IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3762 of 2017

Om Prakash Saxena & Others
Versus
State of West Bengal & Another

For the Petitioners	:	Mr. Pawan Kumar Gupta, Adv. Mr. Awadesh Kr. Rai, Adv. Ms. Sofia Nesar, Adv. Mr. Santanu Sett, Adv.
For the P.F. Authority	:	Mr. Shiv Chandra Prasad, Adv.
Heard on	:	14.11.2024
Judgment on	:	06.12.2024

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973, the petitioners being the accused persons sought for quashing of the proceedings being Case No. C/350 of 2016 under Sections 14(1A), 14A (1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 pending before the Court of the Learned Judicial Magistrate, 1st Class, 1st Court, Barrackpore including the Order passed therein dated July 20, 2016. By the said order, the Learned Magistrate took cognizance against the present petitioners.

2. The brief facts, leading to filing of this instant Criminal Revisional application, are that one Sanjay Biswas, Enforcement Officer, Employees' Provident Fund Organization, Sub-Regional Office, Barrackpore lodged a petition of complaint against the present petitioners contending therein that the accused persons, being the Directors, were in charge of establishment, namely, M/s Bengal Waterproof Limited having its registered officer at "MMS Chambers", 1st Floor, 4A, Council House Street, Kolkata – 700 001 and were responsible for the conduct of its business. In discharge of such responsibilities, they took part in the running of the business. They are bound to comply with the provision of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 and the scheme in respect of the said establishment. The accused persons, however, failed to submit the monthly returns for the period April 2009, December 2011 to January 2012 under the provisions of Clause 16 of Appendix "A" to Paragraph 27AA of the Employees' Provident Fund Scheme, 1952. Therefore, they committed an offence under Sections 14(1)/14(1A)/14(1B)/14(2A)/14A(1)/14A(2)/14AA of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

2a. It is the contention of the petitioners that the complaint has been made by the Officer is totally false and fabricated. No such offence was committed by the present petitioners. The opposite party no. 2 has suppressed the entire material facts before the Learned Magistrate to the effect that M/s Bengal Waterproof Limited has been non-operational since 2013. All the employees of the said establishment resigned from the establishment in the month of November, 2011. The fact of resignation was also brought to the notice of the opposite party no. 2. Accordingly, the opposite party no. 2 has released the funds held under the Provident Fund deposit scheme for final settlement of the fund's dues to all the employees. All payments have been made to all the employees according to their entitlements. Not a single complaint has been made by any of the employees of the said establishment against the petitioners. As such, the entire complaint is false and misconceived and proceeding therein is liable to be quashed at the threshold. After receiving such petition of complaint, the Learned Magistrate took cognizance and issued process against the present petitioners. Hence, this instant Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS:-

3. Learned counsel appearing on behalf of the petitioners vehemently submitted that the allegations levelled against the present petitioners are false and fabricated. The opposite party no. 2/complainant has suppressed the material facts in the petition of complaint with regard to the non-operational of the organization since 2013. Furthermore, it is also not disclosed to the Learned Court below about the resignation of all the employees from the establishment in the month of November, 2011. The said facts were brought to the knowledge of the petitioner no. 2 by the establishment prior to making complaint. Accordingly, the opposite party no. 2 has released the funds held under the provident fund deposit scheme for final settlement of provident fund dues to all the employees. All employees of the said establishment have already received their entitlements as a final settlement. Not a single complaint has been lodged or pending against the establishment from the side of the employees. After payment of such final settlement of the provident fund to the employees, the Utilization Certificate was also forwarded to the authority including all members.

3a. It is further submitted that the authority has issued a letter directing the establishment to undergo an audit through the empanelled auditor. The surrender of exemption in respect of the establishment in question was approved by the Regional Provisional Commissioner and forwarded for issuing a specific notification to the Central Provident Fund Commission. Therefore, the complainant has suppressed all material facts before the Learned Court below. The prosecution against the present petitioners, who were Directors, cannot be allowed to continue as the Directors had resigned from the company. Therefore, they are not liable for vicarious liability to the act of the company itself.

3b. Despite the fact as aforesaid, the Learned Magistrate, without thoroughly examining the entire complaint, mechanically and without applying judicious mind took cognizance against the petitioners solely on the basis of a form of general allegation made by the opposite party no. 2/complainant.

3c. It is further argued that the instant criminal proceeding is initiated after the expiry of limitation period. Accordingly, the Order of taking cognizance by the Learned Magistrate is barred by limitation under Section 468 of the Cr.PC.

3d. Finally, it was submitted that even for the sake of argument, the allegation of the complainant is that the establishment has not submitted the returns on time. But, the company has deposited the amount to the provident fund deposit scheme in time. The establishment could not submit the return because the portal does not permit the establishment to submit the return in time in view of Hon'ble High Court's order passed in another proceeding being WP No. 15191(W) of 2011. Prior to lodging of the said complaint, no opportunity was given to the petitioners to explain the reason as to why they did not file returns.

