IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 35 of 2019

M/s Braithwaite & Co. Ltd.

Vs.

S. K. Auddy

For the Petitioner	: Mr. Sabir Ahmed, Mr. Mujibar Ali Naskar, Mr. Suman Biswas.
For the Opposite Party/EPFO	: Ms. Debjani Ghosal.
Hearing concluded on	: 17.08.2023
Judgment on	: 12.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against the Judgment and Order dated 24th day of December, 2018 passed by the Learned Additional District & Session Judge, 17th Court, Alipore in Criminal Appeal No. 38 of 2018/(CIS-Crl. Appeal-21/18) thereby affirming the Judgment and Order dated 19th day of January, 2018 passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, in C. Case No. 03 of 2004.

2. Judgment and order dated 19th day of January, 2018 was passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, in C. Case No. 03 of 2004, convicting the petitioner for the commission of offence punishable Under Section 14(2A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and sentencing the petitioner to pay a fine of Rs. 5,000/-.

3. On 9th July, 2004, the Provident Fund Inspector, the opposite party herein, filed six complaint cases before the Learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas, which are as follows:-

C. Case No. 01 of 2004	**C. Case No. 02 of 2004**
S.K. Auddy .....Complainant	S.K. Auddy ...... Complainant
Vs	Vs

1. M/s Braithwaite & Co. Ltd. Provident Institution 2. A.K. Bhattacharyya 3. M.K. Das 4. Anup Banerjee 5. P.K. Mishra 6. P. Chatterjee ....Accuseds For non-submission of audited **annual** provident fund accounts for the year 2002-2003.	1. M/s Braithwaite & Co. Ltd. 1939 Provident Institution 2. A.K. Bhattacharyya 3. M.K. Das 4. Anup Banerjee 5. P.K. Mishra 6. P. Chatterjee ....Accuseds For non-submission of audited **annual** provident fund accounts for the year 2002-2003.
C.Case No. 03 of 2004 S.K. Auddy .....Complainant Vs 1. M/s Braithwaite & Co. Ltd. 2. A.K. Bhattacharyya ....Accuseds For non-submission of **monthly** return for the months July, 2003 to September, 2003.	**C.Case No. 04 of 2004** S.K. Auddy .....Complainant Vs 1. M/s Braithwaite & Co. Ltd. 2. A.K. Bhattacharyya ....Accuseds For non-submission of **monthly** returns for the months October, 2003 to December, 2003.
C.Case No. 05 of 2004 S.K. Auddy .....Complainant Vs	**C.Case No. 06 of 2004** S.K. Auddy .....Complainant Vs

1. M/s Braithwaite & Co. Ltd. 2. A.K. Bhattacharyya ....Accuseds For non-submission of **monthly** returns for the months January, 2004 to March, 2004.	1. M/s Braithwaite & Co. Ltd. 2. A.K. Bhattacharyya ....Accuseds For non-submission of **monthly** return for the month April, 2004.

4. **The present application arises out of Criminal Appeal No. 38 of 2018 which relates to C. Case No. 03 of 2004** and complainant's case leveled against the petitioner is to the effect that:-

> *The opposite party/complainant filed the complaint before the Court of the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas against the petitioners for prosecution for offences committed under Sections 14(2A) and 14A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter to be referred as "the Said Act"). The opposite party/complainant is an Inspector appointed under Section 13 of the said Act and a public servant within the meaning of Section 21 of the Indian Penal Code and filed the complaint under order of his superiors.*
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> ***M/s Braithwaite & Co. Ltd. is an establishment and exempted under Section 17 of the said Act and the petitioner no. 2 was the person in charge of and responsible to the conduct of its business and they have failed to submit monthly returns for the months April, 2004*** *in contravention of Section 17(3)(a) of the said Act read with relevant Govt. of India Notification issued in this regard, and have thus committed offences under Sections 14(1A), 14(2), 14(2A) read with Section 14A of the said Act and the Employees Provident Funds Scheme, 1952 (hereinafter to be referred as "the said Scheme").*

5. The Learned Trial Court upon perusal of the material placed before him was pleased to frame charge for commission of offence punishable under Section 14(2A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 against the petitioner by an order dated 01.04.2005.

6. The complainant in order to establish the said charge examined 3 witnesses, P.W.-1 to P.W.-3 and also relied upon documentary evidences which have been marked as Exhibit 1 to 12 and the petitioner on their part did not examine any witness. The specific defence plea was that of innocence and false implication and also protection under the Proviso to Section 14A(1) of the said Act. However the petitioner have relied upon documents like Appendix-A, letters dated 15.02.2002 and 31.05.2003, permission for withdrawal of amounts and letters dated 05.03.2002 and 01.07.2003 issued by the Assistant Provident Fund Commissioner (EX.) W.B. to the petitioner company, permitting to withdraw the amounts which have been marked as Exhibit – A collectively, but the said Exhibit-A did not find a place in the impugned judgment passed by the Learned Trial Court as well as before the Appellate Court.

