

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-21473 of 2022

Date of Decision:14.02.2023

Dhirendra Kumar Rajak

.....Petitioner

Vs.

State of Haryana and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Jagdish Manchanda, Advocate
for the petitioner.

Mr. Randhir Singh, Addl. AG, Harayna.

Mr. Sandeep Goyal, Advocate for respondent
No.2.

DEEPAK GUPTA, J.

Prayer in this petition filed under Section 482 Cr.P.C is to quash
FIR No.502 dated 08.07.1999 under Sections 406 & 409 IPC registered at
Police Station Central Faridabad (Annexure P.2); charge-sheet dated
07.04.2003 (Annexure P.3) and all subsequent proceedings arising
therefrom.

2. Petitioner was running an establishment in the name of M/s
Fibreline India Limited, which was covered under the Employment
Provident Fund and Miscellaneous Provision Act, 1952 (for short, 'the 1952
Act'). Complaint was lodged by Provident Fund Inspector against the
petitioner alleging that provident fund of the employees for the period of
June, 1998, July, 1998 and from December, 1998 to April, 1999 totaling ₹
64,056/-, though deducted from the wages of employees but the same had
not been deposited with the Provident Fund Office and, thus, offence under
Section 406 & 409 IPC was committed. On the letter sent to the Police, FIR
was registered.

3. It is contended by the petitioner that amount for the default

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period was not deposited due to the mistake of the Accountant, who used to deposit the same as per the accounts of the Company. Petitioner came to know regarding the said deposition only after registration of the FIR. No prior intimation was given to him by the Provident Fund Department. Petitioner and other Directors used to remain outside for picking orders. It is further submitted that after coming to know about the registration of the FIR, petitioner deposited the amount of ₹64,056/- on 17.11.1999 prior to filing of the challan. Not only this, penalty of ₹84,196/- was also deposited by him on 31.03.2001, regarding which necessary certificate had already been issued by the concerned department. Still, challan was filed on 24.11.1999 and charge-sheet was framed against him on 07.04.2003.

4. Still further, attention is drawn to various provisions as contained in the 1952 Act in order to urge that proper procedure was not followed; that no recovery certificate was issued by the authorised officer; that prosecution could not be launched as per Section 14AC of the Act without the previous sanction of the Central Provident Fund Commissioner and that all these aspects were not taken into consideration. Petitioner further submits that business of his company was closed in May, 2003, regarding which intimation was sent to all the concerned authorities. He was told by his counsel that since amount of the default period had already been deposited, the case was over, and, therefore, he went to Sharjah (UAE) and joined the job in April, 2004. He came to know that later on, he was declared proclaimed person on 25.05.2007 and as he returned to India on 19.04.2022, he was arrested on 21.04.2022, though granted bail by the Court on the same day. Petitioner submits that he has already suffered for the last 23 years despite depositing the amount towards provident fund of the default period along

with the penalty amount.

5. In reply filed by respondent No.1 – State, by way of affidavit of Shri Satya Pal, Assistant Commissioner of Police, Central, Faridabad, it is submitted that as per the decision of this High Court dated 20.05.1983 in CWP No.48090 of 1975 and CWP No.1574 of 1976 in case of M/s Laxmi Rattan Engg. Works and M/s Metal Products Industries Vs. Union of India and others, the explanation to Section 405 IPC is not violation of Article 20 of the Constitution of India and that non-deposit of the provident fund money after deduction from the wages/ salary of the employees is sufficient evidence for prosecution of the employer under Section 406/409 of IPC. It is submitted further that offence in question being cognizable, police was competent to register the FIR. Challan was filed and the petitioner was charge-sheeted but he absconded from the proceedings and was declared as proclaimed offender and FIR No.164/2022 under Section 174-A IPC was registered against him at Police Station Central Faridabad. Prayer is made for dismissal of the petition.

6. Respondent No.2 in its separate reply, submitted that the present case was registered under Section 406/409 IPC and not under the provisions of the 1952 Act and, therefore, compliance of provisions of the said Employees Provident Fund Act or obtaining of the prior sanction from the competent authority, was not required. Reliance has been placed upon ***Sushil Kumar Bagla Vs. State of West Bengal, 2004 Criminal Law Journal 171 (Calcutta)***.