3e. It is further submitted that on the similar set of allegations made by the same complainant against this establishment, the Co-ordinate Bench of this Court in ***CRR No. 3262 of 2017 WITH CRR No. 3263 of 2017 (Om Prakash Saxena & Ors. Vs. The State of West Bengal)*** disposed of and quashed the entire proceeding only on the ground that the complaint is barred by limitation and the Learned Magistrate mechanically had taken cognizance beyond the period of limitation which is barred under the provisions of Section 468 of the CrPC.

3f. The learned counsel also drew attention about the constitution of the Ad-hoc Committee for enhancing coverage and reducing litigation. The Hon'ble Chairman, Central Board of Trustees, Employees' Provident Fund (CBT EPF) directed to constitute the above committee from amongst members of the CBT EPF to give recommendation for enhancing coverage and reducing litigation and the said committee was constituted vide order dated 27.11.2021. For enhancing coverage and reducing litigation, following recommendations of the Committee were approved by CBT in its 230th meeting: -

> *"(i) to ensure a universal social security coverage by enrolling all employees upto the wage ceiling;*
>
> *(ii) recommend to Central Government to frame and assign administration of scheme for Gig and platform workers, to EPFO;*
>
> *(iii) Regional Committees to be scheduled by a fixed calendar, to meet at least four times every year with standing agenda on coverage and litigations;*
>
> *(iv) to prepare a comprehensive legal framework for litigation management.*
>
> *(v) withdraw prosecutions related to non-filing of returns and/or non-submission of KYC; and*
>
> *(vi) rationalise the rate of damages."*

3g. Therefore, a proposal was given to withdraw prosecution related to non-filing of returns and/or non-submission of KYC because the Committee noted that several prosecutions were going on in respect of default of non-filing of the return and non-submission of KYC in different counts and finally the Committee recommended that the Board may consider the proposal to review the case to withdraw prosecutions related to non-filing of the returns and/or non-submission of KYC to avoid the waste of the Government Exchequer. As such, the present complaint appears merely an attempt to harass the present petitioners. If the said proceeding is allowed to be continued, it would amount to sheer abuse of process of law and for securing the ends of justice, the entire proceeding is liable to be quashed.

3h. Learned counsel appearing on behalf of the petitioners placed a reliance of a judgment passed in the case of ***Kartick Ch. Das & Anr. Vs. State of West Bengal & Ors.***[1], wherein this Court has quashed several complaints of the Provident Fund Authority which was lodged before the jurisdictional Magistrate for non-filing of returns in time.

[1] 2010 SCC OnLine Cal 1895;

3i. Learned counsel appearing on behalf of the petitioners also placed reliance of judgments as under: -

> ***i. Mary Pushpam Vs. Telvi Curusumary & Ors.***[2]
>
> ***ii. C.B. Bhandari Vs. Provident Fund Inspector, Bangalore***[3]

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:-

4. Mr. Prasad, learned counsel appearing on behalf of the opposite party no. 2 vehemently opposed the prayer of the petitioners/accused persons and further submitted that they have committed the alleged offences under the provision of Employees' Provident Fund & Miscellaneous Provisions Act, 1952 by non-filing returns in time. The present petitioners were the Directors of the said establishment. They had a control over the day-to-day activities and business and were in charge of the said establishment. They were responsible persons for filing the returns in time as per the provisions laid down in the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. The complainant found upon verification that the M/s. Bengal Waterproof Limited had not submitted returns for the period April 2009, December 2011 to January 2012 rather the

[2] 2024 (3) SCC 224;
[3] ILR 1988 KAR 900 : (1988) IILLJ 400 KANT.

petitioners ought to have filed the returns within time. Therefore, they are liable for such commission of offence punishable under Sections 14(1)/14(1A)/14(1B)/14(2A)/14A(1)/14A(2)/14AA of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952.

4a. It is further submitted that the offence was continuing as such, question of limitation does not arise in the instant case. Accordingly, the criminal proceeding should not be quashed. In support of his submission, learned counsel has placed a reliance of a judgment in the case of ***Bhagirath Kanoria and Others Vs. State of M.P. WITH Bahadur Singh V. Provident Fund Inspector and Others AND Raja Bahadur Singh V. Provident Fund Inspector and Others***[4].

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. After considering the submissions of learned counsels for the parties and on perusal of the materials on record, this Court finds the opposite party no. 2 has filed a petition of complaint before the Learned Additional Chief Judicial Magistrate at Barrackpore on 09.06.2016 against the present petitioners alleging they were Directors of M/s Bengal Waterproof Limited. In the said complaint, paragraph nos. 3, 4 and 5 mentioned as under: -

[4] AIR 1984 Supreme Court 1688.

"3. That the accused – being employers of the establishment failed to submit monthly returns in Form – 2(IF) for the period 04/2009, 12/2011 to 01/2012 under the provision of clause 16 of Appendix "A" to paragraph 27AA of the EPF Scheme, 1952. They have thus committed offences under Section 14(1A), 14A (1), 14(1B), 14(2), 14 [(2A)] read with paragraph 76 of the EPFS'52, read with paragraph 41(b) of EPFS'71, read with paragraph 42(b) of EPS'95 & read with paragraph 29(b) of the EDLI'76.

