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Ct. No. 29

C.R.R. 2962 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3051 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3052 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3532 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3534 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3535 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3536 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3537 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3538 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.
With
C.R.R. 3875 of 2017
Om Prakash Saxena & Ors.
Vs.
The State of West Bengal & Anr.

Mr. Pawan Kumar Gupta
Mr. Awadhesh Kumar Rai
Ms. Sofia Nesar
Mr. Santanu Sett ***...For the Petitioners***

The petitioners of applications, being CRR 2962 of 2017; CRR 3875 of 2017 and CRR 3536 of 2017 have challenged the respective impugned proceedings on the ground that the continuance of further proceeding will be mere abuse of process of the Court. On the other hand the petitioners of applications, being CRR 3051 of 2017; CRR 3052 of 2017; CRR 3532 of 2017; CRR 3534 of 2017; CRR 3535 of 2017; CRR 3537 of 2017 and CRR 3538 of 2017 have challenged the concerned impugned proceedings on the ground that the said concerned proceedings are barred by law under Section 468 of the Cr.P.C.

The brief background leading to initiate the instant proceedings is that enforcement officer of employees Provident Fund Organization (EPFO) lodged a complaint against the present petitioners contending therein that the accused persons being the Directors were in charge of establishment namely M/S Bengal Water Proof limited and were responsible for the conduct of it's business. In discharge of such responsibilities they took part in the running of the business. According to complainant though they were bound to comply with the provisions of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and the scheme in respect of said establishment, but the petitioners who are the accused persons failed to submit the monthly returns under the provisions of clause 16 of Appendix 'A' to paragraph 27AA of the Employees Provident Fund Scheme , 1952 and thereby they have committed an offence punishable under section 14(1)/14(IA)/14(IB) /14(2A) 14 A(I)/14A(2)/14 AA of the Employees provident fund & Miscellaneous provisions Act, 1952 for the period mentioned in tabular form below.

Sl No.	Revision No.	C Case No.	Case filed on	Default period
1.	CRR No. 2962 of 2017	C/340/2016	18-07-2016	05/2013 to 07/2013
2.	CRR No. 3051 of 2017	C/330/2016	15-07-2016	05/2012 to 07/2012
3.	CRR No. 3052 of 2017	C/331/2016	15-07-2016	08/2012 to 10/2012
4.	CRR No. 3875 of 2017	C/368/2016	25-07-2016	08/2013 to 10/2013
5.	CRR No. 3532 of 2017	C/339/2016	16-07-2016	02/2013 to 04/2013
6.	CRR No. 3534 of 2017	C/338/2016	16-07-2016	02/2013 to 04/2013
7.	CRR No. 3535 of 2017	C/315/2016	11-07-2016	02/2013 to 04/2013
8.	CRR No. 3536 of 2017	C/320/2016	12-07-2016	05/2013 to 07/2013
9.	CRR No. 3537 of 2017	C/314/2016	11-07-2016	11/2012 to 01/2013
10.	CRR No. 3538 of 2017	C/296/2016	30-06-2016	08/2012 to 10/2012

Petitioners' contention is that the petitioners used to run the company under the name and style Bengal Waterproof Ltd. but the production of the company was suspended in 2011. Thereafter the company had formed a trust for management of the provident fund of the staff and workers and obtained exemption from the appropriate authority vide Notification No. 1944-LW/1A-224/58 dated 31st December, 1959. Said trust was stated to be formed to facilitate the Provident Fund Authority to directly deduct the amount from such fund and company's liability was stated to be there only to submit the return of such deduction within a stipulated period of time.

The complainant of CRR 2962 of 2017; CRR 3875 of 2017 and CRR 3536 of 2017 have lodged complaint against the said company for non-submission of return within the prescribed period.

