IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1429 of 2017

Sri Vishal Kochar and Anr.
Versus
The State of West Bengal and Anr.

For the Petitioners	:	Mr. Dipanjan Dutt, Adv. Mr. Amitava Mitra, Adv. Ms. Antara Choudhury, Adv. Mr. Surojit Saha, Adv.
Heard on	:	08.04.2024
Judgment on	:	05.07.2024

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application has been filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 seeking quashing of the proceedings of G.R. Case No. 3974 of 2013 arising out of Shakespeare Sarani (EB) Police Station Case No. 385 dated 31.10.2013 under Sections 406/409/34 of the Indian Penal Code pending before the learned Chief Metropolitan Magistrate, Calcutta in which a charge sheet No. 59/2014 dated 26.03.2014 under Sections 406/34 of the Indian Penal Code has also been submitted in connection with the aforesaid proceedings.

2. The factual matrix of the instant case leading to filing of this revisional application is as under:

2a. The petitioners are Directors of a Company named and styled as Infinity Lifestyle Pvt. Ltd. (previously known as "Omega Coaters Private Limited", which subsequently known as "Infinity Decoratives Pvt. Ltd.") which has its place of business having its registered office at 24, Park Street, Park Centre Building, Kolkata - 700 016.

2b. A complaint was lodged by the opposite party no. 2 i.e. Sri Shyamal Kumar Auddy, Enforcement Officer, E.P.F.O., Sub Regional Office, 44 Park Street, Kolkata – 700 016 with the Deputy Commissioner of Police, Enforcement Branch, Kolkata dated 17.10.2013 which in turn filed with the Officer-in-Charge of Shakespeare Sarani Police Station with an allegation, inter alia, to the effect Infinity Lifestyle Private Limited (previously known as "Infinity Decoratives Pvt. Ltd.") had deducted a sum of Rs. 31,061/- (Rupees Thirty One Thousand and Sixty One Only) from the salaries of its employees as Employees' share of provident fund contribution for the month of August, 2013 but had failed to deposit the same and such fact came to the knowledge of the complainant in course of inspection on 17.10.2013. The petitioners were alleged to be persons who were responsible for conducting of business of the said company. Thus a prayer was made alleging criminal breach of trust and for initiating an FIR against the petitioners vide Shakespeare Sarani Police Station Case No. 385/2013 under Sections 406/409/34 of the IPC dated 17.10.2013 though the claims of the petitioners are that they are completely innocent and in no way connected with the commission of the alleged offences at all but have been falsely implicated in the instant case.

2c. Subsequently, after completion of investigation, the investigating officer submitted report in final form vide Charge Sheet No. 59/2014 dated 26.03.2014 wherein it was stated that a prima facie charge has been established against the petitioners punishable under Sections 406/34 of the Indian Penal Code.

2d. It is the contention of the petitioners that on 17.10.2013, the complainant visited the petitioners' company and carried out an inspection under Section 13 of the EPF & MP Act, 1952 and due to alleged default in payment towards Employees' contribution of Provident Fund for the month of August, 2013 amounting to a sum of Rs. 31,061/- was detected pursuant to which a notice was given to the Directors of the Company to make good the amount so defaulted.

2e. On the very same date i.e. 17.10.2013 without accorded any time to the petitioners to pay off the dues, the concerned provident fund officer forwarded a written complaint to the Deputy Commissioner of Police, Enforcement Branch, Kolkata for alleged offence for criminal breach of trust punishable under Sections 406/409 of the IPC.

2f. On 28.10.2013, the company complied with the notice given to them by paying off the dues vide Account Payee Cheque No. 993700 for Rs. 66,083/- drawn on United Bank of India, Park Street Branch, Kolkata – 700 016. On the next date i.e. 29.10.2013, the cheque paid to EPFO received due clearance and the same is reflected in the bank statement of the company's account in United Bank of India and also from the combined challan dated 30th October, 2013.

2g. On 31.10.2013 i.e. the date of the receipt of the alleged defaulted sum, the opposite party no. 2 claimed himself as the Enforcement Officer lodged an FIR with the Officer –in- Charge of Shakespeare Sarani Police Station in the capacity of an Inspector under the EPF & MP Act, 1952 even after payment of the dues against the Company and its Directors as Shakespeare Sarani (EB) Police Station Case No. 385 dated 31.10.2013 which came as a total violation of the principle of natural justice as the company was not given a chance to represent its case nor was a proceeding against Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 initiated at that stage.

2h. It is further case of the petitioners that subsequently the Directors of the Company were summoned under Section 7A of the

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 dated 31.10.2013 by the Office of the Assistant Provident Fund Commissioner vide memo dated 04.11.2013 to appear in person or through authorized representative to produce original documents as mentioned therein for determining the amount due for the period from August, 2013 to September, 2013 and to conduct an enquiry to that effect. Upon receiving of such summon, the company's representative duly entered appearance and an order was passed to the effect that all dues for the month of August and September 2013 have been paid by the Company in full. An amount of Rs. 934/- on account of interest needs to be paid by the Company within ten days of the receipt of the order. The said amount of Rs. 934/- was also paid to the EPFO vide a pay Order bearing No. 017757 dated 19.12.2013 and the same was handed over to the office of the Additional Provident Fund Commissioner on 19.12.2013 and a letter was written to the Deputy Commissioner of Police (Enforcement Branch) by the Company informing him of the dues being paid off before the commencement of the First Information Report and requesting him to drop the proceedings thereof. But despite of the facts, the proceeding was initiated and finally a charge sheet has been submitted mechanically and without proper investigation though the company has already deposited the entire amount along with interest. As such, the entire proceeding is bad in law and liable to be quashed.

