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Crl.O.P.No.23879 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.23879 of 2017
and Crl.M.P.Nos.4284 & 4285 of 2018

1. Sathiesh Engineering and
Gear Industries,
27-A, Venkatasamy Naidu,
Industrial Area,
Bharathi Colony, Peelamedu,
Coimbatore – 641 004.

2. T.Gomathi

3. R.Sekar

...Petitioners

Vs.

Enforcement Officer,
Employees Provident Funds,
Regional Office,
Dr.Balasundaram Road,
Coimbatore – 641 018.

... Respondent

Prayer: Criminal Original Petitions filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the C.C.No.480 of 2005 on the file of the learned Judicial Magistrate VI, Coimbatore.

For Petitioners : Mr. P.Paramasivadoss

For Respondent : Mr.C.Kulanthaivel
Standing Counsel



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ORDER

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These petitions have been filed to quash the proceedings in C.C.No.480 of 2005 on the file of the learned Judicial Magistrate VI, Coimbatore, thereby taken cognizance for the offences under Sections 14(1A) and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, as against the petitioners.

2. The respondent initiated prosecution for the offence punishable under Sections 14(1A) and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as “the Act”). The first accused is an establishment within the meaning of the Act and the three Schemes are applicable to the first accused. It has been allotted the Code No.TN/34375. The accused 2 & 3 are the partners of the first accused and they are responsible for the day to day affairs of the first accused and for the conduct of its business. Under the Act, they are required to pay the members' and employer's contribution to the Employee's Provident Funds and Employee's Pension Fund, Employer's share of insurance fund contribution in respect of the employees of the first accused together with administrative charges within fifteen days of the close of every month.



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3. Despite several requests made, the accused failed to pay

their contribution for the following period:-

Month & Year	Member's share towards Provident fund	Employer's share towards Provident Fund/Pension Fund	Towards Administrative Charges	Due date for payment
4/1992	3132	3132	244.45	15 th of the following month
5/1992	3126	3126	243.90	15 th of the following month
6/1992	3054	3054	238.30	15 th of the following month

4. Therefore, the Assistant Regional Provident Commissioner, Coimbatore, passed order dated 16.11.2000, under Section 7A of the Act and determined the dues payable by the accused. The said order was also confirmed in the review under Section 7B of the Act. It become final, since no appeal has been preferred by the accused. In pursuant to the order passed under Section 7A of the Act, the Recovery Officer of the Assistant Regional Provident Commissioner issued show cause notice to the petitioners to comply the order passed under Section 7A of the Act, under Sections 8B-8G of the Act.



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5. The said show cause notice was challenged by the second accused before this Court in W.P.No.34669 of 2002 and this Court while dismissing the writ petition on 09.09.2009, directed the authority to consider their representation and pass orders. After giving opportunity, the explanation submitted by one of the accused was rejected by the Regional Provident Fund Commissioner, by an order dated 21.06.2010. It was challenged before the Tribunal under Section 7-I of the Act.

6. It is also seen that the accused cleverly filed the appeal as against the rejection order dated 21.06.2010 along with the order passed under Section 7A of the Act, dated 16.11.2000, after the lapse of ten years. However, the Tribunal allowed the appeal by an order dated 25.03.2011. Aggrieved by the same, the respondent filed a writ petition in W.P.No.14231 of 2011 and this Court by an order dated 31.10.2023, set aside the order of the Tribunal. Therefore, the accused are liable to be punished for the offence under Sections 14(1A) and 14A of the Act.

7. Heard the learned counsel appearing on either side and perused the material placed before this Court.



8. The only ground raised by the petitioners is that the complaint is barred by limitation, since the petitioners committed default for the month of April to January, 1992. Whereas the present complaint has been lodged only in the year 2005.

9. On perusal of records revealed that already the petitioners challenged the very same complaint before this Court in Crl.O.P.Nos. 24724 & 24748 of 2007 and this Court dismissed the petitions by an order dated 13.08.2010 and categorically answered the grounds raised by the petitioners herein. It is relevant to extract the paragraph Nos. 5 & 6 of the above order as follows :-

5. This Court has carefully considered the submissions made by the respective counsel appearing for the parties and also perused the complaints. As rightly put forth by the learned counsel appearing for the Respondent the retirement of one Sebastian and induction of the third petitioner as a partner is in dispute and therefore it can be threshed out only during the course of trial.

6.As regards the submissions made by the learned counsel appearing for the petitioners that the complaint is barred by limitation, that failure to pay the



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contribution within the prescribed time is e continuing offence and admittedly, challenging the quantum of levy of penalty, the petitioners herein had filed W.P.Nos.34668 and 34669 of 2002 and according to the learned counsel appearing for the petitioners, the writ petitions are pending adjudication. Since the offences are continuing as contribution and penalty is not yet paid fully, this Court is of the considered opinion that the complaints are not barred by limitation.”

Now the present petition has been filed suppressing the earlier quash petitions filed by the petitioners. It is nothing but clear abused of process of Court and on that ground alone, this petition is liable to be dismissed with exemplary cost.

10. In view of the above discussions, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

31.10.2023
(2/2)

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
rts



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Coimbatore.
2. Enforcement Officer,
Employees Provident Funds,
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Dr.Balasundaram Road,
Coimbatore – 641 018.



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G.K.ILANTHIRAIYAN. J.

rts

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