Mr. Pawan Kumar Gupta, learned Counsel appearing on behalf of the petitioners' submits that the complainant had initiated total 82 cases with the allegations of non-submission of return, which could have been filed through a single complaint. However, it is not a case of non-submission of provident fund amount before the Provident Fund Authorities and as such it cannot be treated as a continuing offence. His further case is till 2016 Rs. 7,74,58,564/- was already lying under Special Deposit Scheme in company's Trust Account as per aforesaid notification having exemption code, M/s. Bengal Waterproof Ltd., Code WB/664. It is not in dispute that factory remained non-operational after 2011 and all the employees resigned in November, 2011. Therefore, there appears to be no dispute that time to time payment of PF settlement from Special Deposit Account in respect of outgoing employees were obtained from EPFO. On payments made to the employees, utilization certificate was submitted to EPFO along with details of payment. He further submits that a writ petition, being W.P. 15191 (W) of 2011 was filed by the petitioner/company against the PF Authorities challenging the illegal assessment of contribution towards PF and that High Court granted interim order of status quo and had restrained the PF Authorities form giving effect and/or further effect to the orders dated June 15, 2011 and July 4, 2011 passed by it and certificate dated September 8, 2011 without the leave of the Court and in fact such order of High Court resulted in non-submission of the return subsequently for respective months. Mr. Gupta learned Counsel for the petitioner further contended that the complainant is silent regarding the specific role played by each of the accused persons/petitioners. However, the Trial Court without having any application of judicial mind took cognizance and before issuing process he even did not bother to consider about the compliance of mandatory provisions laid down under Section 202 of the Code of Criminal Procedure. Therefore, Mr. Gupta submits it is a fit case for quashing vexious proceeding as nothing could be achieved further, in view of the fact that payment of all employees were made after their resignation.

The opposite party preferred not to contest the instant applications.

Having considered the submissions made by the petitioners it appears that concerned cases were filed on 18th July, 2016; 25th July, 2016 and 12th July, 2016 respectively.

In ***Bhagirath Kanoria & Ors. Vs. State of M.P. & Ors.,*** reported in **(1984)**

4 SCC 222 the Apex Court observed that the offence namely non-payment of the employers contribution to the provident fund before due date is a continuing offence. However, as decided by the several High Courts that failure to furnish return before the due date is not a continuing offence and must be confined to cases of failure to furnish returns. In a similar circumstances a coordinate Bench of this Court in Kartick Chandra Das & Ors. Vs. State of West Bengal quashed twelve similar cases observing that there is no denial on the part of the opposite party/complainant that the concerned establishment was closed before the date of filing of the petition of complain. Since, it is their specific case that all the dues of the employees were released in favour of the employees which had been accepted also by the authority under the Act, it is meaningless to chase for the returns and in the similar situation a coordinate Bench of this High Court held that further continuance of the criminal proceeding would be mere abuse of the judicial process of Court.

Mr. Gupta in this context referred three judgments passed by the other coordinate Benches of this Court in CRR 3262 of 2017 with CRR 3263 of 2017 decided on 21.09.2023, CRR 3764 of 2017 decided on 06.12.2024 and another case being CRR 3882 of 2017 decided on 30.04.2025. Said three judgments disposed of eight cases of similar nature wherein the allegation against the petitioners was that they failed to submit monthly returns under the provisions of Employees Provident Fund Scheme 1952. Admittedly, the employees of the said establishment had forwarded their resignations in the year 2011. The employees have received their provident fund and there is no dispute over the same and the factory of the establishment became non-functional since 2013. At this juncture searching of periodical return by the said establishment would be nothing but a futile exercise.

So far as the allegation leveled in the petition, being CRR 3051 of 2017 in connection with C/330/2016 is concerned, it appears that the case was filed on 15.7.2016 in connection with the default period of May, 2012 to July, 2012 and so far as the case No. being CRR 3052 of 2017 in connection with C/331/2016 is concerned, it appears that the case was filed on 15.7.2016 in connection with the default period from August, 2012 to October, 2012. So far as the allegation leveled in CRR 3532 of 2017, the case was filed on 16.7.2016 being C/339/2016 for the default period from February, 2013 to April, 2013. The application, being CRR 3535 of 2017, the case was filed on 11.7.2016, being C/315/2016 for the default period from February, 2013 to April, 2013 and in CRR 3537 of 2017 the case was filed on 11.7.2016 being C/314/2016 for the default period from November, 2012 to January, 2013 and CRR 3538 of 2017 was filed on 30.6.2016 is connection with the complaint Case No., being C/296/2016 for the default period from August, 2012 to October, 2012.

