

20.12.2024
rc/ct.no.02
Item No.52

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

CRR No. 402 of 2024

In the matter of : Amit Kumar Agarwal

.....Petitioner

Mr. Bikramaditya Ghosh
Ms. Supriya Singh
Mr. Swarup Das ...for the petitioner

Mr. Aditi Shankar Chakraborty
Mr. Abhijit Sarkar ...for the State

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

The petitioner seeks quashing of proceedings including charge sheet in connection with G.R. Case No. 1486 of 2018 pending before the learned Chief Judicial Magistrate, Alipurduar.

Learned counsel for the petitioners submits that the petitioner is the director of ESSESS Endeavours (P) Ltd. which has taken over the assets and liabilities of Jaibirpara Tea Estate. At the time of taking over management of the company, there was substantial liability outstanding on account of provident fund dues, substantial part of which was cleared by the company. FIR was lodged against the petitioner under Sections 406/409 of the Indian Penal Code by the Enforcement Officer, Regional Office, Jalpaiguri on 27th August, 2018 alleging that though the company deducted provident fund contribution from the salary/wages of

the employees for the period June, 2018 to July, 2018, 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 substantial portion of 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 Jaibirpara Tea Company 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.

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 director of the company/petitioner in his 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 petitioner 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 petitioner 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 petitioner shall amount to miscarriage of justice and abuse of the process of the Court.

In the result, the revisional application, being CRR 402 of 2024 is allowed.

The proceedings being G.R. case no. 1486 of 2018 pending before the learned Chief Judicial Magistrate, Alipurduar 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)