



202-9

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-33248-2016**Reserved on: 06.08.2025****Date of pronouncement: 04.11.2025****M/S SANDHU SECURITY SERVICE**

..... Petitioner

Versus**STATE OF HARYANA**

..... Respondent

CORAM: HON'BLE MR. JUSTICE YASHVIR SINGH RATHOR

Present : Mr. R.N. Lohan, Advocate with
Mr. J.S. Maanipur, Advocate and
Ms. Harpreet Kaur, Advocate for the petitioner.

Ms. Vasundhara Dalal Anand, Sr. DAG, Haryana.

YASHVIR SINGH RATHOR, J. (Oral)

1. Prayer in this petition filed under Section 482 of Cr.P.C. is for quashing of FIR No.573 dated 10.12.2015, registered under Sections 406 and 409 of IPC at Police Station Mujesar, District Faridabad and all subsequent proceedings arising therefrom.

2. The present FIR has been registered on the basis of a complaint given to the police by the Executive Engineer, Sub Division, Dakshin Haryana Bijli Vitran Nigam (for short 'DHBVN'), Faridabad, with the allegation that M/s Sandhu Security Services, SCO No. 45-46, First Floor, Office No. 105 Sector-11, Panchkula, was an approved contractor for providing skilled manpower under this Division on outsourcing basis w.e.f. 01.06.2009 to 31.05.2010 and accordingly, work orders were placed on a monthly basis for the supply of requisite



manpower at various substations. The payment is regulated by multiplying the number of manpower provided by the firm with approved DC rates, applicable Employee Provident Fund (for short 'EPF') plus Employee State Insurance (for short 'ESI') plus service tax plus zero percent premium thereon. All the payments including EPF/ESI have been made to the firm through account payee cheques but firm has neither deposited the entire amount of EPF (both employer and employee share) and ESI (both employer and employee share) with the concerned authorities nor he has provided the contract labour with the mandatory EPF and ESI cards which was obligatory on the part of firm. The firm has, thus, dishonestly misappropriated the EPF and ESI amounts paid to him and has also committed breach of trust. The contractor's employees working under the proprietor have not been paid the EPF amounts even after the termination of contract of this firm. The firm has not deposited the exact amount with the EPF/ESI authorities and has embezzled the same. Accordingly, a prayer was made to investigate the matter after lodging the FIR against M/s Sandhu Security Services, SCO No. 45-46, First Floor, Office No. 105 Sector-11, Panchkula under appropriate Sections of IPC and initiate proceedings against him. After registration of FIR, matter was investigated and after completion of investigation, final report has been presented in the Court for trial.

3. By way of present petition, petitioner is seeking the quashing of the FIR. It has been alleged that the FIR has been falsely registered against the petitioner with an ulterior motive to blackmail him. A bare perusal of the FIR shows that it is a case of violation of provisions of Section 39(5a) of the Employees' State Insurance Act, 1948 (for short



‘ESI Act’) according to which if the contribution payable under this Act is not paid by the principal employer on the date on which such contribution was due, he shall be liable to pay simple interest at the rate of 12% per annum or at such higher rates as may be specified in the regulations till the date of actual payment as has been provided in Section 39 of the said Act which is reproduced as below:-

“39. Contributions- (1) The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation.

(2) The contributions shall be paid at such rates as may be prescribed by the Central Government.

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989 (29 of 1989).

(3) The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act.

4) The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period and where an employee is employed for part of the wage period or is employed under two or more employers during the same wage period, the contributions shall fall due on such days as may be specified in the regulations.

5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due he shall be liable to



pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment: Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

b) Any interest recoverable under clause 9(a) may be recovered as an arrear of land revenue or under section 45C to section 45-1.

Explanation- In this sub-section, "scheduled bank" means a bank for the time being included in the Second schedule to the reserve Bank of India Act, 1934 (2 of 1934)."

