IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. – 3262 of 2017
With
C.R.R. No. – 3263 of 2017

IN THE MATTER OF

Om Prakash Saxena & Ors.
Vs.
The State of West Bengal

For the Petitioners : Mr. Pawan Kumar Gupta, Adv.,
Mr. A.K. Rai, Adv.,
Ms. Sofia Nesar, Adv.,
Mr. Santanu Sett Adv.

For the O.P no. 2 : Mr. Satyender Agarwal, Adv.,
Ms. Sikha P. Chaudhury Adv.

For the State : Mr. Narayan Prasad Agarwala, Adv.
Mr. Pratick Bose, Adv.

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Judgment on : 21.09.2023

Subhendu Samanta, J.

Both the criminal revisions have been preferred u/s 482 of the Code of Criminal Procedure for quashing criminal proceedings pending being Nos. - C/327 of 2016 and C/323 of 2016 before the Learned Judicial Magistrate 1st Court Barrackpore u/s14(1)/14(1A)/14(B)/14(2A)/14(AA) of the

Employee's Provident Fund and miscellaneous provident fund Act 1952 pending against the present petitioners.

The brief fact of the case is that one Sanjay Biswas as enforcement officer of the Employee's Provident Fund organisation, Sub-regional office Barrackpore lodged a petition of complaint against the present petitioners being the director of M/s Bengal Waterproof Limited for the offence punishable u/s 14(1)/14(1A)/14(B)/14(2A)/14(AA).

It has alleged in the said petition of complaint that the present petitioners were in charge of the M/s Bengal Waterproof Limited to all material times and were responsible for the conduct of its business in discharge of such responsibility took on the running of its business. It has further alleged that the present petitioners as the employer of the establishment failed to submit monthly return according to the provision of Clause 16 of Appendix "A" of the Paragraph 27AA of EPF scheme 1952.

After receiving such petition of complaint the Learned Jurisdictional Magistrate had taken cognizance and issued process against the present petitioners.

Hence this instant criminal revision.

Learned Advocate for the petitioners submits that the allegation levelled against the present petitioner is false and concocted; no such offence was committed by the present petitioner. The opposite party No. 2 has suppressed the materials fact before the Learned Magistrate and initiated the false complaint. He argued that the M/s Bengal Waterproof Limited is non-operational since 2013. All the employees of the said establishment had resigned from the establishment in November 2011. The said fact of the resignation was brought to the notice of the opposite party No. 2; accordingly opposite party No. 2 has released the funds held under the PF deposit schemes for final settlement of Provident Fund dues to all employees. Since the factory was non-operational in 2013 and all the employees had already resigned in 2011. The question of filing monthly return during the period cannot arise. It is the further case of the petitioners that all the employees has received their final settlement of Provident Fund and there are not a single disputes before the authority. It is the further contention of the petitioners that after resignation of the employees the permission for payment of PF settlement to all the employees was sought for from the Provident Fund Authority and the permission was granted. After the payment of such final settlement of Provident fund to the employees one utilisation certificate was also forwarded to the authority including all particulars. After the payment of such provident fund of the employees and as the establishment became non-functional, an application was forwarded to the Provident Fund Authority for dissolution of the Trust of the said establishment. The authority has issued a letter directing the establishment to audit through the empanelled auditor. The surrender of exemption in respect of the establishment in question was approved by the Regional Provisional Commission and forwarded to the same for issuing specific notification to the Central Provident Fund Commission. It is the submission of the Learned Advocate for the petitioner that the instant criminal proceeding filed against the present petitioners is baseless and purposive. The prosecution against the present directors cannot be allowed to be continued as the directors are not vicariously liable to the act of the Company itself.

Furthermore the petitioners argued that the instant criminal proceedings are initiated after the period of limitation. Thus, the order of taking cognizance by the Learned Magistrate is barred by limitation. It is the further argued that the Regional Provident Fund Authority was initiated the false complaint only to harass the present petitioners if the said proceeding is allowed to be continued that would tantamount the abuse of process of law.

The opposite party No. 2 submitted that the offence has already been committed by the present petitioner under the provision of Employees Provident Funds and Miscellaneous Provisions Act 1952. The present petitioners were the Board of Director of Trustees of the said Establishment. They had the authority and control over the acts and business of the said establishment and were in-charge of the establishment. They are being the directors of the said trustee of the Establishment are responsible for the conduct of its business. It has been proved that they have run the business of the establishment at the relevant point of time but they did not comply the provisions of the Act and the Scheme in respect of the said establishment. Under the direction of the competent authority the squad of enforcement officer vitiated the M/s Bengal Waterproof Limited on 06.01.2016 and 14.01.2016. During the visit of the establishment they have perused the records produced by the establishment and recorded the defects during such visit. Report was filed with the authority and on the basis of the sanction of the competent authority the prosecution was initiated by filing the petition of complaint before the Learned Magistrate. He submitted that the prima facie violation of the provisions conduct by the present petitioners has well proved so at this juncture the criminal proceeding cannot be quashed.

In support of his contention he cited some decisions of Hon'ble Supreme Court and High Court **Regional Provident Fund commission (RPFC) Vs. Hooghly Mills Company Limited.** Wherein the Supreme Court has categorically held that in case of default by the employer of exempted establishment in coming its contribution to the Provident Fund Section 14 B of the Act will be applicable. In the cited case the respondent company was granted exemption under the EPF and Miscellaneous Provisions Act (MPA) 1952 and after such grant of exemption the companies were defaults in making timely payment of dues towards the Provident Fund.

