

01.05.2024
Court No.40.

Item.3.
s.g.

CRR/ 2889/ 2011

In the matter of: **S.P. Dalmia & Anr.**

...Petitioners.

Mr. Milon Mukherjee, Sr. Advocate.
Mr. S.P. Tewari,
Mr. Biswajit Manna,
....for the petitioner.
Mr. Shiv Chandra Prasad,
....for the opposite party no.2.

CRR 2889 of 2011 is filed praying for quashing of the impugned proceeding being G.R. No. 16(1)/08 in connection with Mirik P.S. case no. 07/2008 under Section 406/409 of the Indian Penal Code pending in the Court of Additional Chief Judicial Magistrate, Kurseong.

The genesis of this case is a written complaint filed by the statutory authority under Employees' Provident Fund Act, addressed to the Officer-in-Charge of Mirik Police Station dated 25.01.2008. Allegation is violation of provisions of Employees' Provident Fund Miscellaneous Provisions Act, 1956, against M/s. Panighata Tea Estate, Post Office Belgacha, District Darjeeling. On completion of

investigation charge sheet was filed under Section 406 and 409 of the Indian Penal Code being Charge Sheet dated 16.2.2022 under Section 406 and 409 of the Indian Penal Code. The original petitioners were charge sheeted among others.

An application was filed before the learned Court of Additional Chief Judicial Magistrate, Kurseong for discharge of the original petitioners. That application was turned down by the learned Court in terms of the order dated 02.06.2011. In the said of order it was observed by the learned Court that settlements were arrived at in the Hon'ble Supreme Court of India. It was observed that Civil Appeal being Civil Appeal no. 3516 of 2008 came up for hearing before the Hon'ble Supreme Court on 12.5.2008 and same were disposed of in terms of Minutes of order, in view of the terms of settlement dated 20.3.2008 and 6.4.2008. It was noted by the learned Court further that in terms of the settlement B.L. Dalmia Group and its members shall not be liable for any liabilities, statutory or otherwise in respect of New Terai Association (Panighata Tea Company Ltd.). It was further noted that as per the Order of the Hon'ble Supreme Court of India, the accused petitioners should not be prosecuted for non-payment of Provident fund of the said New Terai Association. The Additional Chief Judicial Magistrate dismissed the application on the ground that the prosecution is triable by a Special Court.

Mr. Milon Mukherjee, the learned Senior Counsel appearing for the petitioner, submitted that clearly and conspicuously, terms and conditions of the Hon'ble Supreme Court of India, exonerated the original petitioners from any liability, whether statutory or otherwise, in respect of the said Terai Association (Panighata Tea Estate). Therefore, the prosecution of the original petitioners are sine qua non bad in law and is liable to be quashed. It is further submitted by Mr. Mukherjee that original petitioner namely S.P. Dalmia breathed his last on 29th November, 2017. So, the prosecution has already been abated against him.

Learned Counsel appearing for the Opposite Party no.2, Provident Fund Commissioner, Employees' Provident Fund Organization submitted that the instant prosecution is in respect of liabilities incurred, prior in time to the settlement arrived at the Hon'ble Supreme Court. Therefore, the petitioners cannot escape the liability and claim immunity from prosecution keeping the solemn order of the Hon'ble Supreme Court of India as a shield.

On perusal of the terms of settlement, specially paragraph 43, it is evident that upon signing of the terms and settlement, B.L. Dalmia Group and or its members shall not be liable for any liabilities, statutory or otherwise, of New Terai Association. There is no whisper that prior liabilities shall continue to be binding. This memorandum of settlement exonerated the original petitioners from any statutory or other liabilities. Once the order is manifest and speaks for

itself, this Court cannot interpret or modify or add something to clear language of the Apex Court of the Country. The opposite parties might have approached the Hon'ble Supreme Court for further clarification. Nothing is there on record. In absence of anything else, the clear language of the order of the Hon'ble Supreme Court of India shall be construed and it will be read that as from the date of signing of the settlement D.L. Dalmia Group should not be saddled with liabilities. That is the very spirit of settlement. An alternative interpretation would undermine and distort the meaning and spirit thereof.

In a nut shell the instant application succeeds. The impugned proceeding G.R. No. 16(1)/08 in connection with Mirik P.S. case no. 07/2008 is quashed, against the Petitioner No.2 Pankaj Dalmia. In view of death of S.P. Dalmia, the Petitioner No.1, prosecution stands abated.

Accordingly, CRR 2889 of 2011 stands disposed of.

(Sugato Majumdar J.)