4. It is further submitted that the penal provisions under the above mentioned Act are contained in Section 85 of the Act, according to which, if any, persons fails to pay any contribution which under this Act he is liable to pay, he shall be punished with imprisonment for a term which may extend to 03 years and the relevant provision contained in section 85 of the Act is reproduced as below:-

*"85. Punishment for failure to pay contributions, etc.
If any person.*

a) fails to pay any contribution which under this Act he is liable to pay, or

b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution or

c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes



an employee, or

e) fails or refuses to submit any return required by the regulations, or makes a false return, or

f) obstructs any Inspector or other official of the Corporation in the discharge of his duties, or

g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

he shall be punishable-

i) where he commits an offence under clause 9a), with imprisonment for a term which may extend to three years but-

a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

b) which shall not be less than six months, in any other case and shall also be liable to fine of 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;

ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both and shall also be liable to fine which may extend to two thousand rupees, or with both.”

5. It is further submitted that the prosecution under this Act is instituted in accordance with provisions of Section 86 of the Act which is reproduced as under:-

“86. Prosecutions. (1) No prosecution under this Act



shall be instituted except by or with the previous sanction of the Insurance Commissioner or of such other officer of the Corporation as may be authorized in this behalf by the Director General of the Corporation.

2) No court inferior to that of a metropolitan Magistrate or judicial Magistrate of the First Class shall try any offence under this Act.

3) No court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof.”

6. It is further alleged that as per Section 75 of the ESI Act, all the matters are to be decided by the Employees Insurance Court and, if any, question or dispute arises as to any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and the Corporation, or between a principal employer and an immediate employer or between a person and the Corporation, or between an employee and a principal or immediate employer, in respect of any contribution or benefit or other dues payable or recoverable under this Act, or any other matter required to be or which may be decided by the Employees' Insurance Court under this Act, such question or dispute subject to the provisions of sub-section (2A) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act. The relevant provisions i.e. Sections 75 and 76 of the Act are reproduced as below:-

“75. Matters to be decided by Employees' Insurance Court.- (1) If any question or dispute arises as to-
a) whether any person is an employee within the meaning of this Act or whether he is liable to pay the



employee's contribution, or

b) the rate of wages or average daily wages of an employee for the purposes of this Act, or

c) the rate of contribution payable by a principal employer in respect of any employee, or

d) the person who is or was the principal employer in respect of any employee, or

e) the right of any person to any benefit and as to the amount and duration thereof, or

ee) any direction issued by the Corporation under section 55A on a review of any payment of dependants' benefit, or

g) any other matter which is in dispute between a principal employer and the Corporation, or between a principal employer and an immediate employer, between a person and the Corporation or between an employee and a principal or immediate employer in respect of any contribution or benefit or other dues payable or recoverable under this Act or any other matter required to be or which may be decided by Employees' Insurance Court under this Act,

such question or dispute subject to the provisions of sub-section (2A)) shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act.

2) Subject to the provisions of sub-section (2A), the following claims) shall be decided by the Employees' Insurance Court, namely:-

a) claim for the recovery of contributions from the principal employer;

b) claim by a principal employer to recover contributions from any immediate employer;

d) claim against a principal employer under section 68;



e) claim under section 70 for the recovery of the value or amount of the benefits received by a person when he is not lawfully entitled thereto; and f) any claim for the recovery of any benefit admissible under this Act.

(2A) If in any proceedings before the Employees' Insurance Court a disablement question arises and the decision of a medical board or a medical appeal tribunal has not been obtained on the same and the decision of such question is necessary for the determination of the claim or question before the Employees' Insurance Court, that court shall direct the corporation to have the question decided by this Act and shall thereafter proceed with the determination of the claim or question before it in accordance with the decision of the medical board or the medical appeal tribunal, as the case may be, except where an appeal has been filed before the Employees' Insurance Court under sub-section (2) of section 54A in which case the Employees' Insurance Court may itself determine all the issues arising before it.

