

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202

CRM-M-40323-2013

DATE OF DECISION: 27th JULY, 2023

Darpan Kapoor and another

.... Petitioners

Versus

**Enforcement Officer, Employees Provident Fund Organization,
Amritsar**

.... Respondent

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

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Present : Mr. Sunil Chadha, Senior Advocate with
Mr. Vivek Salathia, Advocate and
Mr. Tara Dutt, Advocate, for the petitioners.

Mr. Sanjay Tangri, Advocate, for the respondent.

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RAJBIR SEHRAWAT, J. (Oral)

1. This petition under Section 482 of the Code of Criminal Procedure has been filed for quashing of complaint dated 30.11.2011 (Annexure P-1) and for quashing of summoning order dated 01.12.2011 (Annexure P-2) passed by the Judicial Magistrate Ist Class, Amritsar and all consequential proceeding arising therefrom.

2. The facts, as evident from the case, are that the petitioners were the partners of M/s Kapsons Wardrobe. They were alleged to have not filed the returns under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short EPF Act) for the year 2010-2011 qua the establishment called M/s Kapsons Wardrobe. As a

result, the EPF Department initiated criminal complaint against the petitioners under Section 14(2) of the EPF Act. The petitioners were summoned by the concerned Court. It is to challenge the said complaint and the summoning order that the petition has been preferred by the petitioners.

3. Arguing the case, learned Senior counsel for the petitioners submits that there was no default on the part of the petitioners. In fact, the entity M/s Kapsons Wardrobe was closed by the petitioners in June, 2010 and the employees working in the said establishment were absorbed in M/s Kapsons Fashion Pvt. Ltd., Chandigarh. The returns qua the said employees were duly filed for the new entity M/s Kapsons Fashion Pvt. Ltd., Chandigarh. The petitioners were called by the complainant in November, 2011, then the detail regarding closure of earlier entity and the adjustment of the employees in the new entity was also duly disclosed by the petitioners. Not only that, the returns regarding the employees which were taken from the earlier establishment to the new establishment; were also filed for the period, for which, the default is alleged in the complaint qua the previous entity. Accordingly, it is submitted that, in fact, there is no default. At the best, it was technical deficiency in not informing the department qua the closure of M/s Kapsons Wardrobe and not submitting the NIL return qua that entity well in time. Learned counsel for the petitioners has further submitted that earlier the respondent-department/complainant had initiated proceedings against the petitioners for imposing damages under Section 14(b) of the Act. In the said proceedings, the petitioners were burdened with the damages amounting to Rs.11,970/-. The said amount also stands paid by

the petitioners in 2015 itself. Still further it is submitted by the counsel for the petitioners that since the petitioners have been facing the agony of the proceedings initiated by the respondent-department for more than 10 years now, therefore, the proceedings deserve to be quashed.

4. On the other hand, counsel for the respondent-complainant has submitted that the petitioners were duty bound to file the various returns under various provisions of the Act, details of which have been mentioned in para 4 of the complaint. Since the petitioners had defaulted in complying with the statutory provision, therefore, the complaint was rightly lodged by the competent authority. The prosecution of the petitioners for the said offence is of strict liability; arising only from the default in filing the returns, *per se*. Therefore, the petitioners have rendered themselves liable for punishment.

5. This Court had stayed the proceedings vide order dated 02.12.2013. Thereafter, the case has been adjourned repeatedly for the one reason or the other. As a result, about 10 years have passed during pendency of the present petition.

6. Having heard learned counsel for the parties, this Court finds substance in the argument raised by the learned counsel for the petitioners. Although, there are allegations in the complaint qua non-filing of the return for the entity M/s Kapsons Wardrobe for the period 2010-11, however, it is not even in dispute that for the said period, the petitioners had already filed return for another entity M/s Kapsons Fashion Pvt. Ltd., Chandigarh giving the details of the employees who were absorbed in the new entity by closure of M/s Kapsons Wardrobe. Therefore, in fact, there is a substantial compliance of provisions by the

petitioners. Still further, although there is a default in filing the return qua the entity which was closed; and may be even in intimating the respondent-department in time regarding closure of the said entity, however, for that purpose, the petitioners were made to pay the damages as well; by initiating proceedings under the statutory provision. The petitioners have produced the receipt dated 21.07.2015 to show that the petitioners had paid the said amount assessed by the authorities.

7. Another aspect of the case which goes in favour of the petitioners is; the punishment prescribed for the offence, which is imprisonment for one year or with fine of Rs.4000/-. Therefore, even if the trial is permitted to continue, this can end even in imposing upon the petitioners a sentence of fine only, particularly, keeping in view the facts and circumstances of the case. Therefore, on the one hand, the petitioners are facing the process of law for the alleged offence for the past about 13 years and on the other hand, the prosecution, if permitted, can end only in the imposition of sentence of fine of Rs.4000/-. Hence, the interest of justice would be better served if the petitioners are protected from any further harassment and they are also sensitized to strictly follow the provisions of law in future; by imposing an appropriate financial burden upon them, to be deposited with EPF Department.

8. In view of the above particular facts and circumstances of this case, the present petition is allowed and the criminal complaint dated 30.11.2011 (Annexure P-1) and summoning order dated 01.12.2011 (Annexure P-2); and any further subsequent proceedings consequent thereupon, are hereby quashed. However, the petitioners are ordered to deposit an amount of Rs.11,000/- with The Regional Provident Fund

Commissioner, Employees Provident Fund Organization, Regional Office, Amritsar within 15 days from today. It is further ordered that if the amount is not so deposited within 15 days, then the same shall be recoverable as arrears of the land revenue.

27th JULY, 2023

Ankur

(RAJBIR SEHRAWAT)

JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No