IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3533 of 2017

Om Prakash Saxena & Others
Versus
State of West Bengal & Another

For the Petitioners	:	Mr. Pawan Kumar Gupta, Adv. Mr. Awadesh Kr. Rai, Adv. Ms. Sofia Nesar, Adv. Mr. Santanu Sett, Adv.
For the State	:	Mr. Saryati Datta, Adv. Mr. Tirupati Mukherjee, Adv.
Heard on	:	02.01.2026
Judgment on	:	14.01.2026

Ajay Kumar Gupta, J:

1. The instant Criminal Revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the petitioners who are the accused persons, seeking quashing of the proceeding being Case No. C/319 of 2016 under Sections 14(1A), 14A(1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952, pending before the Court of the Learned Judicial Magistrate, 1st Class, 1st Court, Barrackpore, including the Order dated July 12, 2016. By the said order, the Learned Magistrate took cognizance of the offences against the present petitioners.

FACTS OF THE CASE

2. The brief facts, leading to filing of this instant Criminal Revisional application, are that one Sanjay Biswas, Enforcement Officer, Employees' Provident Fund Organization, Sub-Regional Office, Barrackpore lodged a petition of complaint against the present petitioners contending therein that the accused persons, being the Directors, were in charge of establishment, namely, M/s Bengal Waterproof Limited having its registered officer at "MMS Chambers", 1st Floor, 4A, Council House Street, Kolkata – 700 001 and were responsible for the conduct of its business. In the discharge of such responsibilities, they took part in the running of the business. They are bound to comply with the provisions of the Employees' Provident

Fund & Miscellaneous Provisions Act, 1952 and the scheme in respect of the said establishment. The accused persons, however, failed to submit the monthly returns for the period 08/2013 to 10/2013 under the provisions of Clause 16 of Appendix “A” to Paragraph 27AA of the Employees’ Provident Fund Scheme, 1952. Therefore, they committed an offence under Sections 14(1)/14(1A)/14(1B)/14(2A)/14A (1)/14A (2)/14AA of the Employees’ Provident Fund & Miscellaneous Provisions Act, 1952.

3. It is the contention of the petitioners that the complaint, made by the Officer is totally false and fabricated. No such offence has been committed by the present petitioners. The opposite party no. 2 has suppressed the entire material facts before the Learned Magistrate to the effect that M/s Bengal Waterproof Limited has been non-operational since 2013. All the employees of the said establishment resigned from the establishment in the month of November, 2011. The fact of resignation was also brought to the notice of the opposite party no. 2. Accordingly, the opposite party no. 2 has released the funds held under the Provident Fund deposit scheme for final settlement of the fund’s dues to all the employees. All payments have been made to all the employees according to their entitlements. Not a single complaint has been made by any of the employees of the said establishment against the petitioners. As such, the entire complaint is false and misconceived and proceeding therein is liable to be quashed at the threshold. After receiving such petition of complaint, the Learned Magistrate took cognizance and issued process against the present petitioners without applying the statutory provision of Section 468 of the Cr.P.C. for making a complaint after expiry of the period of limitation. Hence, this instant Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONERS: -

4. Learned counsel for the petitioners submitted that the issues raised herein are substantially identical to those which fell for consideration before this Court earlier, in ***CRR 3772 of 2017, with CRR 2963 of 2017, with CRR 3054 of 2017 [Om Prakash Saxena and Ors. v. State of West Bengal and Anr.]***, wherein similar prayers of the petitioners were allowed. A similar set of matters also fell for consideration before a coordinate bench of this Court, in ***CRR 2962 of 2017, with CRR 3051 of 2017 [Om Prakash Saxena and Ors. v. State of West Bengal and Anr.]*** etc., wherein the Co-ordinate Bench has also allowed the prayer of the petitioners. Considering the absence of any distinguishing facts, learned counsel has urged this Court to rely on these decisions and adopt the same reasoning and allow the prayer of the petitioners as similar as the order passed in the aforesaid cases.

5. It is further argued that the instant criminal proceeding is initiated after the expiry of the limitation period. Accordingly, the Order of taking cognizance, by the Learned Magistrate is barred by limitation under Section 468 of the Cr.P.C.

