IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 123 of 2001

Regional Provident Fund Commissioner, West Bengal
-Vs-
M/s Sonodyne Television Company Limited & Ors.

For the Appellant : Mr. Nikhil Kr. Gupta

For the Respondent No.1 & 2 : Mr. Susrea Mitra
Mr. Hamidul Haque

Heard on : 09.01.2024, 09.05.2024, 05.09.2024

Judgment on : 22.04.2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. This appeal is preferred against the judgment and order dated 28.02.2000 passed by Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas in Case No.C-119 of 1996, thereby acquitting the appellant of the charge under Sections 14(1A), 14(2), 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

2. Opposite party no.1 the company was covered under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, opposite party no.2 being its Director, alleged to have been a person in charge of the said company, responsible for the conduct of its business, required to comply the provisions of the said Act and the scheme framed thereunder.

Contentiously opposite party no.2 being the employer failed to pay the contributions for the month of December, 1991 in contravention of the provisions of Section 6 of the said Act along with administrative charges for the month of December, 1991 in contravention of the provisions of paragraph 38 of the Employees' Provident Funds Scheme 1952 and therefore committed offences under 14(1A), 14(2) read with 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 read with paragraphs 76 of the Employees' Provident Funds Scheme, 1952.

It was further alleged the opposite party no.2 was in-charge and responsible for the day to day affairs of the company during the relevant period and had committed an offence under Section 14(1A) read with Section 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. As such he was punishable under Section 14AA of the said Act.

3. The provisions of Section 14(1A) and also Section 14(1B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provided as follows:-

"Section 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.

Section 14(1B) – An employer who contravenes, or makes default in complying with, the provisions of Section 6C, or clause (a) of Sub-section (3A) of Section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than [six months and shall also be liable to fine which may extend to five thousand rupees:

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."

4. The appellant further contended that an employer who contravened, or defaulted in complying with, the provisions of Section 6 or Clause (a) of Sub-section (3) of Section 17 in so far as it related to the payment of inspection charges, or para 38 of the scheme in so far as it related to the payment of administrative charges, should be punishable under Section 14(1A). As such complaint cases were initiated against the company as well as its director for non-payment of provident fund and allied dues within a stipulated time i.e., 15th of each following month, to which it related and subsequent payment did not absolve from the offence committed by them.

5. Appellant further stated that before filing aforesaid complaint cases under Section 14(1A), 14(1B), 14(20 read with 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the sanction for prosecution of the aforesaid case was duly accorded on 09.02.94 but the Learned Magistrate failed to appreciate the same and the Learned Magistrate had wrongly observed in the impugned judgment and order dated 28.02.2000 that the sanction of the prosecution was accorded on 09.02.1995 in place of

09.02.1994. Thus, the observation of the Learned Court in the impugned judgment and order that the company had paid off the disputed dues before granting sanction by the Regional Provident Fund Commissioner was incorrect as it would be observed from the following:-

Date of filing the complaint				04.03.1995
Date of Sanction of Prosecution				09.02.1994
Case No.	Period	under Section	Amount	Paid
C-119/95	12/91	14(1A), 14(2), 14A(1) of the E.P.F & Misc. Provisions Act, 1952.	Rs.30.242.00(EE)	02.09.1993
			Rs.30,242.00 (ER)(EPF)	15.09.1994
			Rs.3,779.00(EE)(EPF)	02.08.1993
			Rs.3,779.00(EE)(EPF)	15.09.1993
			Rs.2,211.00(Adm.)	28.03.1994

6. It was further stated that only the Employees' share of Provident Funds and Employees' Pension Fund Contribution had been paid before the date of sanction of prosecution i.e., 09.02.1994. The opposite parties admittedly failed and/or neglected to pay the Provident Fund and allied dues for the period December, 1991 which the stipulated time under para 38 of the Employees' Provident Funds Scheme, 1952. In Form 5A filed by the company reflected the opposite party no.2 as director and responsible for day to day affairs of the company. As such the opposite parties were liable to punished under the provisions of the said Act. The amounts realized by the employer along with their own contribution had to be deposited by the employer under Section 6 of the said Act within the stipulated time under para 38 of the

Employees' Provident Funds Scheme, 1952 and they having not paid the amounts within the stipulated time, the offence stands committed and any subsequent deposit would not cause a waiver of the prosecution.