2B) No matter which is in dispute between a principal employer and the Corporation respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. Of the amount due from him as claimed by the Corporation: Provided that the court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section.

3) No civil Court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by 5[a medical board, or by a



medical appeal tribunal or by the Employees' Insurance Court."

"76. Institution of proceedings, etc.- (1) Subject to the provisions of this Act and any rules made by the State Government, all proceedings before the Employees' Insurance Court shall be instituted in the court appointed for the local area in which the insured person was working at the time the question or dispute arose.

2) If the Court is satisfied that any matter arising out of any proceeding pending before it can be more conveniently dealt with by any other Employees' Insurance Court in the same State, it may, subject to any rules made by the State Government in this behalf order such matter to be transferred to such other Court for disposal and shall forthwith transmit to such other court the records connected with that matter.

3) The State Government may transfer any matter pending before any Employees' Insurance Court in the State to any such Court in another State with the consent of the State Government of that State.

4) The court to which any matter is transferred under sub-section (2) or sub-section (3) shall continue the proceedings as if they had been originally instituted in it."

7. It is further alleged that the aforesaid provisions make it clear that in case of any violation of the provisions of this Act, the proper procedure is to file a complaint before the Employees' Insurance Court by the concerned authority under the Act and no prosecution can be launched by way of registration of FIR by the Police. The ESI Act is a special Statute and the provisions of the said Act shall prevail over the



provisions of the Criminal Procedure Code. As per Section 75 of the ESI Act, if any, question or dispute arises, the same has to be decided by the Employees' Insurance Court in accordance with provisions of this Act. According to sub-section (2) of Section 75, claim for recovery of contributions from the principal employer or claim by a principal employer to recover contributions to immediate employer are to be decided by the Employees' Insurance Court and according to Section 76 of the said Act, all proceedings under Employees' Insurance Court shall be instituted in the Court appointed for the local area in which the insured person was working at the time when the question or dispute arose. As per Section 77 of the Act, the proceedings before the Employees' Insurance Court have to be instituted within a period of three years from the date on which the cause of action arose. Same is the case regarding EPF and Family Pension Act. If EPF is not deposited within time, the matter is to be dealt with under Section 14 to 14B of the EPF Act. Under Section 14, penalties have been prescribed and a person avoiding the payment due under the act may be punished with imprisonment for a term which may extend to 6 months or with fine. As per Section 14AA, if a person commits the same offence as mentioned in Section 14, he may be imprisoned for term which may extend to one year and fine. Under Section 14AB of the Act, all such offences have been made cognizable. As per Section 14AB, no Court shall take cognizance of any offence punishable under this Act except on a report in writing with the previous sanction of Central Provident Fund Commissioner by an Inspector appointed under the Act and Section 14AC is reproduced as below:-

“14AC. Cognizance and trial of offences.



(1) No court shall take cognizance of any offence punishable under this Act, the Scheme or the Family Pension Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorized by the Central Government, by notification in the official Gazettee, in this behalf, by an Inspector appointed under section 13.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or Family Pension Scheme.”

8. Reply dated 19.11.2016 by way of affidavit of Dalbir Singh, HPS, Assistant Commissioner of Police, Mujessar, Faridabad has been filed on behalf of respondent-State and the same is taken on record.

9. It is submitted that the complaint was submitted by XEN DHBVN, Faridabad regarding embezzlement of EPF/ESI amount by the petitioner in respect of the manpower provided by the petitioner during the contract period. During investigation, copies of various work orders for providing technical workers by the petitioner to DHBVN, Faridabad were seized and as per clause-XII of the terms and conditions of the same, the firm was to submit the documents relating to the compliance of EPF and ensure that EPF deducted from the salary of skilled employee was being deposited with the concerned department regularly. Since the aforesaid amount was not deposited by the petitioner after having deducted the same, he has embezzled it and dismissal of the petition has been sought.



