

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on : 23.01.2020
% **Pronounced on : 01.06.2020**

+ **CRL.M.C. 4771/2019 & CRL.M.A. 36428/2019**

RAVI KAPUR & ANR. Petitioners

Through: **Mr. Sanjay Gupta, Adv.**

versus

REGIONAL PROVIDENT FUND COMMISSIONER

..... Respondent

Through: **Mr. Puneet Garg, Adv.**

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

JUDGMENT

1. The petitioner has preferred the present petition with the following prayers:

“A. Call for the judicial record in digital form of complaint case no. 11359/18 titled as Regional Provident Commissioner Vs. Absolute Security & Facility Management Pvt. Ltd. & Anr. U/s 14 & 14 (a) read with para 76 (d) of EPF Scheme from Hon'ble Court of Sh. Rajesh Malik, CMM, North West District, Rohini Court, Delhi;

B. Quash the impugned order dated 24.09.2018 passed by Sh. Rajesh Malik, CMM, North West District, Rohini Court in complaint case No. 11359/18 titled as Regional Provident Commissioner Vs. Absolute Security &

Facility Management Pvt. Ltd. & Anr. & order dated 06.08.2019 passed by the Court of Sh. Pankaj Gupta, ASJ, North West District, Rohini Courts, Delhi in Crl. Revision No. 38 of 2019 and accept the petition.”

2. In brief the facts of the case are that the respondent/complainant filed a complaint U/s 14 and 14 (a) read with Para 76 (D) and Para 78 (3) of the Employees Provident Fund Scheme, 1952 (EPF scheme) on the facts that the complainant had introduced Universal Account Number Service for contributing members to facilitate probability of PF accounts w.e.f. 22.07.2014; that vide Government of India Notification dated 10.02.2016, the complainant had also introduced Incentive Refund Scheme for employees who provided Universal Account Number with 100% or 60% seeded KYC to all its employee in the EPF Scheme 1952; that the complainant introduced Umag-App to facilitate its PF subscribers for online settlement of claims, uploading of the Pass book, Online Transfer of PF accounts, alerts message and other service. The above services were only available to the PF subscribers who had completed their KYC and had their AADHAR, Bank and Pan linked with UAN; that the accused, an establishment within the meaning of the EPF & MP Act-1952 and scheme framed there under, had been allotted Code no. D/39080 and thus was required to comply with all the provisions of the said act and the scheme framed there under in respect of the said establishment; that the complainant office via E-mail dated 27.08.2018 issued a Show Cause Notice to the accused regarding compliance, but the accused failed to comply with the requirements prescribed in Para 36 and 37 of the EPF Scheme, 1952. The bank account number, Aadhar number and PAN card number of the every

member of the Establishment were not updated; that the accused failed in seeding of KYC with Universal Account Number with regards to all the members of the said Establishment and thus committed offence under Section 14 and 14 (a) of the EPF & MP Act, 1952 read with Para 76 (D) of the EPF Scheme, 1952 and para 78 (3) of the EPF Scheme.

3. Thereafter the Ld. Trial Court took cognizance on 24.09.2018 and since the complaint U/s 200 Cr.P.C was filed in the capacity of public servant, therefore, pre-summoning evidence was dispensed with and the Trial Court took cognizance for offence U/s 14 & 14 (a) R/w 76 (D) of the Employees Provident Fund Scheme 1952 and summoned the petitioner.

4. The petitioner feeling aggrieved invoked the revisional jurisdiction of the Court of Sessions and questioned the correctness, legality and propriety of the said order. But his criminal revision petition bearing No. 38/2019 was dismissed by the Ld. A.S.J. vide impugned order dated 06.08.2019 which is now challenged by the petitioner, invoking jurisdiction of this Court U/s 482 Cr.P.C.

5. I have heard the Ld. counsel for the parties and perused the records of the case.

6. Now a procedural issue has arisen, as to whether the petitioner having availed of the remedy of revision should be allowed to take recourse to section 482 Cr.P.C as a substitute for virtually initiating a second revisional challenge or scrutiny which is clearly barred U/s 397 (3) Cr.P.C which reads as follows :

"(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

7. In ***Rajinder Prasad Vs. Bashir***, (2001) 8 SCC 522, the Supreme Court referring to its earlier decision in ***Krishnan Vs. Krishnaveni***, (1997) 4 SCC 241 held that :

"...though the power of the High Court under Section 482 of the Code is very wide, yet the same must be exercised sparingly and cautiously particularly in a case where the petitioner is shown to have already invoked the revisional jurisdiction under Section 397 of the Code. Only in cases where the High Court finds that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order was not correct, the High Court may, in its discretion, prevent the abuse of the process or miscarriage of justice by exercise of jurisdiction under Section 482 of the Code. It was further held, "Ordinarily, when revision has been barred by Section 397(3) of the Code, a person - accused/complainant - cannot be allowed to take recourse to the revision to the High Court under Section 397(1) or under inherent powers of the High Court under Section 482 of the Code since it may amount to circumvention of provisions of Section 397(3) or Section 397(2) of the Code."

