



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPLICATION (APL) NO.1142 OF 2022

AZAD SINGH ARYA VS. THE STATE OF MAHARASHTRA AND ANOTHER

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.M. Patrikar, Advocate for the applicant
Ms Kalyani Marpakwar, APP for the non-applicant No.1/State
Mr. Girish Kunte, Advocate for the non-applicant No.2

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 31.07.2024.

1. The present application has been filed by invoking inherent powers of this Court under Section 482 of the CrPC for quashing the FIR No.336 of 2019 on 04.10.2019 registered with Police Station MIDC Butibori, Nagpur, against the applicant under Section 406, 409 r/w Section 34 of Indian Penal Code and Section 13 and 14A of the Employees Provident Funds and Misc. Provisions Act.

2. We have heard Mr. Patrikar, learned Advocate for the applicant, the learned APP for the State and Mr. Kunte, learned Advocate for the non-applicant No.2.

3. The applicant has come with a case that he was the Vice President (Operations) cum Factory Manager from 21.05.2008 to 13.06.2015 with M/s. Spentex Industries Ltd., MIDC, Butibori, District : Nagpur. He stood retired by superannuation on 13.06.2015 and now he is residing at his home town Bhiwani in the State of Haryana. The allegations against the company are

that they have not deposited provident fund of employer and employees for the period 01.01.2016 to 01.02.2018 and the officer of the Regional Provident Fund-II has assessed the recovery of sum of Rs.3,28,27,857/-. The employees contribution was recoverable of Rs.80,79,511/-. As he was retired on 13.06.2015, he had sent an E-mail to the Directors of the company and the company had accepted the same. He has no knowledge about all the transactions took place after his retirement. He is not responsible for any act or omissions done by the company after his retirement and therefore, he prayed for quashment of the FIR.

4. It is also submitted that the applicant and the co-accused had filed Criminal Application No.433 of 2020 before this Court for quashing the FIR. This Court had directed the applicants therein to deposit various amount as a condition precedent, but the concerned persons i.e. the Managing Director and the others, who were at the helm of the company's day to day affairs during the period for which had not deposited the PF amount and therefore, the said application for quashing the FIR was dismissed on 27.08.2020. Since that petition was joint and the direction was to those persons to pay the amount, the applicant was not the person from whom the compliance was called for and therefore, the applicant has prayed for quashment of the FIR by this application.

5. The learned Advocate for the applicant reiterates the same fact as above and gave explanation regarding the maintainability of the present application that the dismissal of the criminal

application No.433 of 2020 will not be hurdle for this applicant, as the directions therein were against the co-accused.

6. Per contra, the learned APP strongly opposes the application and submits that once earlier application of the applicant was rejected, he cannot file similar application for the same relief subsequently.

7. We have gone through the order passed by this Court in Criminal Application No.433 of 2020 dated 27.08.2020. A note has been taken by this Court regarding the Writ Petition No.1830 of 2019, challenging the show cause notice dated 08.02.2019. This Court had directed the applicants to deposit various amounts as a condition precedent so as to prevent their arrest. That order has not been complied with. Thereafter, the FIR come to be registered in pursuant to the order dated 03.01.2020 passed by the National Company Law Tribunal. The present applicant was the applicant No.4 in Criminal Application No.433 of 2020. A perusal of the earlier application i.e. Criminal Application No.433 of 2020 would show that the pleadings were made regarding the retirement of the present applicant from the post of Vice President on 15.06.2015, but there is no specific pleadings that since he stood retired on 15.06.2015, he is not responsible for any recoveries or payments. It appears that he was serving in dual capacity as the Vice President (Operations) and also the Factory Manager. Now if that ground was taken yet, this Court had dismissed the application, then the remedy was to approach the higher Court and not this Court again. There is further gap of about two years

in approaching this Court i.e. after the decision in said matter on 27.08.2020. The present application has been filed on 08.07.2022. This Court cannot reconsider the same issue, once the earlier application was decided on merits and therefore, the present application is not maintainable. Hence, it stands **rejected.**

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]