10. I have heard learned counsel for the parties and have gone through the material on record with the able assistance.

11. Learned counsel for the petitioner contended that the FIR in question has been lodged by HVPNL with the allegations that he was engaged to provide manpower on outsourcing basis and work orders were placed on a monthly basis for providing the manpower. The department had paid him its share of EPF as well as ESI besides service tax but he has not deposited the same in the account of the employees/contract labour and he has also not provided them with EPF and ESI cards which was obligatory. He has thus misappropriated the contribution paid to him and has committed the breach of trust. Learned counsel contended that both the ESI Act and EPF are a complete code in itself which provide for payment of contribution, penal provisions, obtaining of prior sanction before prosecution is launched and the complaint has to be instituted by an authorized person, whereas in the present case, FIR has been got registered under Sections 406 and 409 of IPC by Executive Engineer, HVPNL, which is not sustainable and is an abuse of process of law. Learned counsel further contended that as per Section 35 sub-section 5(a) of the ESI Act, contribution not deposited by the contractor can be recovered with interest @ 12% per annum or any other rate of interest to be decided by the authority. Section 85 contains penal provisions which prescribe punishment in case of non-deposit of the contribution. Section 86 of the Act deals with prosecution for which previous sanction of the Insurance Commissioner is required and cognizance can be taken only on the basis of a complaint to be made in writing before the ESI Court. Learned counsel further contended that the



ESI Act is a special statute and it prevails over the Code of Criminal Procedure (for short, 'Cr.P.C.').

Learned counsel next contended that Sections 14 to 14B of the EPF Act are also identical to that of the ESI Act. Section 14 of the said Act prescribes penalties and Section 14AB provides that no cognizance can be taken of an offence under the said Act except on a report in writing with the previous sanction of the Central Provident Fund Commissioner, on the basis of a complaint to be instituted by the Inspector. Learned counsel lastly contended that since both the Acts are special statutes, the same will prevail over the Code of Criminal Procedure and continuation of the present proceedings arising out of this FIR is an abuse of the process of law and learned counsel prayed that the FIR in question be quashed. In support of his contentions, learned counsel has relied upon judgment dated 11.09.2015 passed by a Coordinate Bench of this Court in CRM-M-29708-2014 titled ***Ajay Kumar Sandhu Vs. State of Haryana***, CRM-M-15719-2005 titled ***'Dhan Raj Jain and another Vs. State of Haryana and another'***, judgment of Supreme Court in Criminal Appeal No.2039 of 2012 titled ***'Anju Chaudhary Vs. State of U.P. and another'***, Criminal Appeal No.179 of 2008 titled ***'Suresh Nanda Vs. C.B.I'***, Criminal Appeal No.1133, 1134 of 2009 titled ***'Jeewan Kumar Raut Vs. Central Bureau of Investigation'***, Criminal Appeal No.569 of 2003 titled ***'Saumindra Bhattacharya Vs. State of Bihar and another'*** and Privy Council Appeal No.11 of 1936 titled ***'Nazir Ahmad Vs. King Emperor'***.

12. On the other hand, learned State counsel argued that the petitioner was paid the employees' contribution to the provident fund and



ESI by HVPNL, but he did not pay the same to the contractual staff and has misappropriated the same, thereby committing breach of trust. Learned State counsel further contended that Act No. 40 of 1973 inserted an explanation to Section 405 IPC, which defines the offence of criminal breach of trust punishable under Section 406 IPC, so as to specifically include deduction of the employees' contribution from wages and default in payment of such contribution to the fund as ingredients of the offence, imposing the required *mens rea* for the offence by way of a deeming fiction. Learned State counsel further contended that *mens rea* is *sine qua non* for attracting the offence under Section 406 IPC and to attract this offence, the offender has to dishonestly misappropriate or convert the property involved for his own use or dispose of the same in violation of the trust imposed upon him, whereas to attract the offence under Sections 14 and 14AA of the EPF Act as well as Section 85 of the ESI Act, *mens rea* is not a necessary ingredient. Therefore, the offences under Sections 406 and 409 of IPC and the offences under Sections 14 and 14AA of the EPF Act and Section 85 of the ESI Act are distinct and different and when the ingredients are not identical and the offences are distinct, there is no question of double jeopardy as embodied in Article 20(2) of the Constitution being applicable. Learned State counsel lastly contended that since the petitioner has committed default in payment of such contribution to the EPF and ESI fund of the contractual staff, he shall be deemed to have dishonestly used the amount as required to constitute the offence of criminal breach of trust punishable under Section 406 of IPC and he can be prosecuted in the present FIR as well. Learned State counsel prayed that the petition in hand be dismissed. In support of her



