

221 30.04  
222 2025  
224 Ct. No. 29  
225  
227  
akb

**C.R.R. 3882 of 2017**  
**Om Prakash Saxena & Ors.**  
**Vs.**  
**The State of West Bengal & Anr.**  
**With**  
**C.R.R. 3876 of 2017**  
**With**  
**C.R.R. 3879 of 2017**  
**With**  
**C.R.R. 3880 of 2017**  
**With**  
**C.R.R. 3883 of 2017**

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

Affidavit-of-service filed on behalf of the petitioners is taken on record. Opposite parties are not represented.

The applications, being C.R.R. 3876 of 2017; C.R.R. 3879 of 2017; C.R.R. 3880 of 2017 and C.R.R. 3883 of 2017 are taken up together for hearing with the present application, being C.R.R. 3882 of 2017.

All the aforesaid five revisional applications have been preferred before this Court seeking quashment of the proceeding of Case Nos. C/359 of 2016; C/358 of 2016; C/375 of 2016; C/362 of 2016 and C/351 of 2016, presently pending before the learned Judicial Magistrate, 1<sup>st</sup> Court, Barrackpore.

The allegation against the present petitioners in all the five criminal proceedings is that the petitioners have committed offence punishable under Sections 14(1A)/14(1)/14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 (in short, Act of

1952).

It is alleged in the complaint that the petitioners were incharge of M/s. Bengal Waterproof Ltd. and were responsible for the conduct of the business of the said establishment and in discharge of such responsibility took part in the running of the business of the said establishment. The allegation is that the present petitioners as the employer of the establishment failed to submit monthly returns under the provisions of Clause 16 of Appendix 'A' to paragraph 27 AA of the Employees' Provident Fund Scheme, 1952. After receiving the complaint, the Court below had taken cognizance and had issued process against the petitioners under Section 204 of the Code of Criminal Procedure.

The date of filing complaint, period of default and date of taking cognizance can be put as per following table:-

| Sl No. | CRR No.          | Lower Court case no. | Lower court case filing date | Cognizance order dated | Offence date                           |
|--------|------------------|----------------------|------------------------------|------------------------|----------------------------------------|
| 1.     | CRR/3883 of 2017 | C/351/2016           | 20.07.2016                   | 20.07.2016             | 25.03.2012<br>25.04.2012<br>25.05.2012 |
| 2.     | CRR/3882 of 2017 | C/359/2016           | 21.07.2016                   | 21.07.2016             | 25.09.2012<br>25.10.2012<br>25.11.2012 |

|    |                     |            |            |            |                                        |
|----|---------------------|------------|------------|------------|----------------------------------------|
| 3. | CRR/3880 of<br>2017 | C/362/2016 | 22.07.2016 | 22.07.2016 | 25.12.2012<br>25.01.2013<br>25.02.2013 |
| 4. | CRR/3879 of<br>2017 | C/375/2016 | 26.07.2016 | 26.07.2016 | 25.03.2012<br>25.04.2012<br>25.05.2012 |
| 5. | CRR/3876 of<br>2017 | C/358/2016 | 21.07.2016 | 21.07.2016 | 25.06.2012<br>25.07.2012<br>28.08.2012 |

In the above backdrop, it is needless to mention that the offence punishable under the above-mentioned sections is imprisonment not exceeding three years. The period of limitation mentioned under Section 468 of the Code of Criminal Procedure is that the offences which are punishable with imprisonment, maximum period for a term of exceeding one year but not exceeding three years, cognizance of such offence shall have to be taken within three years. Here, in all those cases, the complaint was lodged beyond the period of three years.

The limitation period mentioned in Section 468 of the Code is mandatory and cognizance taken beyond the period of limitation are without jurisdiction. Before taking cognizance of time-barred complaint, the court should determine the question of limitation filed by a separate application accompanied with an affidavit and only in those cases where sufficient ground of condonation of delay is shown, court can take cognizance in a time-barred complaint but that does not authorize the

court to take cognizance first and then to determine the question of limitation.

In the instant cases, court below even without any prayer for condonation of delay, far from prayer with sufficient ground, has taken cognizance on time-barred complaint, which is clearly without jurisdiction as period of limitation starts from the date of the commission of an offence and as such, the cognizance taken by the Magistrate is barred by law.

Reliance has been placed in this context on a judgment delivered by a co-ordinate Bench of this court in the case of **Kartick Ch. Das & Anr. Vs. State of West Bengal & Ors.** reported in **2010 SCC OnLine Cal 1895** where this court was pleased to quash several complaints of the provident fund authority which was also lodged before the jurisdictional Magistrate for non-filing of return within time.

Since the factory has already been closed in the year 2013 and all the dues and pensions of the employees have already been released in favour of the employees, I find that it would be of no use to continue with the time-barred allegation of non-submission of return and I am of the view that if under the above-mentioned circumstances the proceedings are allowed to be continued then it would be mere abuse of process of the court.

In such view of the matter, the revisional applications being C.R.R. 3882 of 2017; C.R.R. 3876 of 2017; C.R.R. 3879 of 2017; C.R.R. 3880 of 2017 and C.R.R. 3883 of 2017 stand allowed and

thereby the concerned complaint cases being nos. C/359 of 2016; C/358 of 2016; C/375 of 2016; C/362 of 2016 and C/351 of 2016 pending before the court of learned Judicial Magistrate, 1<sup>st</sup> Court, Barrackpore are hereby quashed.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

*(Dr. Ajoy Kumar Mukherjee, J. )*