12.5.2023
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SB
Ct. No.236

CRR 4058 of 2011
CRAN 1 of 2012

In the matter of : Sri Amitava Poddar

Mr. Manas Kumar Ghosh . … for the petitioner

Mr. N.P. Agarwala
Mr. P. Bose … for the State

This revisional application under Section 482 of the Code of Criminal Procedure challenges the proceeding in Taratala / EB Case No. 53 dated 09.7.2010 corresponding to EBG.R. Case No. 16 of 2010 pending before the 8th Court of learned Judicial Magistrate, Alipore, 24 Parganas (South).

Briefly stated, Sri Kalyan Paul, Enforcement Officer, Employees' Provident Fund Organization, Regional Office, Kolkata (West Bengal) informed the Deputy Commissioner, Enforcement Branch, Kolkata, in writing that M/s. Indian Jute Industries Research Association, covered under the purview of the Act having Code No. WB/12411 deducted the employees share of contribution from the wages payable to the employees for credit to Employees Provident Fund but failed to remit the accumulated amount for the period from 01.04.1999 onwards. The alleged act of M/s. Indian Jute Industries Research Association is in contravention to the provision of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and Schemes framed thereunder.

The information since disclosed offence cognizable in nature jurisdictional Police Station registered the case under Section 406/409/34 of the Indian Penal Code.

Mr. Ghosh, learned counsel representing the petitioner submits that the petitioner was no way responsible for such non-compliance of the provision of act as at the relevant point of time he was not in employment. Therefore, he cannot be made culpable for any infraction of law or rule made thereunder. It is further contended that M/s. Indian Jute Industries Research Association, at the relevant point of time used to manage the provident fund under the rules and regulations that came into effect from 31.12.1976 and it is known as M/s. Indian Jute Industries Research Association Provident Fund Rules and Regulations. r Rule 3(a) & (b) read as under :-

"3 a) *The Fund and the Management thereof shall be vested in the Board of Trustees who shall be appointed annually. The number of the Trustees shall not be less than four, two of whom shall be appointed by the Committee from amongst its members and other two shall be elected by the members from among the members of the Fund, but the Committee may in its absolute discretion appoint additional Trustees of the Fund but so that the total number of Trustees shall not at any time be more than five. A vacancy occurring in the course of any year shall be filled in within three months from the date of occurring such vacancy by appointing one the members of the Committee or by electing one of the members of the Fund as the case may be as provided in rule but the Board shall continue to act notwithstanding such vacancy*."

"3 b) *At any meeting of the Board of Trustees, three Trustees shall constitute a quorum and any decision of a Meeting of the Board at which a quorum is present shall be deemed to be decision of all the Trustees and final and binding on them. The Committee shall nominate one of the Trustees to act as Chairman at any Meeting of the Board of Trustees and he shall have a casting vote in addition to his own vote as a Trustee. The decision of majority at any meeting of the Board of Trustees at which a quorum is present shall be final and binding on the Trustees*."

Plain reading of the aforesaid rules indicate that the fund and the management thereof shall be vested in the Board of Trustees to be appointed annually and Secretary to the Board of Trustees shall be responsible for keeping the records of the Board including record of decision of the Board of Trustees. The petitioner being the Acting Director had no role to play in the management of Provident Fund. The dominion control over the fund was with the Board of Trustees. That apart by filing Supplementary Affidavit it is adverted that attempt was made to transfer the accumulated amount to the employees' provident fund organization by cheque which was initially not accepted by the E.P.F.O. as the money was tendered by the cheque, thereafter, the said amount was accepted and acknowledged when it was paid under the Pay Order bearing No. 150689 dated 06.8.2013 pursuant to the direction of this Court together with accumulated interest. The criminal proceeding has been initiated against the acting director of the organization. None of the member of the Board of Trustees, who was supposed to manage the fund was arrayed in the proceeding as accused persons.

Taking into consideration the fact that the interest of the employees of M/s. Indian Jute Industries Research Association has been protected though subsequent to the initiation of the criminal proceeding and also taking into consideration the fact that the petitioner being the acting director cannot be held to be culpable for committing any infraction of rule or act because of non transmission of the Provident Fund to the EPFO, in my humble opinion he cannot be made to stand the trial. If the proceeding is allowed to remain in force, it would be an abuse of process of law and it should be quashed, which I accordingly do.

The criminal proceeding being EBG.R. Case No. 16 of 2010 pending before the 8^{th} Court of learned Judicial Magistrate, Alipore, 24 Parganas (South) stands quashed.

Let a copy of the order be sent to the learned Trial Court for information and necessary action.

(Siddhartha Roy Chowdhury, J.)