6. Finally, it was submitted that even for the sake of argument, if it is assumed that the complainant alleges that the establishment has not submitted the returns on time, the company has deposited the amount to the provident fund deposit scheme in time. The establishment could not submit the return because the portal does not permit the establishment to submit the return in time in view of the Hon'ble High Court's order passed in another proceeding being WP No. 15191(W) of 2011. Prior to lodging of the said complaint, no opportunity was given to the petitioners to explain the reason as to why they did not file returns.

7. It is further submitted that on the similar set of allegations made by the same complaint against this establishment, this Court in ***CRR No. 3262 of 2017 WITH CRR No. 3263 of 2017 (Om Prakash Saxena & Ors. Vs. The State of West Bengal)*** disposed of and quashed the entire proceeding only on the ground that the complaint is barred by limitation and the Learned Magistrate mechanically had taken cognizance beyond the period of limitation which is barred under the provisions of Section 468 of the Cr.P.C.

8. The learned counsel also drew attention to the constitution of the Ad-hoc Committee for enhancing coverage and reducing litigation. The Hon'ble Chairman, Central Board of Trustees, Employees' Provident Fund (CBT, EPF) directed the constitution of the above committee from amongst members of the CBT, EPF to give recommendations for enhancing coverage and reducing litigation and the said committee was constituted vide order dated 27.11.2021. For enhancing coverage and reducing litigation, the following recommendations of the Committee were approved by CBT in its 230th meeting:-

> *"(i) to ensure a universal social security coverage by enrolling all employees upto the wage ceiling;*
> *(ii) recommend to Central Government to frame and assign administration of scheme for Gig and platform workers, to EPFO;*
> *(iii) Regional Committees to be scheduled by a fixed calendar, to meet at least four times every year with standing agenda on coverage and litigations;*
> *(iv) to prepare a comprehensive legal framework for litigation management.*
> *(v) withdraw prosecutions related to non-filing of returns and/or non-submission of KYC; and*
> *(vi) rationalise the rate of damages."*

9. Therefore, a proposal was given to withdraw the prosecution, with regard to non-filing of returns and/or non-submission of KYC because the Committee noted that several prosecutions were going on in respect of default of non-filing of the return and non-submission of KYC in different counts and finally the Committee recommended that the Board may consider the proposal to review the case to withdraw prosecutions related to non-filing of the returns and/or non-submission of KYC to avoid the waste of the Government Exchequer. As such, the present complaint appears merely an attempt to harass the present petitioners. If the said proceeding is allowed to be continued, it would amount to a sheer abuse of process of law and for securing the ends of justice, the entire proceeding is liable to be quashed.

10. None appears on behalf of the opposite party no. 2 at the time of call and no accommodation was sought for.

SUBMISSION ON BEHALF OF THE STATE:-

11. Learned counsel appearing on behalf of the State candidly and on his usual fairness also conceded that in the identical and similarly situated several cases, this bench and the co-ordinate bench have passed the judgment and quashed the proceedings on the ground that the complaint was made beyond the period of limitation as prescribed under Section 468 of the Cr.P.C. He finally left the matter to the discretion of this court.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

12. After considering the submissions of learned counsels for the parties and upon perusal of the materials on record, this Court finds that the opposite party no. 2 has filed a petition of complaint before the Learned Additional Chief Judicial Magistrate at Barrackpore on 09.06.2016 against the present petitioners, alleging that they were Directors of M/s Bengal Waterproof Limited. In the said complaint, paragraph nos. 3, 4, and 5 are mentioned as under: -

> *"3. That the accused – **being employers of the establishment** failed to submit monthly returns in Form-5(PS) for the period 08/2013 to 10/2013 under the provision of clause 16 of Appendix "A" to paragraph 27AA of the EPF Scheme, 1952. They have thus committed offences under Section 14(1A), 14A (1), 14(1B), 14(2), 14 [(2A)] read with paragraph 76 of the EPFS'52, read with paragraph 41(b) of EPFS'71, read with paragraph 42(b) of EPS'95 & read with paragraph 29(b) of the EDLI'76.*
>
> *4. That I further submit that as the accused **Nos. one to six** were during the relevant period in charge of the said establishment and were responsible to it for the conduct of its business, they have in view of the facts and circumstances stated above committed offences under Section 14(1A) read with Section 14A (1) & 14[(2A)] of the Act'52.*
>
> *5. That I submit that the accused **Nos. one to six** are Directors of the said establishment which is a establishment*

