

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R No. 2478 of 2017

M/s Innovative Commodities Pvt. Ltd & Ors.

Vs.

**Sri Sankar Chakraborty, Provident Fund Enforcement
Inspector & Anr.**

For the Petitioners:

Mr. Bratin Kumar Dey, Advocate

Opposite Party No. 1:

Mr. Shib Chandra Prasad

Heard on :

03.12.2021

Judgment on:

24.12.2021.

Ananda Kumar Mukherjee, J. :-

1. The petitioners prefer this revision under section 482 of Cr. P.C read with section 401 of the Code of Criminal Procedure -1973.
2. The grievance of the petitioners, as it unfurls from their application for revision is as follows:

The petitioner company deducted Employees' contributions towards Provident Fund from their wages amounting to Rs. 4679/- (four thousand six hundred seventy nine) for the months from July, 2012 to September, 2012 and in contravention of the provisions of section 6A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (herein after referred to 'as the said Act') read with paragraph 3 of the Employees' Provident Fund Scheme, 1995 of the said Act, failed to deposit such Employees' Provident Fund contributions to the statutory fund within the stipulated period.

3. Due to failure of the petitioners in depositing Provident Fund dues, in respect of the deductions made by them from their workers, the Assistant Provident Fund Commissioner/ Assessing Officer, Sub-Regional Office, Park Street issued summons to the petitioners vide no. SRO/ PRB/ CC/WB/ 42439/67 dated 21.08.2013 with direction to appear in the hearing with records.

4. The petitioners failed to appear in the said proceeding before the Assistant Provident Fund Commissioner who assessed the dues payable under section 7(A) of the said Act as Rs. 73957/- (Seventy three thousand nine hundred fifty seven) and also assessed dues under section 7(Q) of the said Act as Rs. 6084/- (six thousand eighty four). The petitioners having been directed to pay within 15 days from receipt of the order has paid all dues payable under section 7(A) and 7(Q) by three Demands Drafts amounting to a total of Rs. 80041/- (eighty thousand forty one) drawn on State Bank of India in favour of the Employees' Provident Fund Officer and transmitted under letter dated 17.02.2014.

5. After receipt of the said amount paid through three demand drafts, Opposite Party no. 1 has lodged complaint against the petitioners on 24.02.2014 under section 14(1), 14(1A), 14(1B), 14(2), 14(2A), 14A(1), 14A(2) and 14 AA of the Employees' Provident Fund and Miscellaneous Provisions Act 1952, bearing case no C-6447 of 2014, pending before the Learned Judicial Magistrate, 2nd Court at Alipore, South 24 Parganas.

6. The petitioners have contended herein that having paid the entire amount against Employees' Provident Fund dues as assessed by the Employees' Provident Fund authority, the complaint case lodged against them is not maintainable and sought for quashing of the complaint in case no. C-6447 of 2014, pending before the Learned Judicial Magistrate, Second Court at Alipore, South 24 Parganas.

7. The thrust area of argument advanced on behalf of the petitioners is that the petitioners no. 2 and 3 as Directors of the employer company, having deposited the Provident Fund dues of the Employees' contributions before lodgement of the compliant, cannot be prosecuted on the charge of contravention of the provisions under section 14 (1A) of the Employees' Provident Fund and Miscellaneous Provisions Act as the default has already been made good by making payment.

8. Mr. Bratin Kumar Dey, learned Advocate for the petitioners, urged that continuation of further proceeding against the petitioners on the strength of the compliant would result in abuse of the process of the court and submitted that by invoking the jurisdiction vested under section 482 of Cr. P.C the petition of complaint may be quashed.

9. Learned Counsel for the petitioners in support of his argument placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of **Adoni Cotton Mills Ltd and others vs. Regional Provident Fund Commissioner and others (1995) Supp (4) Supreme Court Cases 580**, and two other decisions of this Court, one in **Air Transport Corporation and Others vs. State of West Bengal and Another, (2006 SCC Online CAL 164: (2006) 4 CHN 701)** and the other in **Howrah Motor Company Limited and Others vs. Samir kumar Das, (2004 SCC Online CAL 430: (2004) 4 CHN 291)**.

10. Mr. Shib Chandra Prasad, Leaned Advocate appearing for the Regional Provident Fund Commissioner/ Opposite Party no. 1 strongly assailed the arguments advanced on behalf of the petitioners. It is argued on behalf of Opposite Party No. 1 that the failure on the part of the employer /petitioner to

deposit the employees' contribution of Provident Fund which has been deducted by the employer from the employees' wages is a violation in complying the Provisions of section 6A of the Employees Provident Fund Act, resulting in Commission of offence punishable under section 14(1A) and Section 14 (A) of the Employees' Provident Fund and Miscellaneous Provisions Act 1952 and any subsequent deposit of the outstanding dues does not absolve the accused person of their liability of the criminal offence committed by them.

