West Bengal)**. From a perusal of the aforesaid judgment of our High Court, it appears that our High Court has observed that no doubt the allegations made in the complaint cannot be white washed by any subsequent payment but the fact remains that the offence relates to failure to deposit the amount for a certain period. In that case our High Court quashed the proceeding due to subsequent payment.

9. The next judgment relied upon by learned counsel for the petitioners is reported in **(2004) 4 CHN 291 (Howrah Motor Company Limited & Ors. V. Samir Kumar Das)**. In the said judgment, it was held by our High Court as follows:-

“There was, no doubt, delay in payment of provident fund dues. Things, however, were not within the effective control of the petitioners either. Since there was an order of injunction restraining the petitioners from withdrawing the amount from bank followed by the order of appointment of a Special Officer, the petitioners were duly prevented from clearing their dues earlier. The problem was eventually sorted out with the appointment of a Special Officer overseeing the disbursement of salary and other dues of the employees. Meanwhile, the Provident Fund Authorities also accorded permission to the petitioners to pay the dues by instalments. The entire amounts having been

paid in instalments as evidenced by the copy of the challans, there cannot be any justification for further continuation of the proceeding against them. With the payment of the entire dues nothing remains outstanding. Further continuation of the proceeding will be sheer wastage of time and money. In fact in Adoni Cotton Mills Limited vs. Regional Provident Fund Commissioner & Ors., reported in 1995 Suppl. (4) SCC 550, the Hon'ble Supreme Court quashed the proceeding in view of the payment of the dues being partly deposited and partly secured.

Judging all the facts and circumstances and having regard to the fact that the entire dues have been paid by the petitioners in terms of the order of the Regional Provident Fund Authorities, there should not be any justification for further continuation of the proceeding. Accordingly, the order dated 10.6.2003 whereby the learned magistrate rejected the application for dropping of the proceeding is set aside and consequently, the entire proceeding being C/1883-2000 is hereby quashed. "

10. The next judgment relied upon by the learned counsel for the petitioners is reported in (2002) III LJ 1047 Cal. (Jasoda Glass and Silicate and Ors. Vs. Regional Provident Fund Commissioner and Ors.) wherein our High Court has observed as follows:-

“Notwithstanding the above position, the Hon’ble Supreme Court in the Adoni cotton Mills Ltd. Case (supra) quashed the proceedings for prosecution initiated on the notices to show cause as to why prosecution for default should not be taken under Section 14 and 14 A of the 1952 Act since the amount in default had been partly deposited and partly secured.

In the case before us, the appellants have also deposited all the dues which were allegedly outstanding on the strength of orders passed from time to time.

In view of the aforesaid decision of the Hon’ble Supreme Court, we dispose of the appeal with leave to the appellants to file separate affidavits before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas, in respect of each separate complaint giving details of the payments of the amounts in default in each such complaint and if the learned magistrate is satisfied that such payments have been duly made, he shall take steps to drop the proceedings in respect of which such payments have been made.”

11. Relying upon the aforesaid judgments it is submitted by the learned counsel for the petitioners that First Information Report has been lodged alleging commission of offence punishable under Section 406/409 of the Indian Penal Code against the present petitioners for non-depositing a sum of Rs.8,96,571/- which they deducted from the wages of the employees as the contribution towards their respective Provident Fund. He further submitted that the

petitioners have deposited their entire amount of money with the Provident Fund Authorities and in support of such he draws the attention of this Court to the Xerox copy of the receipts showing making of such payment annexed with the instant criminal revisional application. He further submitted that in view of subsequent deposits of the said amount in question the instant prosecution against the petitioners is liable to be quashed. Learned counsel appearing for the Opposite party No. 2 vehemently opposed the prayer for quashing. He submitted before this Court that subsequent payment of amount, in any event, does not obliterate commission of an offence under the Indian Penal Code. In this connection, he relied on decisions reported in *2018 (2) LLJ (Cal) 112 (Tapan Biswas V. The State of West Bengal & anr.)*, *2008 (1) CHN 1061 (Anjuman Tea Company Ltd. And Ors. V. State of West Bengal and others)* and *2008 (1) CHN 1066 (Sayed Nasiruddin V. State of West Bengal and others)*. Learned advocate appearing for the State urged that the application is not maintainable and is liable to be rejected.

12. I have heard the learned advocates of the respective parties. I have perused the charge-sheet which was filed by the Investigating Authority. On a perusal of the charge-sheet, it appears that a *prima facie* case is made out against the petitioners. The offence is serious in nature.

13. It has been held in a case reported in *(2007) 2 CALLT 259 (HC) (M/s. Hotel Dock Palace Private Limited and another V. State of West Bengal and another)* that subsequent payments are necessarily a circumstance that should not be miss the attention of the learned Trial Court if and when the learned Trial Court proceed to award punishment to the petitioners only when guilt is established according to law and this circumstance is needed a good circumstance and a mitigating circumstance to be taken cognizance of only at the conclusion of trial and only when the offender is proved guilty.

14. In view of the above facts and circumstances, it may be concluded that the allegation made in the complaint cannot be white washed in the changed circumstances and that the application seeking quashing of the proceeding under Section 482 of the Code of Criminal Procedure cannot be allowed. The judgments referred to above by the learned counsel appearing for the petitioners are all relating to the offences under the Employees Provide Fund Act, 1952. In my considered view those judgments do not have any manner of application in the present case.

15. Since the allegations are serious in nature and since *prima facie case* is made out against the petitioners which is sufficient for the purpose of proceeding further. I am of the view that it will not be proper for this Court to quash the proceeding at this stage. The present application, therefore, fails.

16. However, the learned Court below shall proceed with the case in accordance with law and at the end of trial, if he finds the accused petitioners are guilty, in that case, subsequent payment (which has been claimed to have paid already) be treated as a mitigating circumstance.

17. Let a copy of this judgment be sent down to the learned Court below for information and taking necessary action in accordance with law.

18. Urgent photostat certified copy of this judgment be given to the parties, if applied for, upon compliance with requisite formalities.

(Manojit Mandal, J.)