20.12.2024
rc/ct.no.02
Item No.50

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction

CRR No. 335 of 2024

In the matter of : Smt. Annu Agarwal @ Anu Agarwal & Anr.
.......Petitioners

Ms. Radhika Agarwal
Mr. Dhiraj Lakhotia
Ms. Meghana Joshi
Ms. Khushi Kundu ...for the petitioners

Dr. Arjun Chowdhury ...for the State

Mr. Bhaskar Roy Mahashaya ...for the P.F.Authority

The petitioners seek quashing of proceedings including charge sheet in connection with G.R. Case No. 69 of 2022 pending before the learned Chief Judicial Magistrate, Kurseong, Darjeeling.

Learned counsel for the petitioners submits that the petitioners are directors of M/s Matigara Realtors Private Limited and are not involved in the day to day affairs of the tea estate. M/s Matigara Realtors Private Limited is the lessee of Marionbari Tea Estate. FIR was lodged against the petitioner under Sections 406/409 of the Indian Penal Code by the Enforcement Officer, P.F.Office, Siliguri, Darjeeling on 18th May 2022 alleging that though the company deducted provident fund contribution from the salary/wages of the employees for the period January, 2022 to

March, 2022, the same was not deposited with the statutory fund, in violation of Section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 which amounts to an offence under Section 405 of the Indian Penal Code. Charge sheet was submitted against the petitioners under Sections 406/409 of the Indian Penal Code. Referring to Sections 14A and 14B of the Act of 1952 and judgments of a coordinate Bench of this Court delivered in CRR 652 of 2019 on 21st August, 2023 and in CRR 790 of 2019 delivered on 19th September, 2023, learned counsel for the petitioner has submitted that since the company has not been arrayed as an accused, the petitioner being the director cannot be prosecuted under Sections 406/409 of the Code since it is the company and not the petitioner/director who is the employer under the Act.

Learned counsels for the opposite parties have opposed the prayer.

It is not in dispute that the entire due amount has been deposited by the company after lodging of the FIR. Admittedly the petitioner is a director of the company and the company being M/s Matigara Realtors Private Limited has not been arrayed as an accused in the FIR or the charge sheet.

At this juncture, it is pertinent to reproduce Sections 14A and 14B of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

"14-A. Offences by companies –

> 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.
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> **14-B. Power to recover damages**.—Where an employer makes default in the payment of any contribution to the Fund, the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section (2) of section 15 or sub-section (5) of section 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under section 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme:"

Therefore, it is crystal clear that 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 liable to be proceeded against. A prosecution initiated against the directors of the company/petitioners in their official capacity cannot continue without arraying the employer/company as an accused and no offence under Sections 406/409 of the Indian Penal Code can be said to have been committed by the petitioners without the company being saddled with the liability of the offence. Be it mentioned here that it is trite law that vicarious liability is unknown to criminal jurisprudence unless specifically provided in the statute itself. Therefore the petitioners cannot be held responsible for any act of the company who is the employer and is liable for depositing the employees' share of provident fund before the provident fund authority, without roping in the company as an accused. Allowing the prosecution to continue against the petitioners shall amount to miscarriage of justice and abuse of the process of the Court.

In the result, the revisional application, being CRR 335 of 2024 is allowed.

The proceedings being G.R. case no. 69 of 2022 pending before the learned Chief Judicial Magistrate, Kurseong, Darjeeling including the charge sheet submitted therein be quashed.

Urgent certified website copy of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh,J)