7. The Learned Trial Court upon conclusion of the trial and after hearing the parties was pleased to pass the Judgment and order dated 19th day January, 2018 in C. Case No. 03 of 2004, convicting the petitioner for the commission of offence punishable under Section 14(2A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 and sentencing the petitioner to pay fine of Rs. 5,000/-.

8. The petitioner preferred an appeal before the Court of Learned Sessions Judge at Alipore, South 24 Parganas, which was registered as Criminal Appeal No. 38 of 2018.

9. The Learned Appellate Court after hearing the respective parties was pleased to pass the judgment and Order dated 24th day of December, 2018 in Criminal Appeal No. 38 of 2018 thereby affirming the Judgment and order dated 19th day of January, 2018 passed by the Learned Trial Court in C. Case No. 03 of 2004.

10. The petitioner state that the aforesaid Six Complaints were filed on similar facts and accusation and the Learned Trial Court after conclusion of trial has convicted the accuseds/petitioners in all the Six complaint cases and challenging the six judgments of conviction, Six Appeals were preferred before the Court of Learned Sessions Judge at Alipore, South 24 Parganas which were registered as Criminal Appeal Nos. 36 to 41 of 2018 respectively.

11. After hearing all the six appeals, the Learned Appellate Court was pleased to allow Criminal Appeal No. 36 of 2018 and Criminal Appeal No. 37 of 2018, which relates to C. Case No. 01 of 2004 and C. Case No. 02 of 2004 respectively and set aside the judgments and orders of conviction and was also pleased to partly allow Criminal Appeal No. 38 of 2018, which relates to C. Case No. 03 of 2004 and set aside the judgment and order conviction of petitioner no. 2 therein. However the Court affirmed the judgment of conviction of petitioner no. 1.

12. **Mr. Sabir Ahmed, learned counsel for the petitioner/company** has submitted, on filing a written notes of argument that the impugned Judgment and order of conviction and sentence is the result of total non-application of Judicial mind by the Learned Trial Court and is apparent on the face of it, as the points taken up for consideration by the Learned Trial Court, remained unconsidered and/or unanswered and the same has also been followed by the Learned Appellate Court.

13. It is submitted that the learned Trial Court failed to consider exhibit 5, 6 and 7 and also failed to appreciate the facts that the Trustees were appointed in the middle of retirement process of huge number of employees and being the petitioner company a Government undertaking under Ministry of Railway it was a priority to the inexperienced Trustees to settle the accounts of the retired employees and in doing so, after following the statutory procedure, it caused delay in submission of returns and the Learned Trial Court without considering such facts has whimsically passed the judgment of conviction and the same was whimsically affirmed by the Learned Appellate Court without looking into such facts, which is arbitrary, illegal and unlawful and as such the instant Judgment and Order of conviction and sentence being devoid of proper appreciation of the evidence on record, is liable to be set aside, being not in accordance with law.

14. **Ms. Debjani Ghosal, learned counsel for the opposite party no. 2/complainant** has also submitted on filing a written notes of argument, that the charge has been proved beyond reasonable doubt against the petitioner and the order of conviction and sentence being in accordance with law, the revision is liable to be dismissed.

15. From the materials on record, it appears that the complainant has clearly stated in his petition of Complaint that the petitioner/company is an establishment exempted under Section 17 of the Employees Provident Fund Act, 1952 (hereinafter referred to as the EPF Act).

16. Section 17 of the EPF Act lays down:-

> *"[**17. Power to exempt.—***
>
> *(1) The appropriate Government may, by notification in the Official Gazette, and subject to such conditions as may be specified in the notification, [exempt, whether prospectively or retrospectively, from the operation] of all or any of the provisions of any Scheme—*
>
> *(a) any [establishment] to which this Act applies if, in the opinion of the appropriate Government, the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme in relation to the employees in any other [establishment] of a similar character; or*
>
> *(b) any [establishment] if the employees of such [establishment] are in enjoyment of benefits in the nature of provident fund, pension or gratuity and the appropriate Government is of opinion that such benefits, separately or jointly, are on the whole not less favourable to such employees than the benefits provided under this Act or any Scheme in relation to employees in any other [establishment] of a similar character.*

[* *]*

[Provided that no such exemption shall be made except after consultation with the Central Board which on such consultation shall forward its views on exemption to the appropriate Government within such time limit as may be specified in the Scheme.]

[(1A) Where an exemption has been granted to an establishment under clause (a) of sub-section (1),—

(a) the provisions of sections 6, 7A, 8 and 14B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable under section 14 as if the said establishment had not been exempted under the said clause (a);

(b) ***the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;***

(c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(d) the Board of Trustees constituted under clause (b) shall—

(i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;

(ii) ***submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;***

(iii) invest the provident fund monies in accordance with the directions issued by the Central Government from time to time;

(iv) transfer, where necessary, the provident fund account of any employee; and

> *(v) perform such other duties as may be specified in the Scheme."*

17. **The offence alleged in this case is that as the monthly return for the months of July, 2003 to September, 2003, was submitted on 20.07.2004 (as seen from judgment under revision), beyond the date of submission,** an offence under Section 17(1A)(d) of the act and punishable under Section 14(A)(i) of the Act was committed.

18. It is the case of the petitioner/company that all due diligence was taken to prevent the commission of the offense as alleged, reason being that:-

i) **During the period 2000-2004 the Government of India initiated Voluntary Retirement Scheme (VRS) and huge number of employees retired during that period, which was over 800 including senior officials,** the members of Board of Trust and P.F. administration of the petitioner no. 1 and to fill up the vacuum created by such retirement, inexperienced employees were appointed in the Board of Trust (appointments were made since March, 2003), which is evident from exhibit 6 and 7.

ii) The company being a Government Undertaking, settlement of accounts of retired employees was the first priority and to do that the inexperienced members of Trustee had to first learn the procedure of doing such settlement and then took permission for sale of investment under Para 27AA Condition 20 of the said Scheme, which is evident from Exhibit–A, and after getting permission the members of Trustee followed the Sale procedure and then upon receipt of the sale proceeds, the Accounts of the retired employees was settled and payments were made.

iii) After the payments were made and the Accounts of the retired employees was settled, accounting statements were prepared and in conducting the whole process of taking permission for sale of investments, organizing sale procedure and settling the accounts of the retired employees by these inexperienced Trustees consumed much time and took several months to complete since the retirements were not at a time and was in phases and beside that preparation of the accounts of such huge number of retired employees is itself time consuming for the inexperienced Trustees, hence submission of returns caused delay.

iv) **Until and unless the accounts of the retired employees were settled, no statement of accounts could be prepared and without preparing the same, the petitioner could not submit the returns or otherwise the same would also be an offence under the said Act and Scheme.**

v) Appendix – 'A' of Exhibit – 8/1 to 8/7, Exhibit-A and Exhibit-9, clearly prove the fact of retirement of employees, permission for withdrawal of monies and settlements of Accounts and this supports the contention of the petitioner that in carrying out such procedure, it consumed time and caused the delay.

19. **It is on record that the same Appellate Court has acquitted the Accused alleged to have failed to file the annual report but convicted in the case in which, it failed to file monthly return, for the same reasons and on the same grounds.**

20. Considering all the facts and circumstances as stated, it is seen that the **petitioner/company is entitled to get the benefit of Section 17 of the EPF Act. The complainant has clearly stated in his petition of Complaint that the petitioner/company is an establishment exempted under Section 17 of the Employees Provident Fund Act, 1952.**

The Appellate Court has also erroneously convicted the petitioner/company in this case, when the other accused persons have been acquitted. A company acts through its office bearers according to the extent of their responsibilities and when the said persons who acted on behalf of the company have been acquitted of all charges, the company alone, cannot be found guilty and be convicted. Even more so in this case, wherein the company admittedly is exempted under Section 17 of the EPF Act.

The Trial Court and the appellate court have thus come to wrong findings, which not being in accordance with law requires the interference of this court.

21. **CRR 35 of 2019 is thus allowed.**

22. Accordingly the Judgment and Order dated 24th day of December, 2018 passed by the Learned Additional District & Session Judge, 17th Court, Alipore in Criminal Appeal No. 38 of 2018/(CIS-Crl. Appeal-21/18) thereby affirming the Judgment and Order dated 19th day of January, 2018 passed by the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas, in C. Case No. 03 of 2004 **are set aside**.

23. The petitioner/convict is accordingly acquitted of all charge and discharged/released from Bail bond.

24. Petitioner is at liberty to withdraw the amount deposited along with interest with the learned Registrar General of this Court, as per direction of this Court vide order dated 20.09.2019.

25. All connected applications, if any, stands disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this judgment be sent to the learned Appellate Court and Trial Court for necessary compliance.

28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)