

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.868 of 2021

Arising Out of PS. Case No.-340 Year-2021 Thana- GANDHIMAIDAN District- Patna

1. HIMANSHU SHEKHAR S/o SHRI SAHDEO JHA R/o PANJVATEE 480, NEHRU NAGAR, P.S-PATLIPUTRA, TOWN AND DISTRICT-PATNA
2. BINU KAKKARNATTU JOSE S/o K.J. JOSE R/o FLAT No. 23, GALAXY APARTMENT 2, NEW PATLIPUTRA COLONY, P.S-PATLIPUTRA TOWN AND DISTRICT-PATNA

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY BIHAR
2. OFFICER INCHARGE, GANDHI MAIDAN P.S, TOWN AND DISTRICT-PATNA. PATNA.
3. ENFORCEMENT OFFICER,REGIONAL OFFICE, EMPLOYEES PROVIDENT FUND ORGANIZATION, R-BLOCK ROAD NO.6,PATNA BHAVISHYANIDHI BHAVAN R-BLOCK ROAD No.6, PATNA.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1115 of 2021

Arising Out of PS. Case No.-340 Year-2021 Thana- GANDHIMAIDAN District- Patna

DEVASHISH PURKAYASTHA S/O Late Gopika Ranjan Purkayastha Resident of 304, Kaushalya Apartment, Khagaul Road, Mithapur, Town and District Patna 800001, at present residing at- Eden Tolly Lake Side, Flat - 4a, Floor-4th, Block- F1, 319, Mahatma Gandhi Road, Kabardanga Ramchandrapur, Kolkat (MC), Kolkata, West Bengal - 700104.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY Bihar
2. officer Incharge, Gandhi Maidan Police Station, Town and District Patna. Bihar
3. Enforcement officer, Regional office, Employees Provident Fund organization, Bhavishyanidhi Bhavan R- Block Road No. 6, Patna, Bihar.

... .. Respondent/s

Appearance :

(In Criminal Writ Jurisdiction Case No. 868 of 2021)

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Sr. Advocate
FOR the EPFO	:	Mr. Rajeev Kumar Verma, Sr. Advocate
		Mr. Prashant Sinha, Advocate
For the State	:	Mr. Prabhat Kumar Verma, AAG 11



(In Criminal Writ Jurisdiction Case No. 1115 of 2021)

For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate
FOR the EPFO : Mr. Rajeev Kumar Verma, Sr. Advocate
For the State : Mr. Prabhat Kumar Verma, AAG 11

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V JUDGMENT

Date : 09-09-2022

Heard Mr. Umesh Prasad Singh, learned senior counsel for the petitioners, Sri Rajeev Kumar Verma, learned senior counsel for the Employees Provident Fund Organization and learned counsel for the State.

The petitioners in both the applications have filed their applications praying for quashing of the first information report of Gandhi Maidan P.S. Case no. 340 of 2021 registered on 17.7.2021 under sections 406 and 409 of the Indian Penal Code.

The FIR was registered on the basis of written statement dated 16.7.2021 of the Enforcement Officer, Regional Office, Employees Provident Fund Organization, Patna, Bihar addressed to the Officer In-charge, Police Station Gandhi Maidan, Patna. It was stated therein that M/s Sahabad Investment and Traders Ltd. (SINTRA) is an establishment covered under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the EPF Act') with effect from 31.7.1972 bearing code no. BR/PAT/2006. By letter dated 4.5.1976 SINTRA was granted



relaxation under para 79 of the EPF Scheme, 1952, however as the establishment violated the conditions as mentioned in the letter dated 16.7.2021 of the EPF Scheme, 1952, by letter dated 28.2.2017 the competent authority withdrew the relaxation granted. Further the establishment was directed to transfer the past accumulation within 10 days of receipt of the order dated 8.2.2017 and to submit a statement of the same in accordance with the provisions of paragraph no. 28 of the EPF Scheme, 1952. The Secretary of the trust submitted the past accumulation statement as on 28.2.2017 with their letter dated 3.7.2018 according to which Rs. 5,14,24,723/- was payable to the EPFO, Patna. Out of the aforesaid amount Rs. 1,61,50,120/- relates to employer's share while Rs. 3,52,74,603/- relates to the employees share. It was further stated that till date only Rs. 2,50,34,204/- has been recovered from the establishment and an amount of Rs. 2,63,90,519/- in respect of 224 employees as on 28.2.2017 ie. the date the relaxation was withdrawn, is still due. It was stated that the office is regularly receiving complaints from the employees of the establishment of payment of EPF benefits. Consequent to withdrawal of the relaxation, the management of SINTRA Ltd was liable to transfer the total EPF accumulation of the employees as on 28.2.2017 as per past



accumulation statement against whom the provident fund contribution was deducted. It was stated that since the establishment failed to deposit/transfer the dues amount of Rs. 2,63,96,519/- in accordance with the provisions of the EPF Scheme, 1952, it appeared that the management of SINTRA Ltd and its provident fund trust has misappropriated the provident fund contribution of their employees and thereby they have committed the offence of criminal breach of trust as provided in Explanation-1 of section 405 of the Indian Penal Code and punishable under sections 406 and 409 of the Indian Penal Code. The Enforcement Officer, Regional Office, EPFO by his letter dated 16.7.2021 requested that an FIR be lodged against the petitioners for misappropriation of the provident fund contribution of their employees. Accordingly the FIR as stated above was registered against the petitioners.