From the aforesaid description it is clear that the complaint of non-filing of return was lodged beyond the period of three years. The period of limitation mentioned in Section 468 of the Cr.P.C, 1973 runs 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."***

From the aforesaid provision made under Section 468 of Cr.P.C., it clear that in the instant cases the Magistrate has taken cognizance upon the offence beyond the period of limitation. As I have already stated that since the allegation regarding non-submission of return is not a continuing offence, so it is very much clear that in the above-mentioned cases, cognizance has been taken by the Court below after expiry of more than three years. Therefore, the learned Magistrate has taken cognizance of offence beyond the period of limitation and order of taking cognizance under Section 14(1A), 14(A1) and 14(2A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 without assigning any reasons is bad in law.

On the similar set of allegations made by the same complainant against the establishment, A co-ordinate Bench of this court in CRR No. 3262 of 2017 with CRR No. 3263 of 2017(Om Prakash

Saxena & Others Vs. State of West Bengal) disposed of and quashed the entire proceeding only on the ground that the complaint is barred by limitation and learned magistrate had taken cognizance mechanically and had taken cognizance beyond the period of limitation which is based under section 468 Cr.P.C.

In view of above when, coordinate Benches of this Court have already decided in the self-same circumstances in favour of the petitioners I find that to ensure judicial discipline, the opinion expressed by an earlier Bench of equal strength is binding upon the subsequent Bench, unless this Bench expressed an opinion doubting the correctness of view taken by the earlier Bench of co-equal strength and only in that case of expressing doubt the matter may be placed before the larger Bench for deciding the correct proposition of law. In the present case aforesaid unchallenged observations upon similar facts and circumstances of the cases, there appears to be no room for any amount of doubt over the observations made by the coordinate Benches of this Court in the above-mentioned judgments.

Mr. Gupta in the course of argument also drawn my attention to one deliberation and recommendation of the ad-hoc committee on coverage and related litigation published by the Employee Provident Organization in July, 2022 wherein the committee noted that special prosecutions are going on in respect of the default for non-filing of returns and non-submission of KYC and therefore the committee recommended that the Board may consider the proposal to review the cases to withdraw the prosecutions related to non-filing of returns and/or non-submission of KYC.

Considering the above facts and circumstances of the case this Court is also of the view that if the above-mentioned proceedings are allowed to be continued it would be a futile exercise. There is hardly any chance of conviction of the petitioners and further continuance of the said proceedings would only put the accused/petitioners to oppression and prejudice and extreme injustice would be caused to them, if their prayer for quashing the above-mentioned criminal proceedings be not allowed.

Therefore, under the above-mentioned facts and circumstances of the case and also relying upon the observations made by coordinate Benches in the earlier judgments and that the alleged offences are not continuing offence, the applications, being CRR 2962 of 2017; CRR 3051 of 2017; CRR 3052 of 2017; CRR 3875 of 2017; CRR 3532 of 2017; CRR 3534 of 2017; CRR 3535 of 2017; CRR 3536 of 2017; CRR 3537 of 2017 and CRR 3538 of 2017 are allowed. Consequently, the proceedings, being C/340/2016; C/330/2016; C/331/2016; C/368/2016; C/339/2016; C/338/2016; C/315/2016; C/320/2016; C/314/2016 and C/296/2016 pending before the learned Judicial Magistrate, 1st Court, Barrackpore are hereby quashed.

Let a copy of this judgment and order be sent to the Court below for information.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis.

(Dr. Ajoy Kumar Mukherjee, J.)