4. That I further submit that as the accused Nos. one to six were during the relevant period in charge of the said establishment and were responsible to it for the conduct of its business, they have in view of the facts and circumstances stated above committed offences under Section 14(1A) read with Section 14A (1) & 14[(2A)] of the Act'52.

5. That I submit that the accused Nos. one to six are Directors of the said establishment which is a establishment within the meaning of the said Act and the offence(s) mentioned above have been committed by the company with the consent or connivance of or is attributable to neglect on part of such Director(s)/Manager/Secretary/Officer(s)/Members of the Board of Trustee of the Company and as such they are punishable under Section 14(1A) and 14(1B) read with Section 14A(2) of the Act, 1952."

6. Clause 16 of Appendix "A" enumerates "The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation:

So according to this provision, the Board of Trustees of the employer shall file returns monthly/annually as prescribed by the Employees Provident Fund organisation within specific time limit. It has been alleged that the petitioners have not complied with the provisions and disobeyed to file returns for the aforesaid period in time.

7. From the perusal of the order passed by the Learned Additional Chief Judicial Magistrate at Barrackpore dated 20.07.2016, it appears the Learned Magistrate has taken cognizance for the offence punishable under Sections 14(1A), 14A(1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. However, not a single reason, whatsoever, recorded in the said order and simply cognizance was taken on the basis of petition of complaint.

8. The punishment of such offence has been enumerated in Section 14 of the said Act, 1952.

Section 14(1A) reads as under:-

*"**S. 14(1A)** An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to three years, but—*

(a) which shall not be less than [one year and fine of ten thousand rupees in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case:

Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term."

Section 14A (1) reads as under: -

*"**14A. Offences by companies**. — (1) If the person committing an offence under this Act, the Scheme or*

the Pension Scheme or the Insurance Scheme is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence."

Section 14(2A) reads as under: -

*"**S.14(2A)** Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees."*

9. The alleged offence of non-filing of returns was committed in the year 2012 but the complaint was lodged in the year 2016. Though, the provision of Section 468 of the Code of Criminal Procedure, 1973 is specifically specified that the Magistrate can take cognizance of offence within one year, if the offence is punishable with imprisonment for a term not exceeding one year. The period of limitation mentioned in Section 468 of the Code of Criminal Procedure, 1973 as follows: -

> *"**468. Bar to taking cognizance after lapse of the period of limitation. —** (1) Except as otherwise provided elsewhere in this code, no court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be—*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for a term of exceeding one year but not exceeding three years."*

10. Upon perusal of the aforesaid provision, it reveals that the Learned Magistrate has taken cognizance beyond the period of limitation which is barred by the provision of Section 468 of the Code of Criminal Procedure, 1973.

11. On perusal of the decisions cited by the Learned Advocate on behalf of the opposite party no. 2, it appears to me that the alleged offences as mentioned in the cited cases are entirely separate because the period of limitation in a continuing offence, the last act of the offence governs the commencement of the period but in the present case, cognizance has been taken after expiry of more than three and half years from the last date of alleged offence. However, the ratio of ***Kartik Chandra Das (supra)*** is more applicable in respect of facts and circumstances of this case. Admittedly, the employees of the said establishment have forwarded their resignations in the year 2011. The employees have received their provident fund. There were no disputes. The factory of the establishment became non-functional since 2013. The Trust has been dissolved according to the direction and observing formalities of the Provident Fund. At this juncture, searching the periodical returns by the said establishment is nothing but a futile exercise. The criminal complaints for the violation of provisions of EPF Act, 1952 of one establishment which has actually become defunct 10 years ago also will be misused of procedural safeguards.

12. Learned Magistrate has taken cognizance of offence beyond the period of limitation and order of taking cognizance under Sections 14(1A), 14A (1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 without assigning any reasons is bad in law.

13. It is relevant to mention that the Ad-hoc Committee constituted upon direction of the Hon'ble Chairman, Central Board of Trustees, Employees' Provident Fund is of the view that the complaint lodged by the Authority with regard to non-filing of returns and submission of KYC should be withdrawn to reduce the litigation of Employees Provident Fund Organization and to save the Government Exchequer.

14. Considering the above facts and circumstances, this Court is of the view that if the proceeding is allowed to be continued, it would be a futile exercise. There is every possibility of conviction is remote and bleak and continuation of such criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to them by not quashing the criminal proceeding.

15. Accordingly, **CRR 3762 of 2017** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.

16. Consequently, the proceeding of Case No. C/350 of 2016 under Sections 14(1A), 14A (1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 pending before the Court of the Learned Judicial Magistrate, First Class, 1st Court, Barrackpore is quashed and Order passed therein dated July 20, 2016 by which the Learned Magistrate took cognizance against the present petitioners is also set aside.

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

18. Let a copy of this Judgment and Order be sent to the Learned Court below for information.

19. Interim order, if any, stands vacated.

20. All parties will act on the server copies of this Judgment and Order uploaded on the official website of this Hon'ble High Court.

21. Urgent photostat certified copy of this Judgment and Order, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)