7. Learned Advocate representing the appellant submitted as follows:–

   i. The sanction of prosecution was accorded on 09.02.1995 in place of 09.02.1994 as mentioned in the impugned judgment and order.

   ii. The opposite parties being the employer failed and/or neglected to deposit the Provident Fund and allied dues within 15th of the following month to which it was related under para 38 of the Employees' Provident Fund Scheme thus they committed offences under Section 14(1A), 14(2) read with 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 read with paragraph 76 of the Employees' Provident Funds Scheme, 1952.

   iii. The amount realized by the employer along with their own contribution had to be deposited by the employer under Section 6 of the aforesaid Act and failing to pay the amounts within the stipulated time the offence was committed and any subsequent deposit would not cause a waiver of the obligation.

   iv. The non-payment of the provident fund and allied dues within the stipulated time was a continuing offence.

   v. The sanction of prosecution was duly accorded on 09.02.1994 before filing the complaint cases under the provisions of the said Act.

   vi. Form 5A filed by the company, the opposite party no.2 shown as the director and responsible for the day to day affairs of the company during the relevant period as such he was liable to punished under the provisions of the said Act.

8. Considered the rival contentions of the Learned Advocate representing the opposite parties.

9. A circumspection of the evidence of the prosecution witnesses revealed as follows:-

   i. PW-1 deposed that he was the Enforcement Officer, Provident Fund Commissioner, in the year 1995. He filed a complaint against accused no.1 and 2 marked as Exbt.-1. After obtaining sanction from Regional Provident Fund Commissioner, marked as Exbt.-2 and under his order, the complaint was filed.

   ii. PW-1 in his cross-examination stated that R.P.F. Commissioner, Mr. N.N. Sharma issued the sanction order. However, he was unaware whether the sum of money was deposited before issuance of the sanction or not before filing of that complaint letter did not enquire whether the money was deposited or not.

   iii. PW-2 deposed to have been posted as Enforcement Officer at New Alipore P.S. in the year 1992. He visited the Sonodyne Television Company Ltd. covered under the P.F. Act with a code number and met the director of the said company. He inspected Salary Register, Wages Register relevant papers in connection with P.F. papers. Prior to his visit, the company did not deposit the P.F. dues. He also wanted to see the challan showing the submission of P.F. dues which was failed to be shown for the relevant period and such irregularities were noted in the inspection books. He submitted his inspection report to his officer i.e., Regional Provident Fund Commissioner stating that the company did not pay the P.F. dues.

iv. PW-2 in his cross-examination stated that he did not know the exact date of inspection at accused company. During inspection he met Mr. Ashok Aikat. He learnt after perusing Form 5A that Ashok Aikat was the director. Apart from Form 5A he had not investigated separately to find out who was in-charge of P.F. in the company.

v. PW-3 deposed he was the Upper Division Clerk in the P.F. Officer. Section 7A was issued against M/s. Sonodyne Television Company Ltd. The notice was issued by M. Vijoy Raj, Asst. P.F. Commissioner marked as Exbt.-3 collectively. Arun Kanti Banerjee appeared before the P.F. Commissioner on behalf of the accused company. The order sheet was signed by N.N. Sharma, P.F. Commissioner marked as Exbt.-4 series. Arun Kanti Banerjee signed a prosecution report which was marked as Exbt.-5. An order was passed on the proceeding of Section 7A.

vi. PW-3 in his cross-examination stated that he had no personal knowledge about Section 7A notice, demand notice apart from office records.

