IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 02.04.2019

1. CRM-M-34584-2013 (O&M)

Ashok Mehra

….Petitioner

Versus

Enforcement Officer, Employees Provident Fund Organization, Ministry of Labour, Govt. of India.

….Respondent

2. CRM-M-6641-2014 (O&M)

Anirudh Mehra

….Petitioner

Versus

Enforcement Officer, Employees Provident Fund Organization, Ministry of Labour, Govt. of India.

….Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Vivek Salathia, Advocate
for the petitioner (in both cases).

Mr. Sanjay Tangri, Advocate
for the respondent (in both cases).

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ARVIND SINGH SANGWAN, J. (Oral)

This order shall dispose of both the aforementioned petitions praying for quashing of criminal complaint No.030200136272011 dated 13.10.2011 titled as Enforcement Officer, EPFO Vs. M/s M.T. Metals and others (Annexure P-1) and the summoning order dated 07.05.2012

(Annexure P-2) as well as the all consequential proceedings arising out of the impugned complaint.

Brief facts of the case are that M/s M.T. Metals was a registered partnership firm, which came into existence on 01.04.2003. Initially, there were 04 partners namely Vikas Thakral, Sanjeev Thakral and the present petitioners Ashok Mehra and Anirudh Mehra. On account of non-filing of annual returns for the period 2009-10 and 2010-11, under the Employees Provident Fund and Misc. Provisions Act, 1952 (for short 'Act of 1952'), the respondent-complainant (hereinafter referred to as 'organization') filed the impugned complaint against the petitioners as per the provisions of Section 14(2), 14A, 14AA of the Act of 1952 against the petitioners and three other persons. In the complaint, it is specifically stated that the employer failed to furnish the returns under the Employees Provident Fund Scheme, 1952, Employees Pension Scheme, 1995 and the Employees Deposit Linked Insurance Scheme, 1976, in Form No.12A, Form No.5 and Form No.10, which was required to be submitted to the Regional Provident Fund Commissioner by the 25th of the following month and further failed to furnish the annual returns (in Form 3A/6A), which was to be submitted on or before 30th April every year.

Thereafter, the trial Court, vide impugned order dated 07.05.2012 (Annexure P-2), summoned the petitioners and therefore, they have filed the present petitions challenging the impugned complaint and the summoning order on the ground that the petitioners were sleeping partners and have retired from the firm w.e.f. 01.04.2011.

It is argued that the petitioners were not incharge and responsible for the affairs of the firm, as in Form 5-A attached with the schedule of the Act, it is required to give details of the persons dealing with legal issue of assignment of liability in case of non-compliance of the provisions of the Act. It is further stated that the petitioners were not the authorized persons, as per Form 5-A and therefore, they were not responsible for the affairs of the establishment.

Learned counsel for the petitioners has relied upon Form 5-A (revised) submitted by the firm, in which in column No.8, the particulars of the owners are given, as Vikas Thakral and Sanjeev Thakral and submits that the petitioners were not incharge or responsible for the conduct of business of the establishment. Learned counsel has further relied upon the judgment dated 07.12.2012 passed in ***CRM-M-7873-2011 (Dervinder Singh Vs. Provident Fund Inspector)*** to submit that in similar circumstances, the complaint against a person, who was not held to be person responsible for or incharge for the conduct of the business, was quashed.

Learned counsel for the petitioners has submitted that in pursuance to the summoning order, the person incharge and responsible for running of the affairs of the firm Vikas Thakral has already appeared before the trial Court and is facing the trial. It is further submitted that as per Section 2(e) of the Act of 1952, an employer means a person, who is owner or occupier of the factory, including the agent of such owner or occupier or legal representative under Section 7 of the Factories Act. For reference, Section 2(e) of the Act of 1952 is reproduced below: -

> *"**2(e)** "employer" means-*
> *(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and*
> *(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent".*

Learned counsel has thus argued that the petitioners were neither incharge nor owners or occupiers of the factory and they cannot be held responsible for non-filing of the returns of the firm.

Learned counsel for the petitioners has also relied upon retirement-cum-partnership deed dated 01.04.2011, vide which the petitioner Ashok Mehra and his son Anirudh Mehra were retired from the partnership with Sanjeev Thakral and Vikas Thakral. It is thus submitted that after the retirement of the petitioners, revised Form 5-A was submitted, in which only Vikas Thakral and Sanjeev Thakral were shown to be the owners and persons responsible, under Clause 8 and 11 of this amended Form 5-A under the Employees Provident Fund Scheme, 1952, Employees Family Pension Scheme, 1971 and Employees Deposit Linked Insurance Scheme, 1976.

In reply, learned counsel for the respondent has submitted that the complaint had been filed against the petitioners on account of non-filing of the annual returns for the years 2009-10 and 2010-11 and at the relevant time, they were partners in the firm. It is further submitted that the petitioners being partners were incharge and responsible for the day to day affairs of the firm and as per balance sheet of the firm for the years 2009-10, an amount of Rs.7,26,209/- is shown to be as capital due towards petitioner Ashok Mehra as one of the partner and therefore, retirement deed prepared by him is mere an eyewash. Learned counsel has further submitted that in Form 5-A, received on 13.08.2009, the petitioners were shown to be partners of the firm and therefore, at the relevant period, for which the returns were not filed, the petitioners are liable for their criminal liability.

Learned counsel for the respondent has argued that the returns for the years 2010-11 and 2011-12 were received in the office of the complainant on 08.02.2012 and 18.07.2012, which itself shows that the same were not filed within the time. It is further argued that the firm is a manufacturing unit, falling within Part I of the definition of employer under sub Section 2(e) of the Act of 1952 and therefore, the petitioners cannot claim that they are not incharge or responsible persons.

After hearing learned counsel for the parties, I find no merit in the present petitions.

(a) As per Form 5-A submitted under the aforesaid three Schemes, petitioners Ashok Mehra and Anirudh Mehra are shown to be partners in M/s M.T. Metals, though in column No.11, the person incharge and responsible is shown to be Vikas Thakral.

(b) The petitioners could not dispute that monthly returns and the annual returns were not filed in time and firm of the petitioners M/s M.T. Metals, being a factory, will be governed by the provisions of Section 2(e)(i) of the Act of 1952.

(c) In **Dervinder Singh**'s case (supra), this Court has recorded a finding that since the firm was not registered under the Factories Act, it will fall under Section 2(e)(ii) of the Act of 1952 i.e. an establishment other than a factory and therefore, facts of the present case are distinguishable from the facts of said case.

(d) Even as per own case of the petitioners that they have retired w.e.f. 01.04.2011, which is subsequent to the period, for which the returns were not filed, I find no ground to quash the impugned complaint.

In view of the above, both these petitions are dismissed. However, it will be open for the petitioners to raise all the pleas/defences during the course of trial.

Since there was a stay of proceedings from the year 2013, the trial Court is directed to conclude the trial expeditiously preferably within a period of 09 months from today.

[ARVIND SINGH SANGWAN]

02.04.2019 **JUDGE**

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No