In **Shrikanta Dutta Narshima Raja Vs. Enforcement Officer Mysore.** The Hon'ble Supreme Court has held that the criminal proceeding pending before the Learned Magistrate and cognizance taken therein is very much correct. At the last paragraph, it has held that--

Therefore, every such person who has the ultimate control over the affairs of company becomes employer. To say therefore that since paragraph 36A requires an employer to do certain acts the responsibility for any violation of the provision should be confined to such employer or owner would be ignoring the purpose and objective of the Act and the extended meaning of employer in relation to establishments other than the factory. The declaration therefore in Form 5A including appellant as one of the persons in charge and responsible for affairs of the company was in accordance with law therefore his prosecution for violation of the scheme does not suffer from any error of jurisdiction or law.

He also cited a decision passed by a Coordinate Bench of this Court in CRR No. 2866 if 2006 wherein the Single Bench has refused to quash a Criminal proceeding, on the ground that the there was no scope for the employer to escape from the responsibilities as vested in the 1952 Act. He also cited decision of another Coordinate Bench of this court passed in CRR No. 128 of 2005 wherein the application u/s 482 of the Criminal Procedure Code was dismissed.

He also cited ratio of this Hon'ble Court passed in **Kamala Tea Company Limited Vs. State of West Bengal & Anr.** Wherein the directors of the establishment has failed to deposit the provident fund with the authority. Subsequently though deposited but such deposit at the subsequent stage does not exonerate them from criminal liability.

On the other hand the petitioner has cited a decision reported in **Kartik Chandra Das Vs. State of West Bengal (2010) SCC Online CAL 1895** wherein this Hon'ble Court has quashed several complaints of the Provident Fund Authority which was lodged before the Jurisdictional magistrate for failing of filing return in time.

Heard the Learned Advocates. Perused the materials on record and also perused the citations as filed by the parties. It appears that the opposite party No. 2 has lodged the complaint before the Learned magistrate against the present petitioner to be the directors of M/s Bengal Waterproof Limited. The petition of complaint was filed in the month of June 2016. It has been mentioned in Paragraph 6 of the said petition of complaint that the regional provident fund Commission II Sub-regional Office Barrackpore has accorded sanction for prosecution. The letter of sanction was annexed with the petition of complaint the letter of sanction bear no date. It has been stated in Paragraph 6 of the said complaint that the sanction was accorded on the basis of the report dated 29.03.2016. It has been alleged in the petition of complaint that the present petitioners being the employer has failed to submit monthly return in form 6 (PS) for the period of 04/2009,12/2011,01/2012 and 11/2013,1/2014 under the provisions of Clause 6 of Appendix A of paragraph 27 AA of EPF Scheme 1952.

Clause 16 of Appendix A enumerates "The Board of Trustees and the employer shall filed such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation:

So according to this provision the Board of Trustees of the employer shall file returns monthly/annually as prescribed by the Employees Provident Fund organisation within specific time limit. It has been alleged that the petitioner has not complied with the provisions and disobeyed to file return for the said period.

The Learned magistrate has taken cognizance for the said offence. The punishment of such offence was enumerated in Section 14 of the said Act 1952. Section 14(1A) (b) of the said act provided highest punishment to be 6 months and a fine of Rs. 5,000/-.

For the violation of offence under Paragraph 76 (b) of EPFS 1952 the punishment is one year.

For the violation of Para 29 (b) of Employees Deposit Linked Insurance Scheme 1976, enumerated punishment of one year and fine.

Paragraph 41(b) of EPFS 1971 also enumerated the punishment of one year. So, the alleged offence of non-filing of return was committed in the year 2013; for such offence according to the provisions of 468 of Cr.P.C. the Magistrate can take cognizance of offence within one year. The period of Limitation mentioned in Section 468 of Cr.P.C is as follows:

468. ***Bar to taking cognizance after lapse of the period of limitation.—***

(1) Except as otherwise provided elsewhere in this code, no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term of exceeding one year but not exceeding three years.

Considering the law of the land it appears that the Magistrate has taken cognizance beyond the period of limitation which is barred under the provisions of Section 468 of Cr.P.C.

On perusal of the decisions cited by the Learned Advocate on behalf of the opposite party No. 2, it appears to me that the alleged offences as mentioned in the cited cases are completely separate. However, the ratio of **Kartik Chandra Das** (supra) is more applicable in respect of facts and circumstances of this case. Admittedly the employees of the said establishment has forwarded their resignations in the year 2011. The employees have received their provident fund. There were no dispute. The factory of the establishment became non-functional since 2013. The Trust has been dissolved according to the direction and observing formalities of the Provident Fund. At this juncture searching the periodical returns by the said establishment is nothing but a futile exercise. The criminal complaints for the violation of provisions of EPF Act, 1952 of one establishment which has actually became defunct 10 years also will be misuse of procedural safeguards.

It further appears to me that the Learned Magistrate has taken cognizance of the offences beyond the period of limitation. The order taking cognizance is bad in law.

Learned Advocate for the petitioner further argued during the argument that several cases were filed by the concern authority for non-filing of the returns which is a waste of huge public exchequer. However, the matter of wasting Public exchequer is not an issue in this instant revisional application. Thus, the same cannot be entertained at this stage.

Considering the facts and circumstances and considering the materials on record it appears to me that the order of taking cognizance by the Magistrate and the Criminal Proceeding pending before the Learned Magistrate bearing Nos. - C/327 of 2016 and C/323 of 2016 pending against the present petitioner before the Learned Jurisdictional Magistrate is hereby quashed.

Connected CRAN applications if pending are also disposed of.

Any order of stay passed by this court by the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)