vii. DW-1 deposed that he was the Manager of the accused company at the relevant point of time, which had been registered under Cottage & Small Scale Industries. The company was deficitly functioning due to competition from other multinational companies in India. Their manufacturing activities were closed at the relevant point of time. Company could not deposit in time but before filing of the complaint case, the dues were deposited. Money was paid by the challan in the bank, for the case No.119/95. The challans showing the dues to have been deposited were marked as Exbt.-A series. Accused was not looking over the day by day affairs of the company. Dilip Basu used to look after the day by day business at the relevant period. Ashok Aikot did not sign any challan for that day. No Managing Director was operating at that time. Mr. Swapan Guha was the President and he was the Chief Executive at the relevant time.

viii. DW-1 in his cross-examination stated that the employees share which were deducted from the salary of the employees were deposited on 02.08.93. Employees share was deposited on 16.09.94. Ashok Aikot was the director of the company. He did not know whether he was in-charge of the company. General Manager was sub-ordinate to the directors.

10. The relevant Sections of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 are given below:-

> *"14. Penalties.—(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act, [the Scheme, [the [Pension] Scheme or the Insurance Scheme]] or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to [one year, or with fine of five thousand rupees, or with both.]*

[(1A) An employer who contravenes, or makes default in complying with, the provisions of section 6or 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 7[one year and a 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.]

[(1B) An employer who contravenes, or makes default in complying with, the provisions of section6C, or clause (a) of sub-section (3A) of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to [one year] but which shall not be less than [six months] and shall also be liable to fine which may extend to [five thousand rupees]:

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.

(2) [Subject to the provisions of this Act, the Scheme] [, the[Pension Scheme or the Insurance Scheme] may provide that any person who contravenes, or makes default in complying with, any of the

provisions thereof shall be punishable with imprisonment for a term which may extend [one year, or with fine which may extend to four thousand rupees, or with both].”

11. The Hon’ble Supreme Court held the following in **Srikanta *Datta Narasimharaja Wodiyar v. Enforcement Officer, Mysore*[1]*:-***

“4. *The Act and the Schemes are self-contained code for deduction from the salary of the employees and the responsibility to contribute in equi-proportion of the employer's share and deposit thereof in the account within the specified time under the Act and the Schemes into the account. It is a welfare legislation to provide benefits to the employees as per the Schemes. They need mandatory compliance therewith and violation thereof visits with penal action. Section 2(e) of the Act defines ‘employer’ which means — in relation to an establishment which is a factory, the owner or occupier of the factory, including the Agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a Manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named ….*

xxx

13. *That depends, obviously, on the scheme of the Act, the liability it fastens on the Director of the Company and applicability of the penal provisions to the statutory violation or breach of the Scheme framed under it. But before doing so it may not be out of place to mention that the Act is a welfare legislation enacted for the benefit of the employees engaged in the factories and establishments. The entire Act is directed towards achieving this objective by enacting provisions requiring the employer to contribute towards Provident Fund, Family Pension and Insurance and keep the Commissioner*

---

[1](1993) 3 SCC 217

informed of it by filing regular returns and submitting details in forms prescribed for that purpose. Paragraph 36-A of the Provident Funds Scheme framed by Central Government under Section 5 of the Act requires the employer in relation to a factory or other establishment to furnish Form 5-A mentioning details of its branches and departments, owners, occupiers, Directors, partners, Managers or any other person or persons who have ultimate control over the affairs of the factory or establishment. The purpose of giving details of the owners, occupiers and Directors etc. is not an empty formality but a deliberate intent to widen the net of responsibility on any and every one for any act or omission. It is necessary as well as in absence of such responsibility the entire benevolent scheme may stand frustrated. The anxiety of the legislature to ensure that the employees are not put to any hardship in respect of Provident Fund is manifest from Sections 10 and 11 of the Act. The former grants immunity to provident fund from being attached for any debt outstanding against the employee. And the latter provides for priority of provident fund contribution over other debts if the employer is adjudged insolvent or the Company is winded up. Such being the nature of provident fund any violation or breach in this regard has to be construed strictly and against the employer.

