

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M-10109-2021
Reserved On: 28.07.2022
Pronounced on: 01.08.2022

Provident Fund Inspector

.....Petitioner

Versus

M/s Baptist Senior Secondary School and others

....Respondents

CORAM: HON'BLE MR. JUSICE HARNARESH SINGH GILL

Present: Mr. Sumeet Goyal, Senior Advocate, with
Mr. A.K. Ranolia, Advocate, for the petitioner.

Harnaresh Singh Gill, J.

The petitioner seeks quashing of the order dated 06.02.2018 (Annexure P.1) passed by the learned Judicial Magistrate, Ist Class, Bhiwani, in a complaint filed by the petitioner, whereby the respondents have been discharged.

In the aforesaid complaint filed under the Employees' Pension Scheme, 1995 read with Sections 6, 14(1-A) and 14A of the Employee's Provident Funds & Miscellaneous Provisions Act, 1952 (for short 'the Act'), the respondents were summoned by the trial Court. The said complaint was filed, inter-alia, with the allegations that the respondents had failed to pay in the manner mentioned in paragraph 4 of the complaint, the pension fund contribution for the period October to December, 2011, total amounting to Rs.2898/- and hence, they had committed the offences under the aforesaid Sections of the Act.

However, when the matter was fixed for framing the charge, the learned trial Court, after taking into consideration the entire pre-charge evidence on record, passed the order dated

06.02.2018 discharging the accused therein. As noticed above, the petitioner challenges the said order in the present petition.

Learned Senior Counsel appearing for the petitioner would vehemently submit that sufficient material was brought on record in pre-charge evidence. It is further submitted that it is settled law that at the time of framing of the charge, the Court is to see if a *prima-facie* case is made out. However, in the instant case, the trial Court has failed to appreciate the said aspects of the matter and proceeded on to pass the impugned order, thereby discharging the respondents.

However, the learned Senior Counsel for the petitioner does not dispute the factum that on the same point and similar facts, concerning the same parties, a Coordinate Bench of this Court, passed a detailed order on 14.03.2022, dismissing the petition filed by the petitioner therein i.e. the Provident Fund Inspector. A perusal of the said order would show that the Coordinate Bench has taken into consideration all the relevant provisions of the Act and various judgments, including those delivered by the Hon'ble Apex Court. The concluding part of the said order would read as under: -

“...It is well settled that criminal prosecution has ramification on the liberties of an individual and that such liberties cannot be subdued at the whims of a complainant. Once a complainant chooses to prosecute a person, a *prima facie* burden lies upon him to establish that the person chosen by the complainant to be prosecuted for the acts of omission of a juristic entity, are the persons who are responsible for and are in ultimate control of the management and of the affairs of the juristic entity sought to be prosecuted. The petitioner-complainant has however, failed to adduce evidence on record to establish as to how the

respondents-accused are ultimate control of the affairs of M/s Baptist Senior Secondary School. Unless the Baptist Union of Northern India is held to be an 'employer' within the meaning of Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Employees Pension Scheme, 1995, the office bearers of the Baptist Union of Northern India cannot be prosecuted. The 'employer', within the meaning of Haryana School Education Board, 2003, is the Principal of the school who has also not been arrayed as an accused. An owner of the premises would not become employer of the employees working therein. It has to be established by the complainant that the owner of the premises also controls the affairs of the establishment against whom the default has been alleged. The said burden has to be primarily discharged by the complainant who is prosecuting the respondents and only if there is sufficient material that can lead to an inference that the person sought to be prosecuted is in-charge of affairs of the establishment, would the burden shift upon the person so sought to be prosecuted. It is evident that the trial Court noticed the aforesaid deficiencies in the case of the petitioner and hence, exercised its jurisdiction under Section 245 Cr.P.C., to discharge the respondents. I find that there is no illegality or perversity in the impugned order and it also does not suffer from any non-appreciation of the material available on record.”

Learned Senior Counsel concedes that the factual position of the present case is identically same as that of the aforesaid case, except the period under reference.

In view of the decision of the coordinate Bench in CRM-M-7892-2021 aforesaid, there is no merit in the present petition. The same is hereby dismissed in terms of the said judgment.

01.08.2022
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No