contention, learned State counsel has cited judgment dated 22.10.2024 passed by the Kerala High Court in Criminal Revision Petition No. 790 of 2024 titled '**S. Mohammed Nowfal vs. State of Kerala**', 2023 INSC 710 titled '**Dhanraj N Asawani Vs. Amarjeetsingh Mohindersingh Basi and others**' 2004(3) RCR (Criminal) 796 titled '**M/s Rita Agencies Vs. Enforcement Officer, Employees' Provident Fund Organization and another**', 2007 LLR 1172 '**Ram Prasad Sao and other Vs. State of Bihar and others**', Law finder Id# 2225117 titled '**Dhirendra Kumar Rajak Vs. State of Haryana and another**'.

13. After hearing learned counsel for the parties and on going through the material on file, I am of the considered opinion that petition in hand is devoid of merits and thus, deserves to be dismissed for the reasons discussed hereinafter.

14. Before proceeding further, Section 405 of IPC which defines the criminal breach of trust is reproduced as under:-

“405. Criminal breach of trust.—

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Explanation 1.— A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous



Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.— A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

15. While interpreting Section 405 of IPC and relevant provisions of EPF Act, Kerala High Court in **S. Mohammed Nowfal** (supra) has observed as under:-

"9. Various penal sections were inserted in the Principal Act by way of the Amendment Act 40 of 1973..

10. Sub-section (1A) was inserted in Section 14 of the Principal Act, making defaults in complying with the provisions of Section 6



punishable with imprisonment for a term which may extend to six months but which shall not be less than three months in case of default of payment of the employees' contribution deducted by the employer from their wages (enhanced to three years and one year respectively by way of the Amendment Act 33 of 1988). The amendment further provided provision (Section 14-AA) for imprisonment, which may extend to one year, which shall not be less than three months in case of repeated offences (enhanced to five years and two years, respectively by way of the Amendment Act 33 of 1988). Section 14-AB was inserted, making the offence relating to default in payment of contribution by the employer cognizable.

11. The Act 40 of 1973, inserted an explanation to Section 405 of the Indian Penal Code, which defines the offence of criminal breach of trust punishable under Section 406 IPC, so as to specifically include the deductions from the employees' contribution from the wages and default in payment of such contribution to the fund as ingredients to the offence, imposing the required mens rea for the offence by way of a deeming fiction.

12. By way of Act 40 of 1973, the Parliament also inserted Section 14-AC by which sanction of the Central Provident Fund Commissioner was made mandatory for taking cognizance of any offence punishable under the EPF Act and the schemes thereunder.

13. Section 14-AC reads thus:-



14-AC - Cognizance and trial of offences;-

(1) No court shall take cognizance of any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of 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, by an Inspector appointed under section 13.

(2) No court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or the Scheme or the Pension Scheme or the Insurance Scheme.

14. As per Section 14-AC, the cognizance of any offence punishable under the EPF Act shall be on a report in writing made with the previous sanction of the Central Provident Fund Commissioner.

15. I have discussed above the objects and reasons for enacting Act 40 of 1973. The legislature had taken note of the vast arrears due to the Provident Fund due to the defaults in payment of contributions. The legislature provided stringent punishment for the offence related to default in the contributions to the EPF. Section 14-AC was inserted as protection from frivolous prosecution of the offences under the Act with the enhancement of punishment for various offences.