> *within the meaning of the said Act and the offence(s) mentioned above have been committed by the company with the consent or connivance of or is attributable to neglect on part of such Director(s)/Manager/Secretary/Officer(s)/Members of the Board of Trustee of the Company and as such they are punishable under Section 14(1A) and 14(1B) read with Section 14A(2) of the Act, 1952."*

13. Clause 16 of Appendix "A" enumerates "The Board of Trustees and the employer shall file such returns monthly/annually as may be prescribed by the Employees' Provident Fund Organisation within the specified time limit, failing which it will be deemed as a default and the Board of Trustees and employer will jointly and separately be liable for suitable penal action by the Employees' Provident Fund Organisation."

14. Therefore, according to this provision, the Board of Trustees of the employer shall file returns monthly/annually as prescribed by the Employees Provident Fund organisation within a specific time limit. It has been alleged that the petitioners have not complied with the provisions and have failed to file returns for the aforesaid period in time.

15. From the perusal of the order passed by the Learned Additional Chief Judicial Magistrate at Barrackpore dated 12.07.2016, it appears the Learned Magistrate has taken cognizance of the offence punishable under Sections 14(1A), 14A(1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952. However, not a single reason, whatsoever has been recorded in the said order, and simply cognizance was taken on the basis of the petition of complaint.

16. The alleged offence of non-filing of returns was committed in the year 2013, but the complaint was lodged in the year 2016. Section 468 of the Code of Criminal Procedure, 1973 has specified that the Magistrate can take cognizance of offence within one year, if the offence is punishable with imprisonment for a term not exceeding one year. The period of limitation mentioned in Section 468 of the Code of Criminal Procedure, 1973 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."*

17. Upon perusal of the aforesaid provision, it is revealed that the Learned Magistrate has taken cognizance beyond the period of limitation, which is barred by the provision of Section 468 of the Code of Criminal Procedure, 1973.

18. Learned Magistrate has taken cognizance of offence beyond the period of limitation and the order of taking cognizance under Sections 14(1A), 14A(1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952, without assigning any reason, is bad in law.

19. It is relevant to mention that the Ad-hoc Committee constituted upon the direction of the Hon'ble Chairman, Central Board of Trustees, Employees' Provident Fund, is of the view that the complaint lodged by the Authority with regard to non-filing of returns and submission of KYC should be withdrawn to reduce the litigation of Employees Provident Fund Organization and to save the Government Exchequer.

20. Considering the above facts and circumstances, this Court is of the view that if the proceeding is allowed to be continued, it would be a futile exercise. Every possibility of conviction is remote and bleak, and continuation of such criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to them by not quashing the criminal proceeding.

21. It further appears from the submissions of the parties that, previously, several revisional applications have been disposed of by this court and the co-ordinate bench. Therefore, this court finds this revisional application has merit and is eligible to be allowed.

22. Accordingly, **CRR 3533 of 2017** is, thus, **allowed**. Connected applications, if any, are also thus disposed of.

23. Consequently, the proceeding of Case No. C/319 of 2016 under Sections 14(1A), 14A (1) and 14(2A) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 pending before the Court of the Learned Judicial Magistrate, First Class, 1st Court, Barrackpore is hereby quashed and Order passed therein dated July 12, 2016 by which the Learned Magistrate took cognizance against the present petitioners is also set aside.

24. Case Diary, if any, is to be returned to the learned Advocate for the State.

25. Let a copy of this Judgment and Order be sent to the Learned Court below for information.

26. Interim order, if any, stands vacated.

27. All parties will act on the server copies of this Judgment and Order uploaded on the official website of this Hon'ble High Court.

28. Urgent photostat certified copy of this Judgment and Order, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)