2i. It is the contention of the petitioners that time and again the Hon'ble Supreme Court of India has dealt with the question as to whether a Director of a company comes within the definition of 'principal employer', as envisaged under Section 2 (17) of the Employees State Insurance Act, 1948. The Hon'ble Supreme Court, after taking into consideration the said definition of the term 'principal employer', and has also held that the company itself is to be considered to be the principal employer and not its Directors. The said view was considered and followed by this Hon'ble Court in certain cases wherein the charge under Section 406 of the Indian Penal Code was held to be not maintainable against the Directors of the defaulting company. It is thus apparent that it is now well settled law that a principal employer under the Employees State Insurance Act, 1948 is the company itself and not its Directors. Since the definition of an 'employer' under the said Act, 1952 is pari material to the definition of the 'principal employer' under Section 2(17) of the Act, 1948, it arises by implication that the term 'employer', so far as it relates to a factory, means the company itself and not its Directors. Thus, even under the said Act, 1952, the company can be prosecuted in its capacity as ‘employer’ and the Directors cannot be brought within the purview of the said Act and prosecuted under guise that they are employers. Thus, the liability for non-deposit of the employees contribution and consequent prosecution under Section 406 of the Penal Code is that of the employer and as such, where it is apparent that only the company which has been exonerated is the employer, the implication of the petitioners in the instant case, in their purported capacity as Directors, is clearly not in consonance with the observations of the Hon’ble Supreme Court of India as also this Hon’ble Court and as such the same is liable to be quashed and/or set aside so far it relates to the present petitioners. Until and unless the prayers, as made by the petitioners, are allowed, the petitioners would suffer immense hardship and harassment and irreparable loss and injury and continuation of the instant case before the present learned Court below would be travesty of justice.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsels appearing on behalf of the petitioners submitted that prior to lodging FIR, the company has deposited the dues amount within time and as per the notice, they also deposited the interest charge upon that amount vide a pay Order bearing No.

017757 dated 19.12.2013. Accordingly, this case is liable to be quashed.

Learned counsels referred three judgments of the Hon'ble Supreme Court and Hon'ble High Court at Calcutta to impress upon this Bench to quash the proceedings. Those judgments are as under:

i. *Provident Fund Inspector, Faridabad Vs. M/s Jaipur Textile, Faridabad and Others*[1]*;*

ii. *Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others*[2]

iii. *Howrah Motor Company Limited & Ors. Vs. Samir Kumar Das*[3]*.*

4. On the other hand, nobody appeared on behalf of the State. However, the complainant appeared in person and submitted a report contending therein that the petitioners are not innocent as per the law of the land. It is the duty of the employer of the establishment to deposit the provident fund contributions of EPFO immediately of 15th day of month by following the wages/salary month after deducting it from the salaries/wages of the employees and not to withhold it. Only after inspection and awareness to the employer, they have deposited

[1] 1986 (Supp) Supreme Court Cases 678;
[2] 1995 Supp (4) Supreme Court Cases 580;
[3] 2004 SCC OnLine Cal 430 : (2004) 4 CHN 291.

the provident fund contributions which was withholding by them. The employer deposited the said amount which was credited to EPFO account on 31.10.2013 after expiry of statutory limit and finally accepted that the Employee(s)/Director(s) of establishment Infinity Lifestyle Pvt. Ltd having its office at 24, Park Street, Park Centre Building, Kolkata -700 016 subsequently paid the amount through Cheque which was credited to EPFO accounts on 30.10.2013 vide CRN - 131007502000069. As such, he prays for a necessary order may be passed.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Having considering the contentions of the petitioners as well as complainant, this Court is of the view that it is the duty of the employer/company to deposit the EPFO within 15 days by month but they came to know about non-deposit of EPFO only after inspection by the complainant. Subsequently, they have been deposited the entire amount along with interest as noticed and also it is admitted fact that the said amount was credited. Accordingly, there is no dispute in the instant case regarding non-payment of employees' share of provident fund contributions within time but later company has deposited entire amount along with interest. Furthermore, it appears the Hon'ble Supreme Court also quashed the proceeding of similar like nature case. In this instant case also, the entire amounts along with interest having been paid as evidenced by the copy of the cheque vide CRN – 131007502000069. There cannot be any justification for further continuation of the proceedings against the petitioners. With the payment of the entire dues nothing remains outstanding. Further continuation of the proceeding will be sheer wastage of time and money. In fact, in Adoni Cotton Mills Limited V. Regional Provident Fund Commissioner, reported in 1995 Suppl. (4) SCC 580, the Hon'ble Supreme Court quashed the proceeding in view of the payment of the dues being partly deposited and partly secured.

6. Accordingly, proceedings of G.R. Case No. 3974 of 2013 arising out of Shakespeare Sarani (EB) Police Station Case No. 385 dated 31.10.2013 under Sections 406/409/34 of the Indian Penal Code in which a charge sheet No. 59/2014 dated 26.03.2014 under Sections 406/34 has been submitted and orders passed therein are hereby quashed.

7. Accordingly, **CRR 1429 of 2017** is, thus, **allowed** without order as to costs. Connected applications, if any, are also, thus, disposed of.

8. Case Diary, if any, is to be returned to the learned Advocate for the State.

9. Let a copy of this judgment and order be sent to the learned Court below for information.

10. Interim order, if any, stands vacated.

11. Parties shall act on the server copies of this order uploaded on the website of this Court.

12. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)