16. It is pertinent to note that Explanation 1 was inserted into Section 405 of the IPC by way of Act 40 of 1973 itself.



17. Section 405 reads thus:-

“405 - Criminal breach of trust:-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

2. Explanation 1.--A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

18. Mens rea is a sine qua non for attracting the offence under Section 406 r/w 405 of IPC. To attract this offence, the offender has to dishonestly misappropriate or convert the



property involved for his own use or dispose of the same in violation of the trust reposed on him.

19. To attract the offences under Sections 14 and 14-AA mens rea is not a necessary ingredient. Therefore, the offence under Section 406 r/w 405 IPC and the offences under Sections 14 and 14-AA of the EPF Act are distinct and different. When ingredients are not identical, and the offences are distinct, there is no question of the rule as to double jeopardy as embodied in Article 20(2) of the Constitution being applicable. [vide: State of Bombay v. S.L. Apte and Another (AIR 1961 SC 578)].

20. With the insertion of the Explanation, the required mens rea for the offence of criminal breach of trust, as I mentioned above, has been imposed by way of deeming fiction to the effect that an employer who deducts the employees' contribution from the wages payable to the employees for credit to a Provident Fund or Family Pension Fund shall be deemed to have been entrusted with the amount and if he makes default in the payment of such contribution to the fund, shall be deemed to have dishonestly used the amount of the said contribution in violation of the direction of law. Therefore, deduction of the contribution from the wages of the employees for credit to a Provident Fund shall be deemed to have been entrusted within the meaning of the term 'entrustment', and when he commits default in the payment of such contribution to the fund,



he shall be deemed to have ‘dishonestly’ used the amount as required to constitute the offence of criminal breach of trust under Section 406 IPC.

22. The intention of the legislature to make the act of default on the part of the employers in contributing the amounts deducted from the wages of the employees a separate and distinct offence from the offences under the EPF Act is vivid with the insertion of the Explanation 1 to Section 405 IPC. The legislature consciously wanted to permit prosecution of this offence without the sanction as provided in Section 14-AC of the Act.

23. The Parliament inserted Explanation 1 to Section 405 to make the act of default in paying contributions by the employers after deducting the same from the wages of the employees an offence cognizable and non-bailable. The legislature wanted to dilute the procedural rigours like the report of the competent officer and previous sanction from the Central Provident Fund Commissioner in the prosecution of that offence. The Parliament wanted that the offence of default in contributions to the Employees’ Provident Fund by the employers after deducting the same from their wages is to be taken out of the rigour of Section 14-AC of the Act. A literal interpretation of Section 14-AC of the EPF Act makes it clear that sanction is contemplated only for prosecuting the offences under the EPF Act, and no sanction is required for



prosecuting the offence under Section 406 r/w 405 IPC.”

16. A Coordinate Bench of this Court in ***Dhirendra Kumar Rajak*** (supra) has also held that the prosecution under Section 406 IPC can be pursued independently without requiring prior sanction under Section 14-AC of the Employees Provident Fund and Misc. Provisions Act, 1952, as both these offences are distinct offences.

17. Coming to the facts of the present case, the first grievance of the petitioner is that Section 14 of the EPF Act prescribes penalties and Section 14-AB provides that no cognizance can be taken of an offence under the said Act except on a report in writing with the previous sanction of the Central Provident Fund Commissioner on the basis of a complaint to be instituted by the Inspector. However, in ***S. Mohammed Nowfal*** (supra) as well as in ***Dhirendra Kumar Rajak*** (supra), it has been held that the sanction is contemplated only for prosecuting the offences under the EPF Act and no sanction is required for prosecuting the offence under Section 406 of IPC. It is pertinent to mention that the provisions contained in the ESI Act are *pari materia* with the provisions of the EPF Act, which also provide for penalties, the requirement of previous sanction by the Insurance Commissioner under Section 86 of the said Act and taking of cognizance only on a complaint in writing by an authorized person by the ESI Court and the reasoning and findings given in ***S. Mohammed Nowfal's*** case (supra) will apply to the present case as well and the petitioner can be prosecuted on the basis of FIR registered by the concerned Department for the offence under Section 406 of IPC as well for not depositing the contribution to the EPF and ESI in view of Explanation I



and II of Section 405 of IPC.