8. In ***Kailash Verma vs. Punjab State Civil Supplies Corporation & Anr.***, (2005) 2 SCC 571, the Supreme Court observed thus :-

"5. It may also be noticed that this Court in *Rajathi v. C. Ganesan* [(1999) 6 SCC 326 : 1999 SCC (Cri) 1118] said that the power under Section 482 of the Criminal Procedure Code has to be exercised sparingly and such power shall not be utilised as a substitute for second revision. Ordinarily, when a revision has been barred under Section 397(3) of the Code, the complainant or the accused cannot be allowed to take recourse

to revision before the High Court under Section 397(1) of the Criminal Procedure Code as it is prohibited under Section 397(3) thereof. However, the High Court can entertain a petition under Section 482 of the Criminal Procedure Code when there is serious miscarriage of justice and abuse of the process of the court or when mandatory provisions of law are not complied with and when the High Court feels that the inherent jurisdiction is to be exercised to correct the mistake committed by the revisional court.”

(emphasis supplied)

9. The Ld. counsel for the petitioner submitted that inherent power of this Court U/s 482 Cr.P.C is still available and for continuous superintendence the Court would be justified in interfering with the order which has led to the miscarriage of justice. He further submitted that the object of introduction of the bar of section 397(3) Cr.P.C is to prevent a second revision so as to avoid frivolous litigation, but the doors of the High Court to a litigant who had failed before the Court of Sessions are not completely closed, and if a "special case" is made out then such bar ought to be lifted.

10. A learned single judge of this court in ***Surender Kumar Jain vs. State & Anr.***, ILR (2012) 3 Del 99 accepted such objections in another similarly placed petition under Section 482 Cr. PC observing thus :-

“5. The issue regarding filing of petition before the High Court after having availed first revision petition before the Court of Sessions has come up before the Supreme Court and this Court repeatedly. While laying that section 397(3) Cr. P.C. laid statutory bar of second revision petition, the courts have held that High Court did enjoy inherent power under section 82 (sic) Cr. P.C. as well to entertain petitions even in

those cases. But, that power was to be exercised sparingly and with great caution, particularly, when the person approaching the High Court has already availed remedy of first revision in the Sessions Court. This was not that in every case the person aggrieved of the order of the first revision court would have the right to be heard by the High Court to assail the same order which was the subject matter of the revision before Sessions Court. It was all to depend not only on the facts and circumstances of each case, but as to whether the impugned order bring about a situation which is an abuse of process of court or there was serious miscarriage of justice or the mandatory provisions of law were not complied with. The power could also be exercised by this Court if there was an apparent mistake committed by the revisional court. Reference in this regard can be made to the judgments of the Supreme Court in *Madhu Limave v. State of Maharashtra*(1977) 4 SCC 551, *State of Orissa v. Ram Chander Aggarwal*, (1979) 2 SCC 305 : AIR 1979 SC 87, *Rai Kapoor v. State (Delhi Administration)*1980 Cri. L.J. 202, *Krishnan v. Krishnaveni and Kailash Verma v. Punjab State Civil Supplies Corporation* (2005) 2 SCC 571.”

(emphasis supplied)

11. All the contentions raised by the petitioner in the present petition cannot be decided under the proceedings U/s 482 Cr.P.C. as this court U/s 482 of the Cr.P.C shall not upset the concurrent findings of the two courts below in the absence of any perversity and the petitioners cannot be allowed to initiate a second revision petition in the garb of section 482 Cr.P.C. More so, the defence as raised by the petitioner in the petition requires evidence, which cannot be appreciated, evaluated or adjudged in the proceedings under Section 482 of Cr.PC and the same can only be proved in the Court of law. Reliance can be placed upon "*State of Madhya Pradesh Vs. Yogendra*

Singh Jadon & Anr''., Criminal Appeal No. 175 of 2020 (Arising out of SLP (Criminal) No. 172 of 2017) decided by the Hon'ble Supreme Court on January 31, 2020 in which it has been held that "the power under Section 482 of the Code of Criminal Procedure, 1973 cannot be exercised where the allegations are required to be proved in Court of law".

12. Therefore, this Court finds that no special case has been made out for this Court to exercise extraordinary jurisdiction U/s 482 Cr.P.C. There is no miscarriage of justice or illegality in the approach adopted by the two courts below nor any such has been pointed by the petitioner.

13. In these facts and circumstances, I do not find any palpable absurdity or perversity in the impugned order, which may require to be corrected or set right by this Court, in exercise of its inherent jurisdiction U/s 482 Cr.P.C. The petition is, therefore, dismissed and Crl. M.A. 36428/2019 is also disposed of accordingly.

RAJNISH BHATNAGAR, J

June 1, 2020

Sumant