It is submitted by learned senior counsel appearing for the petitioners that from perusal of the allegations as leveled in the FIR it would transpire that no specific allegation has been made against the petitioners. The so-called establishment or the Company of which the petitioners were merely employees have not been made accused. None of the petitioners were holding the office at any time as In-charge or controlling Director and or



as Executive Director or Managing Director of the company. The company had become non-functional since 2016. The petitioner no. 1 of Cr.W.J.C no. 868 of 2021 was appointed as Additional Director of the company on 23.11.2017 and he retired as Director on 31.12.2020. The petitioner no. 2 in Cr.W.J.C no. 868 of 2021 was nominated as a Director of the company on 31.12.2020. So far as the sole petitioner in Cr.W.J.C no. 1115 of 2021 is concerned, he was appointed as a Director on 29.9.2018. It was further submitted that the company was mainly engaged in transportation of material for manufacture of cement by a company namely Kalyanpur Cement Ltd as also for transportation of cement from Kalyanpur Cement Factory to Rail Head Sonenagar and other places. For the said work the company SINTRA had entered into an agreement on 29.3.2009 with Kalyanpur Cement Ltd. A copy of the said agreement is Annexure-2 to the petition. It was submitted that M/s Kalyanpur Cement Ltd. declared lockout, was closed and it stopped manufacturing cement. It was finally declared insolvent by the learned NCLT, Kolkata Branch and the assets and liabilities was taken over and transferred to Dalmiya DSP Ltd. As such from the year 2016 the company had no work and is virtually closed. It was submitted that the petitioners had



accepted the assignment only in good faith because of their acquaintance who were Directors and who are managing Kalyanpur Cement Ltd and Hind Marketing Corporation Ltd. The two petitioners of Cr.W.J.C no. 868 of 2021 were employees of Kalyanpur Cement Ltd and Hind Marketing Corporation Ltd, the two sister companies of the company SINTRA Ltd. The petitioner of Cr. W.J.C. no. 1115 of 2021 was in service of the company. The three petitioners having accepted the assignment of being the Director in good faith, did not have any specific control over the affairs of the company when the alleged offence were committed. It was further submitted that even as per the provisions of the EPF Act 1952, the case had to be lodged against the establishment ie. the company SINTRA Ltd. No offence under sections 406 and 409 of the Indian Penal Code or under any other provisions is made out against the petitioners and proceedings against the petitioners without making the company an accused is an abuse of the process of the Court. It was thus submitted that the FIR of Gandhi Maidan P.S. Case no. 340 of 2021 be quashed.

Learned counsel appearing for the petitioners, in support of his contentions relies on the judgment in the case of Aneeta Hada v. Godfather Travels & Tours (P) Ltd. [(2012) 5 SCC 661],



Bablu vs. State of Bihar [2021(3) PLJR 221 SC] and Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [AIR 2006 SC 3086].

It was submitted by Mr. Rajeev Verma, learned senior counsel appearing for the respondent no. 3 that the FIR is not expected to be an encyclopedia. As and when in course of investigation evidence is found, the company will also be made an accused. The offence alleged in the FIR which relates to non-deposit/transfer of the dues of the provident fund contribution to the tune of more than Rs. 5 crores is a continuing offence. It was submitted that the allegation being against the establishment and the prosecution being under the Indian Penal Code and not under the EPF Act, the only recourse was to lodge an FIR. Further referring to section 405 of the Indian Penal Code it was further submitted that while section 405 of the Indian Penal Code defines criminal breach of trust, Explanation-1 to section 405 of the Indian Penal Code provides that a person being an employer of the establishment whether examined under section 17 of the EPF Act or not, who deducts the employees contribution from the wages payable to the employees for credit to provident fund shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he



makes default in payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of law, as aforesaid. Thus, it was submitted that there was no merit in the two applications filed by the petitioners for quashing of the FIR and the same were fit to be rejected.

The prayer of the petitioners was also opposed by learned counsel appearing for the State.

Heard learned senior counsel for the petitioners, learned counsel for the respondent no. 3 and learned counsel for the State.