18. Another contention raised by the petitioner is that proceedings under the Indian Penal Code cannot continue as the provisions contained in the EPF Act and ESI Act are special Acts which shall prevail over the general law and he can only be prosecuted under the EPF and ESI Act. However, in *S. Mohammed Nowfal's* case (supra), it has been held that *mens rea* is a necessary ingredient for attracting the offence under Section 406 of IPC whereas *mens rea* is not a necessary ingredient for the offences under Sections 14 and 14-AA of the EPF Act. Both the offences are distinct and different and proceedings under both the IPC as well as the EPF Act can continue. It is pertinent to mention that the provisions contained in the ESI Act are *pari materia* with the provisions of the EPF Act, which also provide for penalties, the requirement of previous sanction by the Insurance Commissioner under Section 86 of the said Act and taking of cognizance only on a complaint in writing by an authorized person by the ESI Court and the reasoning and findings given in *S. Mohammed Nowfal's* case (supra) will apply to the present case as well and the petitioner can be prosecuted in an FIR got registered by the concerned department for the offence under Section 406 and 409 of IPC as well.

19. The case law cited by learned counsel for the petitioner is not applicable to the facts of the case in hand and there is also no force in the contention raised by learned counsel for the petitioner that the EPF and ESI Acts being special statutes, the same will prevail over the provisions of Cr.P.C. In view of Explanation-I and Explanation-II of Section 405 IPC, which specifically provide that whosoever deducts and



does not pay employees' contribution of the provident fund and ESI shall be deemed to have committed the offence under Section 405 of IPC. Hon'ble Supreme Court in ***Dhanraj N. Asawani's*** case (supra) has held that Section 4 Cr.P.C. provides that all offences under the IPC shall be investigated, inquired into and tried according to the provisions of Cr.P.C. Section 4(2) structures the application of Cr.P.C. in situations where a special procedure is prescribed under any special enactment, as held in (1994) 3 SCC 299 titled ***State of Punjab Vs. Balbir Singh***. It has been further held that Section 4(2) lays down that the provisions of Cr.P.C. shall apply to all offences under any other law apart from IPC. However, the application of the Cr.P.C. will be excluded only where a special law prescribes special procedures to be dealt with in the investigation, inquiry or the trial of the special offence. As already discussed above, in the present case, misappropriation of contribution to the EPF and ESI has been made punishable under Section 406 of IPC as well, in view of Explanation-I and Explanation-II of Section 405 of IPC, which defines criminal breach of trust. Besides this, in ***Dhanraj N. Asawani's*** case (supra), while interpreting ***Jeewan Kumar Raut's*** case (supra) relied upon by learned counsel for the petitioner, Hon'ble Supreme Court observed in para Nos. 25 and 26 of the said judgment as under:-

“25. Appellant No. 2 having arrested on 10.02.2008 and Appellant No. 1 having surrendered on 17.02.2008 as also the complaint petition having been filed on 29.04.2008, the requirement of Sub-section (2) of Section 167 of the Code stands satisfied.

