

HIGH COURT OF CHHATTISGARH AT BILASPUR**Cr.M.P. No. 1423 of 2017**

C.B.K. Singh, S/o Shri J.N. Singh, Aged about 59 years, Former Divisional Railway Manager, South East Central Railway, Bilaspur Chhattisgarh, Presently R/o Office of Chief Administrative Officer, Northern Railway, Baroda House, New Delhi 110001.

---Petitioner/Accused

Versus

Bhagwan Singh S/o Late Navlakha Singh, Aged about 62 years, Bhagwan Mahal, Ward No. 38, Hemu Nagar, Near Railway Outer Signal, PS Torwa, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Respondent/Complainant

Cr.M.P. No. 1854 of 2017

Sakker Hussain C.T. S/o Lt. Alavikutty, Aged about 48 years, Former Senior Divisional Personnel Officer, South East Central Railway, Bilaspur, Chhattisgarh. Presently R/o Office of Senior Divisional Personnel Officer, East Coast Railway, Visakhapattanam, Andhra Pradesh.

---Petitioner/Accused

Versus

Bhagwan Singh S/o Late Navlakha Singh, Aged about 62 years, Bhagwan Mahal, Ward No. 38, Hemu Nagar, Near Railway Outer Signal, PS Torwa, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Respondent/Complainant

Cr.M.P. No. 1826 of 2017

Ranbir Singh, S/o Shri Hukam Singh, Aged about 60 years, Former Additional Divisional Railway Manager South East Central Railway, Bilaspur, Chhattisgarh. Presently R/o House No. 172, Engineers Colony, Ramghat Road, Quarsi, Aligarh – 202001.

---Petitioner/Accused

Versus

Bhagwan Singh S/o Late Navlakha Singh, Aged about 62 years, Bhagwan Mahal, Ward No. 38, Hemu Nagar, Near Railway Outer Signal, PS Torwa, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Respondent/Complainant

Cr.M.P. No. 1855 of 2017

Harkesh Meena S/o Shri Bhajanlal Meena, Aged about 44 years, Former Senior Divisional Finance Manager, South East Central Railway, Bilaspur Chhattisgarh, Presently R/o Office of Deputy Chief Project Managar, Finance/DFCCIL, Ahmedabad.

---Petitioner/Accused

Versus

Bhagwan Singh S/o Late Navlakha Singh, Aged about 62 years, Bhagwan Mahal, Ward No. 38, Hemu Nagar, Near Railway Outer Signal, PS Torwa, Tahsil and Distt. Bilaspur, Chhattisgarh.

--- Respondent/Complainant

For Petitioners	:-	Mr. Abhishek Sinha, Advocate
For Respondent	:-	Mr. Amit Kumar and Ms. Gunjan Tiwari, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

14/02/2020

1. This batch of petitions under Section 482 of Cr.P.C. emanates from order dated 15/03/2013 (Annexure P/5) by which learned trial Magistrate has taken cognizance of offence under Sections 167, 420 and 477A of the IPC against the petitioners. Since, common question of fact and law is involved in all these petitions, therefore, they have been heard together and are decided by this common order.

2. Petitioners have challenged the order of the trial Magistrate taking cognizance of offence against them in the following factual backdrop :-

(i). Sole respondent/complainant filed a complaint under Section 200 of the Cr.P.C. against the four petitioners stating *inter alia* that he was appointed in Bilaspur Division of Railways on 13/03/1965 on the post of Khalasi and thereafter, he was promoted as Fireman, Shunter and Diesel Engine Driver. Finally, after serving for 40 years, he retired as Senior Goods Driver on 31/03/2006 and an amount of ₹ 1,97,477/- was paid to him as Provident Fund.

(ii) It is the case of the respondent/complainant that in the year 1965, he was allotted Provident

Fund Account No. 433854A but the amount deducted every month from his account for Provident Fund was deposited in another account bearing No. 4338546 which was allotted to one Manik Rao. When the respondent/complainant came to know about this, he got his Provident Fund Account No. changed to 754171 in the year 1992, but the same error started happening again and the amount deducted from his account was again being deposited to different accounts and due to that, he was only paid ₹ 1,97,477/- from his Provident Fund account which was ₹ 12,02,523/- less than what he was expecting to get at the time of his retirement and thus, the petitioners have committed the aforesaid offences.

(iii) Respondent/complainant examined himself as well as his witness Tanaji Rao on 05/10/2012 and ultimately, learned trial Magistrate took cognizance of offence under Sections 167, 420 and 477A of the IPC against the present petitioners.