11. Learned Advocate argued that the instant criminal offence arising out of contravention of a social legislation like the Employees' Provident Fund and Miscellaneous Provisions Act has a wide ramification in the society and it does not call for exercise of the power vested under section 482 of the Criminal Procedure Code for quashing of a complaint lodged for violation of the said Act.

12. In support of his argument learned advocate for the Provident Fund Authority placed reliance upon a decision of this court in the case of **Kamala Tea Company Limited and others vs. State of West Bengal and Another, (2007 (2) CLJ CAL 124)** and another decision of the Hon'ble Supreme Court in the case of **Bhagirath Kanoria and others vs. State of Madhya Pradesh With Bhahadur Singh vs. Provident Fund Inspector and others and Rajbahadur Singh vs. Provident Fund Inspector and others, (AIR 1984 Supreme Court, 1688).**

13. It is further argued on behalf of Opposite Party no. 1 that the facts and circumstances of the case under consideration of this court is distinguishable from the facts and circumstances of the case on which the petitioner have placed reliance. Learned Advocate assiduously contended that the decisions in the case of Adoni Cotton Mills Ltd., Howrah Motor Company Limited and others and Air Transport Corporation have no application to the instant case as their facts are not *pari materia* with the present case.

14. Having considered the submissions made by learned advocates for the petitioners as well as the Opposite Party no. 1 and the facts and circumstances of the case, I find there is no factual dispute that the petitioners have failed to deposit the Employees' Contribution of Provident Fund with the Provident

Fund Authority during the period from July 2012 to September 2012 within the stipulated time. The dues were deposited on 17.02.2014 only after a proceeding was initiated against the petitioners by the Assistant Provident Fund Commissioner and summons were issued on 21.08.2013. Admittedly, petitioners were notified of the section 7A and 7Q proceedings. Petitioners failed to attend and comply with the demand notices served on them. Pursuant to the adjudication under section 7A and 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. Only after prosecution had been sanctioned the petitioners deposited the defaulted amount and transmitted the demand drafts to Employees' Provident Fund Organization on 17.02.2014. It is needless to reiterate that failure to deposit the Employees' contribution in time is a violation of section 6A of the Act and results in commission of an offence under section 14 (1A) of Employees' Provident Fund and Miscellaneous Provisions Act 1952.

15. In the case of **Ramjhora Tea Company Limited vs. G.P. Sinha, (1993) 1 LLN 840: (1993) 66 FLR 1033 (CAL)**, it has been held that no amount of subsequent payment after the default, whether by arrangement or otherwise, would wipe out the offence.

16. In **Kamala Tea Company Limited and others 2007 (2) CLJ (CAL) 124**, the High Court of Calcutta has held, "it clearly emerges from the aforesaid discussion that there is no such law, nor any decision which conclusively dictates that in case of subsequent payment of the amount of employees' share of contribution towards P.F., however, belated it might be, the criminal prosecution must be quashed. It is rather the settled position of law that subsequent payment does not by itself condone the lapse but certainly is a factor to be taken into consideration at the subsequent stage and most certainly at the time of imposition of punishment, if at all".

17. In **Bhagirath Kanoria and others vs. State of Madhya Pradesh (AIR 1984 Supreme Court 1688)**, cited on behalf of the Opposite Party, the Hon'ble Supreme Court of India observed "The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day

that they failed to comply with the obligation to pay their contribution to the Fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid his contribution or contribution of the employees to the provident fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply.” Therefore, it appears that late payment does not wipe out the original guilt of the employer.

18. Mr. Dey, learned Advocate for the petitioners sought for quashing of the complaint case and relied upon a decision of the Hon’ble Supreme Court of India in **Adoni Cotton Mills Limited and others (1995) supp (4) supreme court cases 580**, wherein the offence alleged was the failure to deposit the amounts under the Employees’ Provident Fund and Miscellaneous Provisions Act 1952 for a short period of four months immediately following the discharge of the appellate company from the receivership. During pendency of the appeal, Hon’ble Supreme Court of India granted stay of further proceeding by way of prosecution on condition that appellants deposited the amount and furnished Bank Guarantee to the satisfaction of the Registrar of the High Court within a period of six weeks. The employer appellant deposited Rs. 40,000/- (forty thousand) and also furnished a Bank Guarantee of Rs. 60,000/- (Sixty thousand).

