31.08.2023
SL No.2
Court No.3

Circuit Bench of Calcutta High Court
At Jalpaiguri

CRR 10 of 2022

In the matter of : Sri Surendra Kumar Agarwal & Ors.
- Petitioners.

Mr. Anirban Dutta
Mr. Sujit Banerjee
Mr. Shubhankar Dutta
... For the petitioners.

Mr. Bhaskar Roy Mahashaya
.....for the O.P.

This application under Section 482 of the Code of Criminal Procedure challenges the proceeding in Special Case No. 15 of 2017 arising out of Banarhat P.S.Case No. 128 of 2015 and the order passed therein by the learned Additional Sessions Judge.

It is contended by Mr. Dutta, learned counsel for the petitioner that the employer has paid the entire money collected from the employees for the period in question i.e. from October 2009 to December 2014 together with the contribution of the employers. The Assistant Provident Fund Commissioner, Regional Office, Jalpaiguri had acknowledged such payment vide letter No. ENF/RO/JPG/JL/JLP/984/19/2021 dated 15th February, 2019.

It is further contended that in absence of any entrustment within the meaning of Section 405 of the Indian Penal Code, the (Enforcement Officer) EPFO RO, Jalpaiguri could not have approached the jurisdictional police to register the case under Sections 406/409 of the Indian Penal Code. Even the investigating agency also did not have the reason to submit the charge-sheet under Sections 406/409 of the Indian Penal Code.

Refuting such contention Mr. Roy Mahashaya, learned counsel representing the opposite party no. 2 submits that this scheme of the Employees' Provident Fund and Misc. Provident Fund, 1952 sufficiently confers authority upon the Enforcement Officer to take out a criminal proceeding for breach of trust committed by the employer and he makes me go through the Paragraph 38 of the Rules framed under the Employees' Provident Fund Scheme, 1952 and also to Section 14 of the Employees' Provident Fund and Misc. Provident Fund Act, 1952. Section 14 of the said Act speaks of penalties in case of non-compliance of the provision of Section 6 of the Act. But the law does not confer any authority upon the defacto complainant or the State to saddle the employer with criminal liability for committing the offence punishable under Section 406 of the Indian Penal code, and in my humble opinion for the simple reason that the provident fund authority never entrusted the employer with the money, to be deposited in discharge of the their obligation under the Employees Provident Fund, 1952.

There is of course a penal provisions under the Employees Provident Fund and Miscellaneous Provident Fund Act, 1952.

When the payment has been made and the authority under the Employees' Provident Funds and Miscellaneous provisions Act, 1952 did not press the provision as laid down under Section 14 of the Act into service, I am of the view that the proceeding pending before the learned Special Court is but an abuse of process of law.

Therefore, invoking the provision of Section 482 of the Code of Criminal Procedure, I am inclined to quash the proceeding.

Accordingly, the proceeding in Special Case No. 15 of 2017 pending before the learned Trial Court stands quashed. Application pending if any, stands disposed of.

Let a copy of this order be sent down to the learned trial court for information and necessary action.

(Siddhartha Roy Chowdhury,J)