3. Petitioners herein have sought quashment of order taking cognizance mainly on the ground that all the four petitioners were posted as senior officers in Railways on 06/05/2009, 06/02/2008, 10/11/2009 and 14/07/2010 respectively which is apparently after the respondent/complainant retired from service. It is further their case that taking the allegations

in the complaint at its face value, no offence under Sections 167, 420 and 477A of the IPC is made out against them as there is no specific allegation in the complaint with regard to any personal role played or any participation in the alleged offence by the petitioners, much less any act on their part which may attract the aforesaid offence. Admittedly, petitioners are public servants and unless sanction is granted under Section 197 of the Cr.P.C. by the Central Government, no prosecution would lie against them as it is alleged by the respondent/complainant that his Provident Fund account was not maintained in accordance with law and thereby, actual Provident Fund amount which he was entitled to get was not paid to him and petitioners have committed the aforesaid offence, as such, the complaint deserves to be quashed and moreover, no return has been filed indicating that *prima facie* case is made out against the petitioners herein.

4. Mr. Abhishek Sinha, learned counsel for the petitioners would submit that taking the complaint filed by the respondent/complainant as it is, no offence under Sections 167, 420 and 477A of the IPC is made out against the petitioners as admittedly, they have been posted as senior officers in Railways much after the date of retirement of

respondent/complainant. No role of petitioners has been attributed in the commission of aforesaid offence and petitioners, being public servants, for taking cognizance of the aforesaid offence against them, sanction has to be obtained from the Central Government in view of the mandatory provisions contained under Section 197 of the Cr.P.C. which has not been done, therefore, the complaint filed by the respondent/complainant as well as the order taking cognizance of the aforesaid offence against the petitioners be quashed in light of the decision rendered by the Supreme Court in the matter of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Ors.¹.

5. Mr. Amit Kumar and Ms. Gunjan Tiwari, learned counsel for the respondent/complainant would vehemently oppose the submission made by learned counsel for the petitioners and submit that it is a case where the respondent/complainant was paid only ₹ 1,97,477/- as Provident Fund after serving for 40 years which is ₹ 12,02,523/- less than what he was expecting to get, as such, learned trial Magistrate has rightly taken cognizance of offence under Sections 167, 420 and 477A of the IPC against the petitioners of which no exception can be taken by

them as they are responsible for not depositing the amount of Provident Fund in the account of respondent/complainant which he is otherwise entitled to get, therefore, the present petitions deserve to be dismissed.

6. I have heard learned counsel for the parties, considered their rival submissions made herein-above and perused the records.

7. It is admitted position that respondent/complainant retired from service on 31/03/2006 as Sr. Goods Driver and on the date of his retirement, he was paid ₹ 1,97,477/- as Provident Fund which he accepted without any protest or demur. After almost five years, on 04/07/2011, he filed a complaint under Section 200 of the Cr.P.C. before the trial Magistrate against the four petitioners.

8. It is the case of the petitioners that all four of them were posted as senior officers in Bilaspur Division of Railways on 06/05/2009, 06/02/2008, 10/11/2009 and 14/07/2011 respectively, which is much after the date on which respondent/complainant retired from service i.e. on 31/03/2006.

9. The complaint (Annexure P/2) filed by the respondent/complainant on 04/07/2011 would only disclose that he retired from service on 31/03/2006 and after serving for 40 years, he was paid only

₹ 1,97,477/- as Provident Fund and was provided with only one page of his service book and he was compelled to accept the said amount of Provident Fund. In paragraph 12 of the complaint, respondent/complainant has also stated that the amount which was deducted every month from his account was not deposited in his Provident Fund Account and it was rather deposited into other persons accounts which is an illegal act on the part of the petitioners due to which he only got ₹ 1,97,477/- whereas he ought to have received total amount of ₹ 14,00,000/- as Provident Fund after retirement.

10. From the perusal of the entire complaint, it is evident that there is no such allegation that at any point of time prior to 31/03/2006, petitioners were posted in Bilaspur Division where the respondent/complainant was posted at or that petitioners are the persons specifically responsible for deducting the amount of Provident Fund from respondent/complainant's account and depositing into someone else's account rather than that of the respondent/complainant's account.