19. In the referred case the alleged offence for non deposit of Provident Fund dues led to initiation of prosecution about fifteen years back and the appeal come up before Hon’ble Supreme Court. In the mean while two of the appellants had died. In that case, the company was nationalised on 01.04.1974. Initially the company challenged the nationalisation proceeding by writ petition, where the first appellant, the company was appointed as receiver to manage the affairs of the mills. The writ petition was dismissed in July, 1976. The company ceased to be the receiver about that time. There were defaults on the part of the company in making deposit of Provident Fund dues of the employees during the months of April to July 1976, for four months due

to which notices were issued as to why the appellants, that is the Company and the Directors would not be prosecuted for such default under section 14 and 14A of the Employees' Provident Fund Act, 1952. And section 15 of Additional Employment's (Compulsory Deposit) Act, 1974 read with sections 406 and 409 of the Indian Penal Code. On receiving notices the appellants filed two writ petitions which were dismissed by the High Court. On appeal the Hon'ble Supreme Court of India taking into account all such circumstances observed that notices for prosecution should be quashed. In actuality no prosecution was initiated at all.

20. The facts and circumstances of Adoni Cotton Mills case can well be distinguished from the present case as the defaults in deposit were made by the said company which was nationalised. The company was initially appointed as receiver and then discharged during the time of default. The defaulted amounts were partly deposited in court and partly secured by furnishing Bank guarantee. Furthermore, the offence was allegedly committed fifteen years prior to initiation of the appeal, due to failure to deposit the amount under the enactment for a short period of four months immediately following the discharge of the company from Receivership. After taking into account all such circumstances the Hon'ble Supreme Court of India directed that the amounts deposited in court and secured by Bank guarantee are to be paid over to the Regional Provident Fund Commission and the impugned Notices for prosecution should be quashed. In the present case the defaults were without any reason. In Adoni Cotton Mills no persecution had started. The quashing was in respect of the notice to prosecute. On this count as well the prosecution case would be distinguishable from the facts of Adoni Cotton Mills. The settled position of law is, so far as a criminal complaint is concerned, once the offence is committed, any payment made subsequently thereto will not absolve the accused of the liability of criminal offence.

21. Mr. Dey, also relied upon the decision of the Learned Single Judge of this court in the case of **Air Transport Corporation and Others vs. State of West Bengal and Another**, reported in 2006 SCC online CAL 164; (2006) 4 CHN

701, wherein considering the fact that immediate after initiation of the case petitioner deposited the entire dues in respect of the alleged default in payment of the Provident Fund amount and that such amount had been accepted by the Provident Fund authority, it has been held that, “while purpose had been fulfilled, the question of continuing of proceeding, in my opinion, will be an abuse of the process of court” and the proceeding was quashed. While adverting to such question the court deemed it fit to make an observation that, ‘no doubt the allegation made in the complaint cannot be white-washed by subsequent payment’.

22. In the case of **Howrah Motor Company Limited and Others (2004) SCC online CAL (430)**, this court while arriving at a decision of quashing the proceeding against the petitioners, arising out of non-payment of Employees’ Provident Fund dues, took into consideration the facts that the delay in payment of Provident Fund dues resulted due to an order of injunction restraining the petitioners from withdrawing the amount from the bank followed by appointment of a special officer overseeing the disbursement of salary and other dues of employees. This prevented the petitioner from clearing their dues earlier which was not within the control of the petitioners. The Provident Fund Authority also accorded permission to the petitioners to pay the dues by instalments. As the entire amount was paid, the court found no justification for further continuance of the proceeding against them. The fact of the above cases is also distinguishable from the case under consideration where the petitioners failed to cite any cogent reasons for not depositing the Provident Fund dues within the stipulated period, until sanction is accorded for prosecution. In my considered view the case relied upon on behalf of the petitioners are not in pari-materia with the facts and circumstances of the present case. Subsequent deposit cannot absolve the petitioners of therein statutory liability.

23. Employment Provident Funds and Miscellaneous Provisions Act, 1952 is essentially a welfare legislation with a social object to selfguard the future interest of millions of workers in this country. To ensure the protection of the

weaker and oppressed section from exploitation this legislation has become necessary. No authority is permitted to misappropriate or embezzle the Employees' Provident Fund contribution of employees' deducted from their wages. Any violation in this matter constitutes an offence under said Act. Accordingly, subsequent deposits of provident fund contribution may appear to be a mitigating circumstance, but the offence cannot be absolved and the liability of the petitioners under the law shall continue.

24. Considering all these aspects and for the reasons recorded, I do not find it fit to quash the criminal proceeding. The Revisional application is accordingly dismissed on contest. Interim order, if any, stands vacated.

25. It may be mentioned that the learned Trial Court while proceeding with the complaint case will not be influenced by the observations made herein and proceed in accordance with law.

26. Criminal Section is directed to forward a copy of this judgment and orders to the learned Judicial Magistrate, 2nd court Alipore for information and necessary action.

27. Urgent Photostat certified copy of this judgment, be supplied as expeditiously as possible, if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)