The facts relevant for the instant two applications are that an FIR being Gandhi Maidan P.S. Case no. 340 of 2021 was registered on 17.7.2021 under sections 406 and 409 of the Indian Penal Code on the basis of the written statement dated 16.7.2021 of the Enforcement Officer, Regional Office, EPF, Patna (Bihar) addressed to the Officer In-Charge, P.S. Gandhi Maidan. It was stated therein that SINTRA was an establishment covered under the provisions of the EPF Act. It had been granted relaxation under paragraph no. 79 of the EPF Scheme, 1952 vide letter dated 4.5.1776, However, subsequently the relaxation was withdrawn vide letter dated 8.2.2017 with effect



from 28.2.2017. The establishment was directed to transfer the past accumulation within 10 days and to submit a statement in accordance with the provisions of the EPF Scheme, 1952. A total sum of Rs. 5.14 crores (approx) was the employees contribution. It was stated that the office was regularly receiving complaint from the employees and ex-employees of the establishment (SINTRA) as also from the Kalyanpur Cement Karamchari Sangh for payment of EPF benefits. Since the establishment (SINTRA) failed to deposit/transfer the dues amount in accordance with the provisions of EPF Scheme, 1952, they had committed criminal breach of trust as provided in Explanation-I of section 405 of the Indian Penal Code. It was requested that an FIR be lodged and legal action be taken against the three persons (petitioners herein) who were responsible for misappropriation of the provident fund contribution. On the basis of the above written statement the FIR was registered, quashing of which has been prayed for in the two applications.

At this stage it would be relevant to quote section 405 of the Indian Penal Code in its entirety.

“405. Criminal breach of trust.
—Whoever, being in any manner entrusted with property, or with any



dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

1[Explanation 2[1].—A person, being an employer 3[of an establishment whether exempted under section 17 of the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee’s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, 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 law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.]

¹[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.]”

Perusal of Explanation of section 405 of the Indian Penal Code quoted above would show that if any person being an employer deducts the employees’ contribution from the wages payable to the employees for credit to provident fund 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 law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Reading of the contents of the written statement of the informant addressed to the Officer-in-Charge which led to registration of the FIR clearly shows that as per the past accumulation statement on 28.2.2017 employer’s share amounting to Rs. 1.61 crores (approx) and employees’ share



amounting to Rs. 3.52 crores (approx) was found payable to the EPFO, Patna, Bihar. Further an amount of Rs. 2,63,90,519/- in respect of 224 employees as on 28.2.2017 was still due and the establishment failed to deposit/transfer the amount in accordance with the provisions of the EPF Scheme, 1952. It was stated by the Enforcement Officer that the three petitioners in the two applications were responsible for misappropriation of provident fund contribution of their employees. Thus, the FIR was registered against the three petitioners herein.

The Hon'ble Supreme Court in a number of judgments have held that the FIR, is to be quashed only when it does not disclose commission of a cognizable offence. The High Court cannot embark upon enquiry into the merits of the allegations and quash the proceedings without allowing investigating agency to complete its task.

So far as the facts of the instant case is concerned, the investigation in the case having proceeded, in the supervision conducted by the police authorities, the case has been found to be prima facie true under sections 406 and 409 of the Indian Penal Code. So far as the reliance on behalf of the petitioners on the judgment of the special Bench in the case of Bablu (supra) is concerned, it is submitted that in the opinion of this Court, the



same would not have any application in the facts of the present case in so far as the FIR of the instant case has not been registered under the provisions of the EPF Act, 1952 but under sections 406 and 409 of the Indian Penal Code. So far as the reliance on behalf of the petitioners on the judgment in the case of Aneeta Hada (supra) is concerned, this judgment is also of no assistance to the petitioners because the question in the said case related to interpretation of sections 138 and 141 of the Negotiable Instrument Act, 1881. Next judgment relied on on behalf of the petitioners is in the case of Sabitha Ramamurthy (supra). Once again this judgment related to issuance of cheques in favour of respondents and from the facts of the said case it would transpire that the appellants were not the directors of the company at the material time and further this judgment also relates to interpretation of sections 138 and 141 of the Negotiable Instrument Act 1881. Thus, from all the judgments relied on on behalf of the petitioners it would transpire that the same were decided in context of sections 138 and 141 of the Negotiable Instrument Act. So far as the instant FIR is concerned, it would transpire that the allegation made therein clearly make out a case of criminal breach of trust against petitioners which is further confirmed from reading of section



405 of the Indian Penal Code along with Explanation-I thereof and is thus punishable under sections 406 and 409 of the Indian Penal Code.

On the other hand, learned counsel for the respondent no. 3 relied on the judgment reported in the case of Neeharika Infrastructure Pvt. Ltd vs. State of Maharashtra. Relevant part/conclusion of the said judgment dated 13.4.2021 passed in Cr. Appeal no. 330/2021 is quoted herein below for ready reference :

“23.....

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is



sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not



deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate

which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

.....”



Having heard learned counsel for the parties and taking into consideration the facts of the case, in the opinion of this Court the petitioners have not made out any case for quashing of the FIR.

There being no merit in the case, both the applications are dismissed.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