In Sanjay Dutt v. State Through C.B.I., Bombay (II)



[(1994) 5 SCC 410], this Court held:

“53(2)(b) The 'indefeasible right' of the accused to be released on bail in accordance with Section 20(4)(bb) of the TADA Act read with Section 167(2) of the CrPC in default of completion of the investigation and filing of the challan within the time allowed, as held in Hitendra Vishnu Thakur is a right which enures to, and is enforceable by the accused only from the time of default till the filing of the challan and it does not survive or remain enforceable on the challan being filed. If the accused applies for bail under this provision on expiry of the period of 180 days or the extended period, as the case may be, then he has to be released on bail forthwith. The accused, so released on bail may be arrested and committed to custody according to the provisions of the CrPC. The right of the accused to be released on bail after filing of the challan, notwithstanding the default in filing it within the time allowed, is governed from the time of filing of the challan only by the provisions relating to the grant of bail applicable at that stage.”

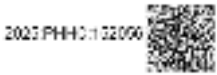
Only because the court itself took a long time in taking cognizance of the offence, i.e., after the expiry of the period of 90 days, the same would not mean that any new right would be created in favour of the appellants thereby.

26. A distinction between a remand of an accused at pre-cognizance stage vis-à-vis the post-cognizance stage is apparent. Whereas the remand at a pre-cognizance stage is to be made in terms of Sub-section (2) of Section 167 of the Code, an order of remand of



*an accused at post-cognizance stage can be effected only in terms of Sub-section (2) of Section 309 thereof. This aspect of the matter has been considered by this Court recently in **Mithabhai Pashabhai Patel and others v. State of Gujarat [2009 (7) SCALE 559].**”*

20. As such, the issue in **Jeewan Kumar Raut’s** case (supra) was whether the provisions of the Transplantation of Human Organs Act bar the applicability of Section 167(2) of Cr.P.C. pertaining to grant of default bail. Section 22 of the TOHO Act prohibits taking cognizance by Courts except on a complaint made by an appropriate authority. It was held in **Jeewan Kumar Raut’s** case (supra) that the TOHO Act is a special statute and will override the provisions of Cr.P.C. so far as there is any conflict between the provisions of the two enactments and filing of a police report in terms of Section 173 Cr.P.C. was held to be forbidden by necessary implication under the TOHO Act whereas in the present case, the offence under Section 406 of IPC and the offence under Section 85 of the ESI Act and the offence under Section 14 of the EPF Act are distinct and different and there is no conflict between the provisions of these two enactments. Rather, misappropriation of the contribution towards ESI and provident fund have been specifically held to be punishable under Section 406 of IPC. As such, **Jeewan Kumar Raut’s** case (supra) cannot be of any help to the petitioner. Likewise, judgment passed by a Coordinate Bench of this Court in **Ajay Kumar Sandhu’s** case (supra) is also not applicable to the facts of the case in hand, as the dispute in that case pertained to non-payment of Service Tax under the Finance Act, 1994. Non-payment of service tax by the petitioner in **Ajay**



Kumar Sandhu's case (supra) would not fall under Explanation-I and Explanation-II to Section 405 of IPC, which relate to default in payment of contribution to EPF and ESI fund and the non-payment of service tax is not covered under Section 405 of IPC, which defines criminal breach of trust. Even otherwise, in that case, the petitioner had deposited the entire service tax during the pendency of the petition and on this ground also, the Coordinate Bench of this Court was pleased to quash the proceedings.

21. As a result of the aforesaid discussion, I am of the considered opinion that a *prima facie* case punishable under Section 406 of IPC is made out against the accused, as the department of HVPNL had paid EPF and ESI contributions to the petitioner, which were to be further paid to the contractual employees by the petitioner along with his own share, which was obligatory upon him. However, he dishonestly misappropriated the contribution paid to him by HVPNL and has thereby committed breach of trust punishable under Section 406 of IPC and no ground to interfere or to quash the FIR is made out and the petition in hand is ordered to be dismissed.

22. FIR has also been registered under Section 409 of IPC but the Trial Court while framing charge shall go into the question whether offence under Section 409 of IPC is attracted or not.

23. Pending misc. application (s), if any, shall also stand disposed of.

(YASHVIR SINGH RATHOR)
JUDGE

04.11.2025
Ali

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No