

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.4586 OF 2015

Tech Mahindra Ltd & Anr
Versus
The Employees Provident Fund Organisation &
Ors

..Petitioners
..Respondents

Mr. Subodh Desai a/w Mr. Raj Panchmatia, Mr. Peshwan Jehangir, Mr. Anindya Basarkod & Ms. Ishrita Bagchi, i/b M/s. Khaitan & Co, for Petitioners.

Mr. Jog Singh a/w Ms. Ragini Singh & Ms. Pooja Pandey, for Respondent Nos. 1 to 3.

Ms. M.R. Tidke, APP, for the State/Respondent.

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CORAM : SARANG V. KOTWAL, J.

DATE : 21st JULY 2023

PC :

1. Heard learned Counsel Mr. Subodh Desai for Petitioners, learned Counsel Mr. Jog Singh for Respondent Nos. 1 to 3 and Ms. M.R. Tidke, APP, for the State, in this Petition.

2. The Petitioners have challenged the proceedings pending before the Judicial Magistrate First Class, Pune, in S.T.C. No.14952 of 2015 in which the impugned order dated 1st September 2015 was passed issuing process against the Petitioners. The order itself does not mention under which Section the process was issued.

However, the complaint mentions that it was filed under Section 14(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as well as under paragraph 76(b) and (d) of the EPF Scheme, 42(b) and (d) of the Employees' Pension Scheme, 1995 and paragraph 29(b) and (d) of the Employees Deposit Linked Insurance Scheme 1976.

3. Learned Counsel for the Petitioners made various submissions. It is not really necessary to delve deeper into the submissions. However, since he has made those submissions, I am just noting them down in this order. The first submission was that, the scheme which provided for various compliance, was violated but the scheme itself provided for the period till September 2015 for such compliance and the complaint was filed prematurely in August 2015. The second submission was that, the sanction was not proper, it referred to two show cause notices, which in turn referred only to some action to be taken under Section 186 of the Indian Penal Code. He submitted that there was practical difficulty in complying with the directions as the company had more than one lakh employees and some of them were abroad. I am not

expressing any opinion on these submissions.

4. Learned Counsel for the Respondent No.2 submitted that the sanction was properly accorded. There was clear violation of the requirements of law and, therefore, the prosecution was properly launched. He also supported the allegations in the complaint.

5. This Petition will have to be allowed only on one aspect regarding the impugned order which reads thus:

“Perused the complaint. Being the public servant, verification is not needed as per Section 200(a) of Cr.P.C. Hence, issue process.”

This is the exact order passed by the learned Magistrate. This order certainly does not display any application of mind. It does not even refer to the complaint or the allegations made therein. No section of any statute is mentioned for which the process was issued. Thus, in short, instead of showing application of mind; it displays utter non-application of mind. Therefore, this order can not stand and will have to be set aside.

6. In this view of the matter, I am inclined to allow this Writ Petition and I am further inclined to remand the matter back for fresh consideration by the learned Magistrate to decide whether process can be issued after due application of mind on his part for the purpose of taking cognizance. It is made clear that the contentions raised by both the parties are specifically left open.

7. Hence, the following order:

O R D E R

- i) The order dated 1st September 2015, passed by the Judicial Magistrate First Class, Pune, in S.T.C. No.14952 of 2015, directing issuance of process, is set aside.
- ii) The learned Magistrate shall consider the question of taking cognizance and issuance of process afresh in accordance with law.
- iii) All the contentions raised by both the parties are specifically left open.
- iv) The Writ Petition is allowed to this extent in the

aforesaid terms.

v) The Writ Petition is disposed of.

(SARANG V. KOTWAL, J.)