11. Petitioners have filed the document (Annexure P/4) which is a part of Indian Railway Accounts Code clearly indicating that responsibility for the

internal check of all transactions pertaining to, and the maintenance of the accounts of the State Provident Funds to which the personnel of the railway subscribe devolves upon the Accounts Officer. Nowhere in the complaint it has been alleged by the respondent/complainant that either of the four petitioners, at any point of time prior to 2006, were posted in Bilaspur Division as Accounts Officer and in that capacity they are responsible for not crediting the actual amount of Provident Fund in respondent/complainant's account. Likewise, the entire complaint only shows that the sole grievance of respondent/complainant is that he has only been paid ₹ 1,97,477/- which is ₹ 12,02,523/- less than what he is actually entitled to get.

12. Another submission made by learned counsel for the petitioners is that since petitioners are public servants, cognizance of aforesaid offence cannot be taken against them without the sanction from the Central Government as per the provision contained under Section 197 of the Cr.P.C., as such, sanction under Section 197 of the Cr.P.C. was absolutely necessary before taking cognizance of offence under Sections 167, 420 and 477A of the IPC against the petitioners as it is not a case of the

respondent/complainant that the said offence was committed in their personal capacity or while acting personally.

13. At this stage, it is appropriate to notice the pertinent decision rendered by the Supreme Court in this regard in Nagawwa (supra) wherein their Lordships have laid down the considerations to be made by the Magistrate while issuing process and when the order issuing process can be set aside which states as under :-

"5...Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no

evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

14. Reverting to the facts of the present petitions in light of the principle of law laid down by the Supreme Court in Nagawwa (supra), it is quite vivid that petitioners were posted at Bilaspur Division much later than the retirement of respondent/complainant from service on 31/03/2006. There is no allegation in the entire complaint that petitioners were either posted at Bilaspur Division prior to 31/03/2006 or at any point of time they were posted as Accounts Officer or that they personally directed for disbursement of the said Provident Fund amount from respondent's/complainant's account and depositing it into other Provident Fund Accounts rather than that of the respondent/complainant. Likewise, along with the complaint, no other document has been filed by the respondent/complainant demonstrating the diversion of respondent/complainant's Provident Fund amount to the account of one Manik Rao at the instance of the petitioners except for the statement made by Dr. D.S. Shastri, his witness,

nothing has been brought on record to show that petitioners are personally responsible for respondent/complainant not being paid the Provident Fund amount which he is otherwise entitled to, whereas petitioners have filed the document (Annexure P/1) in all four of the petitions, which shows that petitioners were posted at Bilaspur Division w.e.f. 06/05/2009, 06/02/2008, 10/11/2009 and 14/07/2010 respectively that evidently demonstrates that they have been posted at Bilaspur Division much later than the retirement of respondent/complainant on 31/03/2006, as such, taking the complaint at its face value and the statement recorded in support thereof, absolutely no *prima facie* case is made out against the four petitioners for taking cognizance of offence under Sections 167, 420 and 477A of the IPC against them.

15. Similarly, petitioners are admittedly covered within the meaning of 'public servants' under Section 197 of the Cr.P.C., therefore, cognizance of offences cannot be taken against them without the previous sanction of the Central Government. Even assuming that the petitioners were posted at any particular point of time at the Bilaspur Division, it is still not the case of the respondent/complainant that petitioners, in their

personal capacity, diverted the Provident Fund of the respondent/complainant into other accounts and thereby, respondent/complainant could get only ₹ 1,97,477/- which is ₹ 12,02,523/- less than what he is actually entitled to get, as such, it is a case where paragraph 5 (1) to (4) of the decision rendered by the Supreme Court in Nagawwa (supra) would squarely attract.

16. Even otherwise, it is the case of the respondent/complainant made throughout in the complaint, that he has been paid only ₹ 1,97,477/- as Provident Fund which is ₹ 12,02,523/- less than what he is actually entitled to get and it appears that on account of non-payment of the Provident Fund to the respondent/complainant which he is otherwise entitled to get, the said complaint has been filed by him. Therefore, in my considered opinion, it is a fit case where the order impugned of the trial Magistrate taking cognizance of offence under Sections 167, 420 and 477A of the IPC against the petitioners vide Annexure P/5 as well as the revisional order dated 07/07/2017 passed by the Additional Session Judge deserve to be and are accordingly quashed and consequently, the complaint case bearing No. 582/2013 pending before the Court of learned Judicial Magistrate First Class,

Bilaspur hereby stands quashed. However, this will not bar the respondent/complainant to make a representation before the competent authorities for payment of Provident Fund in discharge of his official duties which he is entitled to get (if any) and if such a representation is made, it will be considered by the said authorities in accordance with law.

17. With the aforesaid observations/directions, these petitions under Section 482 of the Cr.P.C. are allowed to the extent indicated herein-above. No cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet