IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 876 of 2014

Regional Provident Fund Commissioner
-Vs-
The State of West Bengal & Anr.

For the Petitioner	: Mr. S.C. Prasad
For the State	: Mr.Avishek Sinha
For the Opposite Party No. 2	: Ms. Rituparna De Ghose
Heard on	: 19.09.2023
Judgment on	: 14.12.2023

<u>Ananya Bandyopadhyay, J.:-</u>

1. The instant revisional application has been filed by the petitioner against an order dated 08.10.2012 passed by the Learned Metropolitan Magistrate, 5th Court, Calcutta in G.R. Case No. 4360/10 under Sections 406/409/34 of the Indian Penal Code.

2. The complaint precisely stated that on 24.11.2010 the employers of M/s. B.E. Pumps Pvt. Ltd. had deducted a sum of Rs.75,171/- from the salaries/wages of the employees as employees share of provident fund contribution for the period of August, 2010 and October, 2010 and had not

deposited the provident fund dues with the Trust Fund. The case was initiated on the basis of a F.I.R. lodged before the DCP, EB of Kolkata by Enforcement Officers of Employees' Provident fund Organization.

3. The opposite party no. 2 appeared before the Court of the Learned 5th Metropolitan Magistrate, Calcutta and was arrested and taken into custody and later on was released on bail.
4. The petitioner stated that the opposite party no. 2 filed a petition for discharge on the ground that the opposite party no. 2 being the Director of the Company and was not liable for the offence and the opposite party no. 2 should be discharged from the above mentioned case.
5. The petitioner stated that the Learned Magistrate erred in law in not considering the merits of the case and also by not recording the evidence. The accused had been discharged without any basis and the same was contrary to the provision of law.
6. The petitioner stated that the establishment enjoying exemption/relaxation under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the scheme framed thereunder; and the conditions laid down in Para- 27AA of the scheme required to be strictly followed. Moreover, the establishment had already committed default by not following condition no. 5 of the Para- 27AA of the scheme which was an offence under Section 406/409 read with Section 405 of the Indian Penal Code and also under Section 14 of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952.

7. The Learned Metropolitan Magistrate by his order dated 8.10.2012 was pleased to discharge the accused person being opposite party no. 2 herein relying on a decision of the Hon'ble Apex Court being ***Employees State Insurance Corporation Vs. S.K. Agarwal***, reported in ***1998 Cr.LJ 4027*** was not based on the correct assumption of law. The said decision was not applicable in the instant case as it was passed under E.S.I. Act and the facts of the case was different having no resemblance with the instant case.
8. The petitioner stated that Shri Shomik @ Soumik Mukherjee was not a Director but was a Managing Director of the said establishment who had the ultimate control over the affairs of the said establishment, so the said decision should not help the said opposite party no. 2. The Learned Magistrate had proceeded in the matter with closed eyes and passed the order of discharge which is not tenable in the eye of law.
9. The petitioner stated and submitted that the Learned Magistrate had not dealt with the matter in the proper perspective.
10. The petitioner stated that the Learned Metropolitan Magistrate came to an erroneous finding by overlooking the relevant provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and discharged the accused person under Section 239 of the Criminal Procedure Code and allowed him to be free from the bail bonds.
11. The Learned Advocate for the petitioner submitted that:-

i. The impugned purported order of discharge complained of is a gross abuse of the process of the Court and as such the same is liable to be quashed forthwith.

ii. The Learned Magistrate should have proceeded for adducing evidence to assess the role of the accused before discharging him.

iii. The Learned Magistrate failed to appreciate the prima facie material of the complaint, that the opposite party no. 2 intentionally not paid the provident fund dues which is mandatory in nature.

iv. The Learned Judge failed to appreciate that the Managing Director of the said establishment can be made liable for the offence committed under Section 406 of the Indian Penal Code as he was the person liable to pay and/or submit the dues to the Provident Fund authorities.

v. The Learned Magistrate did not consider the matter in a proper perspective and has proceeded in the matter beyond the scope and ambit of the Employees' Provident Funds and Miscellaneous Provisions Act and the scheme framed thereunder.

12. The case was initiated on the basis of a complaint lodged before the DCP, EB of Kolkata by the Enforcement Officer of EPF, West Bengal. The case was initially started against the accused person who happens to be the Managing Director of B.E. Pumps Pvt Ltd as well as against B.E. Pumps Pvt. Ltd. The accusation was that on 24.11.2010, the employees of B.E. Pumps Pvt Ltd had deducted a sum of Rs. 75,171/- from the salaries/wages of the

employees as employees share of PF (Provident Fund) contribution for the period August 2010 to October 2010 in violation of Section 6 of the Act read with Para 38 of the Employees Provident Fund Scheme. Non-remitting of the Provident Fund money after deducting the Employees Share from their salary/wages tantamounted to an offence of Criminal Breach of Trust as defined under Section 405 (Explanation-10) Indian Penal Code.

13. The case was thereafter investigated and the Investigating Officer, after completion of the investigation, chose to file a chargesheet against the present accused person and decided not to file a chargesheet against M/s B.E. Pumps Pvt. Ltd. The Court of Learned Chief Metropolitan Magistrate took cognizance of the offence under Section 406/409 CrPC and transferred the case to the Learned Metropolitan Magistrate of the 5th Court, Calcutta for disposal for the case. The accused person inter alia claimed that: -

    a. The accused person had already made the payment on the very next date on which the detection of no deposit was made.
    b. The Investigation Officer failed to appreciate such a fact and proceeded to file the chargesheet against the accused person.
    c. The cognizance was taken erroneously without applying mind by not hearing the defacto complainant while discharging the co-accused.
    d. It is contained that without impleading B.E. Pumps Pvt Ltd. the case cannot proceed against the accused person.

e. The case is bad in law and cannot proceed without having obtained a sanction under section 14 of the AAC of the EPF Act.

14. The Learned Advocate for the opposite party no. 2 submitted that the company was not made a party and the opposite party no. 2 was the director who was not in control of the charge of the company and not responsible for the day to day affairs of the company and not responsible for the day to day affairs of the company and therefore. The Learned Trial Court had rightly passed the order of discharge.

15. The Learned Advocate of the State supported the stance of the petitioner claiming at a nascent stage the opposite party no. 2 should not have been discharged.

16. It is pertinent to replicate the relevant Section 2(e)(i) and (ii); and 2 (ff) of the Employees' Provident Funds and [Miscellaneous Provisions] Act, 1952

[(e) "employer" means—

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a

manager, managing director or managing agent, such manager, managing director or managing agent;]

[(ff) "exempted employee" means an employee to whom a Scheme [or the Insurance Scheme, as the case may be] would, but for the exemption granted under [* *] Section 17, have applied;*

17. In the case of ***Regl. Provident Fund Commr. v. Hooghly Mills Co. Ltd***.[1], the Hon'ble Supreme Court held the following: -

"22. *From the aforesaid discussion it is clear that this case calls for interpretation of certain statutory provisions. It is not disputed, and possibly cannot be disputed, that the Act is a social welfare legislation. The Act is one of the earliest Acts after the Constitution came into existence. Prior to its enactment, the requirement of having a suitable legislation for compulsory institutional and contributory provident fund in industrial undertakings was discussed several times at various tripartite meetings in which representatives of the Central and State Governments and employees and workers took part. Initially a non-official Bill on the subject was introduced in the Central Legislature in 1948 and was withdrawn with the assurance that the Government would consider the introduction of a comprehensive Bill. Finally, the proposed legislation was endorsed by the conference of Provincial Labour Ministers in January 1952 and later on the same was introduced in 1952.*

[1](2012) 2 SCC 489

23. *This Court had occasion to expressly hold that the said Act is a beneficial social welfare legislation to ensure benefits to the employees. In Regl. Provident Fund Commr. v. S.D. College [(1997) 1 SCC 241 : 1997 SCC (L&S) 449] this Court while interpreting Section 14-B of the Act held that the Act envisages the imposition of damages for delayed payment (para 10 at p. 244 of the Report). This Court also held that the Act is a beneficial social legislation to ensure health and other benefits of the employees and the employer under the Act is under a statutory obligation to make the deposit. In para 11, it has also been held that in the event of any default committed in this behalf Section 14-B steps in and calls upon the employer to pay damages.*

24. *If we look at the modern legislative trend we will discern that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, whereas penal statutes are sometime enacted providing for penalties for disobedience of laws making those who disobey, liable to imprisonment, fine, forfeiture or other penalty.*

25. *The normal canon of interpretation is that a remedial statute receives liberal construction whereas a penal statute calls for strict construction. In the cases of remedial statutes, if there is any doubt,* *the same is resolved in favour of the class of persons for whose benefit the statute is enacted, but in cases of penal statutes if there is any doubt the same is normally resolved in favour of the alleged offender.*

26. *It is no doubt true that the said Act effectuates the economic message of the Constitution as articulated in the directive principles of State policy. Under the directive principles the State has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life. The said Act obviously seeks to promote those goals. Therefore, the interpretation of the said Act must not only be liberal but it must be informed by the values of the directive principles. Therefore, an awareness of the social perspective of the Act must guide the interpretative process of the legislative device."*

18. As a dictum of the beneficial legislature the provisions enumerated in the said Act in terms of the contribution of the employees should be strictly adhered to. According to the definition of an 'employer' as envisaged in the aforesaid Section of the said Act, a Managing Director of an institution is inclusive.

19. The contention of the opposite party no.2 negating his designated status to be a director contrary to the claim of the petitioner to be a Managing Director required justification through adducing of evidence. Moreover, whether the

contribution defaulted has been deposited on the next date required substantial documentary evidence for conclusive determination.

20. The Company is M/s B.E. Pumps Pvt. Ltd. should have been impleaded as a party. However, the Learned Trial Court can exercise the process enumerated in Section 319 of the Criminal Procedure Code for proper adjudication of the instant proceedings.
21. Under such circumstances the order of discharge of the opposite party no. 2 at the preliminary stage was not warranted.
22. In view of the above discussions, the order dated 08.10.2012 passed by the Learned Metropolitan Magistrate, 5th Court, Calcutta in G.R. Case No. 4360/10 under Sections 406/409/34 of the Indian Penal Code is set aside.
23. The criminal revisional application being CRR 876 of 2014 is allowed.
24. Accordingly, CRR 876 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
25. There is no order as to cost.
26. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
27. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)