7. As far as contention of the petitioner regarding non compliance of the provisions of 1952 Act is concerned, it has no merit. It has been held by Calcutta High Court in **Sushil Kumar Bagla's case (supra)**, as under:

“11. Now explanation-I to Section 405 provides that "a person, being an

employer who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law of the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid". Once it is found that employer deducted amounts from wages of the employees for contribution to Provident Fund and retaining the same without depositing it with the fund, an automatic presumption is available against the employer that he dishonestly used the amount of the said contribution in Violation of a direction of law. Same view was expressed by the Supreme Court in [Harihar Prasad Dubey v. Tulsi Das Mundra](#)

36. Furthermore, no cognizance can be taken for the offences under E.P.F. & M.P. except with sanction from competent authorities under [Section 14AC](#). But for the offences under [Sections 406/409](#) I.P.C., no sanction is required. Therefore, prosecution has option not to proceed against the offenders for offences under E.P.F. & [M.P. Act](#) for which sanction is required. It may opt for easier course under [the Penal Code](#) where no sanction is required. [In Amarendra Nath Roy v. State](#), , this Court expressed the same view. Similar was the view of this Court in [Bodri Prasad v. State](#). Therefore, if an act or omission amounts to offences under two enactments and under one of such enactments sanction is required for prosecution of the offender, it is option of the prosecution to prosecute him under either of the enactments. Court cannot insist that the prosecution must be under the enactment which requires sanction."

8. It is thus clear that though no cognizance can be taken for offences

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and under the 1952 Act except with prior sanction of the competent authority as per Section 14AC of the Act but for the offence under Section 406/409 IPC, no sanction is required. Prosecution has option not to proceed against the offender for offences under 1952 Act for which sanction is required and it may opt the easier course under the Indian Penal Code, where no sanction is required. If an act or omission amounts to offences under two enactments and under one of such enactments, sanction is required for prosecution of the offender, it is the option of the prosecution to prosecute him under either of the enactments and the Court cannot insist that prosecution must be under the enactment, which requires sanction.

9. In view of the said legal provision, petitioner cannot be allowed to contend that provisions of 1952 Act were not complied or that prior sanction as required under Section 14AC was not obtained because his prosecution has been sought under Section 406/409 IPC and not under the provisions of the 1952 Act.

10. However, having regard to the facts and circumstances of this case, this Court is of the view that though prosecution could be independently launched under Section 406/409 IPC, without seeking prior sanction of the competent authority under Section 14AC of the 1952 Act but still the FIR in question and the subsequent proceedings need to be quashed,, for the following reasons.

11. It is important to notice that FIR in question was registered way back on 08.07.1999 for non-deposition of the provident fund for the default period of June, 1998, July, 1998 and December, 1998 to April, 1999. It has not been disputed that prior to filing of the challan in Court, petitioner had already deposited the default amount of ₹64,056/- on 17.11.999. Not only this, he also deposited the additional penalty amount of ₹84,196/- including damages and

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interest on 31.03.2001 by way of cheque and when the said cheque was dishonored, he deposited ₹93,851/- on 24.08.2001 as is evident from the documents Annexures P.4 and P.5. The Assistant Provident Fund Commissioner had also issued a certificate dated 31.08.2001 (Annexure P.6) in this regard.

12. Charge was framed on 07.04.2003. Petitioner was declared proclaimed person on 25.05.2007 and after his arrest on 21.04.2022, is now being sought to be prosecuted. Having already deposited the provident fund of the default period, along with all penalty charges, prior to filing of the challan and framing of the charge, it will not be in the interest of justice, to prosecute the petitioner after such a long delay, particularly when his establishment was already closed in May, 2003.

13. Coming to the proceedings regarding declaring the petitioner as proclaimed person and registration of the FIR under Section 174-A IPC, it is important to notice that though petitioner was declared proclaimed person on 25.05.2007 but FIR No.164 under Section 174-A IPC has been registered in 2022 as evident from the reply of respondent- State, i.e. After 15 years.

14. Section 468 IPC bars taking cognizance of an offence by any Court, for an offence punishable up to three years imprisonment after a period of three years. Section 174-A IPC provides punishment of three years, unless declaration has been made under sub-Section (4) of Section 82 Cr.P.C pronouncing a person as proclaimed offender, in which case punishment can extend to seven years. Section 82(4) Cr.P.C mentions various provisions of IPC, wherein a person can be declared as a proclaimed offender in case of his failure to appear despite proclamation. Section 406 and 409 IPC do not find mention therein. Meaning thereby, in case the petitioner had absconded and did not appear despite

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proclamation for committing offences under Section 406 & 409 IPC, he at the most could have been declared a proclaimed person; and not the proclaimed offender under Section 82(4) Cr.P.C and, therefore, the sentence under Section 174-A IPC can be up to three years qua him. As noticed above that FIR under Section 174-A IPC has been registered in 2022 i.e after 15 years of declaring the petitioner as proclaimed person and, therefore, the said FIR is liable to be quashed, as no cognizance can be taken after a period of three years.

15. On account of entire discussion as above, FIR No.502 dated 08.07.1999 registered under Section 406, 409 IPC at Police Station Central Faridabad (Annexure P.2), charge-sheet dated 07.04.2003 (Annexure P.3) and all subsequent proceedings arising therefrom including declaring the petitioner as proclaimed person and registration of the FIR under Section 174-A IPC against him, are hereby quashed.

Disposed of accordingly.

February 14, 2023

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Whether Speaking/reasoned

Whether Reportable

(DEEPAK GUPTA)

JUDGE

Yes/No

Yes/No