IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:
THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2847 of 2006

JWALA PRASAD AGARWAL & ORS.
VS.
PAWAN KUMAR GENERIWALA & ANR.

For the Petitioners	: Mr. Debasish Roy, Adv. Mr. Vivek Jhunjhunwala, Adv.
For the Opposite Parties	: Mr. Somopriyo Chowdhury, Adv. Mr. Sanket Sarangi, Adv.
Hearing concluded on	: 16th November, 2022
Judgement on	: 29th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Challenge in this criminal revision is to judgement and order passed by learned Metropolitan Magistrate, 11th Court, Calcutta in Case No. C/7623/06 on 1st August, 2006, whereby learned Trial Court was pleased to issue process under Section 204 of the Criminal Procedure Code for offence punishable under Section 420/406/120B of the I.P.C. against the accused persons after examining the complainant Pawan Kumar Ganeriwala under Section 200 of the Cr.P.C.

2. Briefly stated, Sri Pawan Kumar Ganeriwala was an employee of Gwalior Webbing Company Private Limited having its office at R.N. Mukherjee Road. Said Pawan Kumar Ganeriwala prior to joining

Gwalior Webbing Company Private Limited on 16th September, 2005, was an employee of Jute Investment Company Limited in the Managerial post. The Company participated in the Voluntary Provident Fund Scheme administered by Birla Brothers Private Limited Provident Fund Institution. Deduction used to be made from the salary of Mr. Ganeriwala like other employees and the employee's share so deducted used to be complimented with the share of the employer and the aforesaid sum used to be deposited in the Provident Fund Institution and credited in the name of employee who is given a membership number in respect of account. Mr. Ganeriwala was also awarded membership no. 024807 and regular deduction towards employees share of provident fund used to be made from the salary of Mr. Ganeriwala and same was deposited to the credit of Mr. Ganeriwala in his provident fund account. At the time of his resignation from the said Company on 16th September, 2005 the accumulated sum was Rs. 7,05,965.25/- after adjustment of non refundable withdrawal of Rs. 83,000/-. After his resignation, new employer of Mr. Ganeriwala submitted a new membership declaration form with the Provident Fund Institution under the cover of letter dated 22nd February, 2006 and requested the Provident Fund Institution to transfer the accumulated amount against the membership of Mr. Ganeriwala for credit under the new membership allotted. But it was not done. Hence, Mr. Ganeriwala filed the petition of complaint before the Competent Court of law against five persons. It was alleged that accused nos. 1 to 5 are responsible of the affairs of the said Company who deducted the contribution of the provident fund from his salary. According to complainant the accused persons have acted dishonestly and fraudulently by denying the complainant of the just amount due to him under the aforesaid provident fund scheme maintained by Birla Brothers Provident Fund Institution and they have converted the same to their own use resulting into wrongful loss to the complainant and wrongful gain to the accused persons.

3. Mr. Debasish Roy, learned Senior Counsel representing the petitioners submitted that admittedly Mr. Pawan Kumar Ganeriwala was an employee of Jute Investment Company Limited. While in employment, from his salary certain amount used to be deducted towards employee's share in the contribution of provident fund and together with employer's contribution and the same used to be deposited with the Biral Brothers Provident Fund Institution along with contribution of other employees.

4. Mr. Ganeriwala put in paper and his resignation was accepted by the Jute Investment Company Limited and he was allowed to join his new employer. But subsequently on 15th June, 2006, the erstwhile employer of the Opposite Party, informed him that during his employment he became a part of conspiracy for various offence including the act of forgery and criminal breach of trust and acted against the interest of the company. The Company decided to place his act and omission under scanner and thereby the request of Mr. Ganeriwala for transferring of the amount accumulated in his provident fund was not acceded to.

5. Drawing my attention to Rule 20 of the Birla Brothers Provident Fund Institution Rules and Regulations, Mr. Roy submits that

employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntary leaves his employment otherwise than on account of ill health or other unavoidable cause before the expiration of five years service. In such case the recoveries made by the employer shall, subject to the approval of the Truestees of the institution be limited to the contributions made by him to the individual account of the employee and to interest (simple or compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund. According to Mr. Roy, the member shall forfeit to the fund the whole of the amount standing to his credit including his own subscription in the case of embezzlement, dishonesty, fraud, misappropriation or in other criminal act against the employers. Since the Opposite Party was informed by letter dated 5th June, 2006, that The company was examining certain issues of forgery and criminal breach of trust, committed by some persons including the Opposite Party No. 1, the amount accumulated in the provident fund was not transferred. Subsequently the said sum has been transferred to the fund to which the subsequent employer of the Opposite Party No. 1 was a member and such fund being M.P. Birla Group Provident Fund Institution, having been added as Opposite Party by filling affidavit has admitted the factum of such transfer. Mr. Roy concludes his argument by saying that the company did not cause any infraction to Rules and cannot be saddled with criminal liability of any kind.

6. Mr. Somopriyo Chowdhury, learned Counsel representing the added Opposite Party submits that after accepting the resignation, the

erstwhile employer had no reason to withhold the amount accumulated in the provident fund against the membership of Pawan Kumar Ganeriwala despite request of such transfer made through his employer M/s Gwalior Webbing Company Private Limited. It was willfully done to deprive Mr. Ganeriwala.

7. In my humble opinion, when the Opposite Party Mr. Pawan Kumar Ganeriwala is not appearing before the Court and the M.P. Birla Group Provident Fund Institution has been impleaded only for the purpose of informing this Court as to whether amount accumulated to the credit of Mr. Generiwala in his provident fund account was transferred to the provident fund institution, where his subsequent employer became a member or not and by filling supplementary affidavit, the added Opposite Party indicated that the accumulated sum was transferred from the Birla Brothers Provident Fund Institution to M/s M.P. Birla Group Provident Fund Institution.

8. Therefore, there is every reason to presume that as an employer, M/s Jute Investment Company Limited deposited both the employers contribution as well as contribution of the employee, so deducted from his salary, to the Birla Brothers Provident Fund Institution and the same was duly transferred to M/s M.P. Birla Group Provident Fund Institution.

9. Had there been any incident that having deducted the share of the employee from the salary together with the share of the employer not deposited with the provident fund institution. The employer could have been held liable for committing the offence within the meaning of Section 405 of the I.P.C. which says:-

"Section 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][[2][Explanation 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 employees 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.]

[4] [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.]"

10. Explanation 1 appended to Section 405 of the I.P.C. enunciates that a person being an employer, who deducts the employees' 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 contribution so deducted by him and in case of any default on the part of the employer to deposit the said sum the employer shall be deemed to have dishonestly used the said amount in violation of law. When admittedly the contribution (of both employee and employer) was deducted and deposited with the provident fund institution by no stretch of imagination it can be said that there was infraction of statutory provision for which the employer could be saddled with any criminal liability either within the meaning of Section 405 of the I.P.C. or Section 415 of the I.P.C. The delay in transferring the fund has the explanation under Rule of 20,21 and 22 of the Birla Brothers Provident Fund Institution Rules and Regulations. It cannot be ascribed to any criminal mind.

11. Thus, in my humble opinion it is a fit case to invoke the provision of Section 482 of the Cr.P.C. to quash the proceeding being C/7623/06 in order to avert the abuse of process of law which I accordingly do.

12. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary action.

13. Parties are to act on the server copy of this judgement.

14. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)