IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-35909 of 2015
Date of Decision: 06.08.2019

Gian Parkash Bhandari and another ...Petitioners

VERSUS

State of Punjab and others ...Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: None.

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SURINDER GUPTA, J.

Petitioners have filed this petition under Section 482 Cr.P.C. seeking quashing of FIR No. 58 dated 20.06.2014, registered at Police Station Lambra, Jalandhar City, District Jalandhar for offences punishable under Sections 406 and 409 IPC.

2. Allegations, as levelled against petitioners in the FIR, read as follows:-

> *"1. M/s G.B. Tools Forgings Ltd., 11 Mile stone, village Mand Kapurthala. Road, Jalandhar is an establishment covered under the EPF and MP Act, 1952 under code no. PB/JALL/9631. The employer of this establishment is under statutory obligation to deduct the employee share of P.F. Contribution from the wages/salaries each month for deposit into the statutory fund. The amount thus deducted wages is of the nature of trust money with the employer.*
>
> *2. As per information it has come to notice that the employer of M/s G.B. Tool Forgings Mand had deducted*

the employee's share of contribution from his wages/salaries for the period given below but has not deposited the amount so deducted into the statutory fund. The employer, therefore, is guilty of an offence of criminal breach of trust under Section 406/409 of the Indian Penal Code of 1960............................

3. *The month wise total particulars of the amount of provident fund contribution deducted by the employer from the wages/salaries of the employees as taken from the wages register/books of accounts, ledger maintained by the employer are given herewith:- month: Feb., 2014, amount of P.F. Contributions deducted from wages of employee : ₹206181/-, Source of information : Wage sheet cheque challan. March, 2014 : ₹196867/- cheque challan attested copy ₹403048/- (Four lakhs three hundred forty eight only).*

4. *The wages registered for the period mentioned above which contain signature of the employees and particulars of the amount of P.F. contribution deducted from their wages/salaries constitute the most important documentary evidence to establish the offence of criminal breach of trust. It is therefore, absolutely necessary that these record of the employer are taken into custody immediately.................”*

3. As per allegations against petitioner, an amount of ₹4,03,048/- was deducted from the salaries of employees of petitioners towards

provident fund contribution but the same was not deposited with the Provident Fund Department. Petitioners have alleged that they have deposited amount of ₹4,03,048/- with interest on 21.05.2014 i.e. much before the registration of FIR, as such, FIR should be quashed. Relevant averments in the petition to this effect are contained in para 4, which read as follows:-

> *"4. That the petitioners are admittedly the directors of the aforesaid company M/s G.B. Tools and Forgings Limited, Jalandhar. During the months of February and March, 2014, they admittedly deducted a sum of ₹4,03,048/- from the salaries of the employees by way of P.F. contributions for those months and there is no dispute about the same. However, while conducting the affairs of the company, it generally takes sometime to deposit such amounts with the concerned authorities and the aforesaid amount of ₹4,03,048/- along with interest accrued on the same at the prescribed rate amounting in all to ₹4,30,048/- was deposited in the relevant account by the petitioners on 31.05.2014 i.e. much before the registration of the case on 20.06.2014 and there was hardly any defalcation of any amount."*

4. The petition is contested by Enforcement Officer, EPFO, Jalandhar in his reply stating therein that complaint was made to the police on 05.05.2014. It was after coming to know of that complaint, petitioners deposited the amount on 31.05.2014. The offence of criminal breach of trust was committed by petitioners, when they failed to deposit the

amount by the due date as per provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. As per provisions of para 38 of the Employees' Provident Funds Scheme, 1952, every employer is duty bound to deposit the EPF dues by 15th of every month after deducting 12% employees' share and contributing 12% of his own. After expiry of 15 days period amount retained by the employer constitutes offence of criminal breach of trust.

5. A short question, which has been put-forth in this case is as to whether late deposit of amount of employees' provident fund constitute offence under Section 406 IPC? In this regard reference can be made to provisions of Section 405 IPC defining criminal breach of trust and Explanation 2 to above provisions reads as follows:-

> "*Explanation 2 — A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.*"

6. As per admission by petitioners, amount of share of contribution for the months of February, 2014 and March, 2014 were deposited only on 31.05.2014.

7. The first contention of petitioners that FIR was registered after deposit of the amount has no merit as the complaint was lodged with the police by Enforcement Officer, EPFO, Jalandhar on 05.05.2014. It is also not disputed that as per provisions of para 38 of the Employees' Provident Funds Scheme, 1952, petitioners were required to deposit employees' contribution and employees' share of contribution to the Provident Fund Department within 15 days of the close of every month. The employees' provident fund amount was, as such, not deposited as per provisions of Para 38 of the Employees' Provident Funds Scheme, 1952, which reads as follows:-

> "***38. Mode of payment of contributions :-***
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> *(1) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than excluded employee and in respect of which provident fund contribution payable, as the Central Government may fix. He shall within fifteen days of the close of every month pay the same to the fund by separate bank drafts or cheques on account of contributions and administrative charge:*
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> *Provided that if the payment is made by a cheque, it should be drawn only on the local bank of the place in which deposits are made:*
>
> *Provided further that where there is no branch of Reserve Bank or the (State Bank of India at the station where (factory or other establishment) is situated the employer shall pay to the fund the amount mentioned*

above by means of Reserve Bank of India, Governmental Drafts at par) separately on account of contributions and administrative charge

(2) The employer shall forward to the Commissioner, within twenty-five days of the close of the month, a monthly abstract in such form as the Commissioner may specify showing the aggregate amount of recoveries made from the wages of all the members and the aggregate amount contributed by the employer in respect of all such members for the month:

Provided that an employer shall send a Nil return, if no such recoveries have been made from the employees :

Provided further that in the case of any such employee who has become a member of the pension fund under the Employees' Pension Scheme, 1995, the aforesaid form shall also contain such particulars as are necessary to comply with the requirements of that Scheme.

(3) The employer shall send to the Commissioner within one month of the close of the period of currency, a consolidated annual Contribution Statement in Form 6-A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the Inspector."

8. Learned counsel for the petitioners has mainly argued on the issue that the amount of provident fund had been deposited before registration of the FIR and presentation of challan, as such, FIR registered in this case is misuse of process of law.

9. I do not myself in agreement with submission of learned counsel for petitioners as after reporting of the commission of offence to the police if there is delay in registration of FIR and in the meanwhile amount alleged to have been misappropriated, has been deposited, makes out no ground for quashing of the FIR and registration of FIR is not a misuse of process of law. The plea of learned counsel for petitioners that outstanding amount of provident fund of employees was deposited with interest and penalty can, at the most, be a factor to be seen by the Court while deciding the case on merit.

10. As a sequel of my above discussion, I find no merit in this petition and the same is dismissed.

(SURINDER GUPTA)
JUDGE

August 06, 2019
jk

Whether speaking/reasoned: ***Yes/No***

Whether Reportable: ***Yes/No***