14. *Reverting to the statutory provision Sections 14 and 14-A provide for penalties. The one applies to whosoever is guilty of avoiding payment of provident fund and to employer if he commits breach of provisions mentioned in its various clauses whereas Section 14-A fastens liability on certain persons if the person committing the offence is a Company. The scope of the two sections is same. Latter is wider in its sweep and reach. The former applies to anyone who is an employer or owner or is himself responsible for making payment whereas latter fastens the liability on all those who are responsible or are in charge of the Company for the offence committed by it. Section 14-A reads as under:*

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

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly:

Explanation.— For the purposes of this section—

(i) 'company' means any body corporate and includes a firm and other association of individuals; and

(ii) 'director', in relation to a firm means a partner in the firm."

15. *Sub-sections (1) and (2) extend the liability for any offence by any person including a partner by virtue of explanation if he was in charge or was responsible to the Company at the time of committing the offence. The expression, 'was in charge of and was responsible to the Company for the conduct of the business' are very wide in* *their import. It could not, therefore, be confined to employer only. The employer is defined by Section 2(e) as follows:*

"2. (e) 'employer' means—

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;".

Both clauses (i) and (ii) again are wide in their sweep. In clause (i) are included not only owner or occupier but even the agent or Manager. When it comes to establishments other than factory it is not confined to owner or occupier but to all those who have control or are responsible for the affairs of the Company. It includes even Director. Therefore, every such person who has the ultimate control over the affairs of Company becomes employer. To say therefore that since paragraph 36-A requires an employer to do certain acts the responsibility for any violation of the provision should be confined to such employer or owner would be ignoring the purpose and objective of the Act and the extended meaning of employer in relation to establishments other than the factory. The declaration therefore in Form 5-A including appellant as one of the persons in charge and responsible for affairs of the Company was in accordance with law. Therefore his prosecution for violation of the Scheme does not suffer from any error of jurisdiction or law."

12. The relevant portion of the order dated 28.02.2000 in Case No. C-119 of 1996 passed by the Learned A.C.J.M., Alipore, South 24 Parganas is reproduced here-in-below:-

> *"I have applied my judicial mind over all the decisions and after going through the Exbt.-2 and Exbt.-A. I am of the view that accused deposited the P.F. dues before the sanction was granted for filing this complaint by the Regional Provident Fund Commissioner. But relying on the aforesaid decision I am of the view that the accused already deposited the amount for which the sanction was granted for filling the complaint. It can be said that the fact of deposit of disputed dues was not placed before the Regional Provident Fund Commissioner. So that Regional Provident Fund Commissioner has not applied his judicial mind before granting sanction to launch complaint against the accused. Hence considering the facts that accused no.2 already deposited the amount before granting of sanction to launch prosecution the sanction was bad-in-law.*
>
> *Ld. Lawyer for the prosecution also relied on a decision reported in AIR 1971 SC page 866.*
>
> *Ld. Lawyer for the accused also argued that accused have no mens rea in defaulting the payment of Provident Fund of the employees. Whether company has been prosecuted u/s 14A for an offence under this Act mens rea is not an essential element of offence in this Act.*
>
> *I have applied my anxious mind over the prosecution and defence case and I am of the view that it is a fact that accused no.2 was the Director of the accused no.1 and accused no.2 did not deposit the P.F. dues within relevant point of time. But before sanction was granted for launching the prosecution it appears that accused has deposited all the disputed dues and hence the sanction which granted for launching the prosecution was totally bad-in-law."*

13. The deduction of the salary of the employees were deposited on 02.08.1993 for the month of December, 1991. The sanction was accorded for filing the complaint on 09.02.1995. The complaint was filed after one and half years of the deposit in default.
14. The Learned Trial Judge had acquitted the opposite parties based on the observation as stated hereinabove. After lapse of 30 years, this Court is not inclined to interfere with the same in view of the decisions of the Hon'ble Supreme Court as cited above.
15. In view of the above discussions, the instant criminal appeal being CRA 123 of 2001 stands dismissed.
16. There is no order as to costs.
17. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)