HC-KAR

NC: 2026:KHC:59435
CRL.P No. 8645 of 2019

CNR: KAHC010530462019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 8645 OF 2019

BETWEEN:

1 . MR BHANU PRAKASH PAI
S/O SHRI PAI
AGED ABOUT 59 YEARS
DIRECTOR
SOUTHERN CHIPS AND CIRCUITS (P) LTD.
NO.58/4, MUNI REDDY INDUSTRIAL AREA
KUDLU VILLAGE, SINGASANDRA POST
BANGALORE - 560 068.

2 . MR SUNIL O G
S/O SHRI GOPINATHAN
AGED ABOUT 58 YEARS
DIRECTOR
SOUTHERN CHIPS AND CIRCUITS (P) LTD.
NO.58/4, MUNI REDDY INDUSTRIAL AREA
KUDLU VILLAGE, SINGASANDRA POST
BANGALORE - 560 068.

Digitally signed by ANUSHA V
Location: High Court of Karnataka

3 . MR RAJISH D NAMBIAR
S/O SRI DHAMODARAN
AGED ABOUT 51 YEARS
DIRECTOR
SOUTHERN CHIPS AND CIRCUITS (P) LTD.
NO.58/4, MUNI REDDY INDUSTRIAL AREA
KUDLU VILLAGE, SINGASANDRA POST
BANGALORE - 560 068.

...PETITIONERS

[BY SRI VENKATESH S ARBATTI, ADVOCATE]

AND:

1 . THE STATE OF KARNATAKA
REP BY STATION HOUSE OFFICER
PARAPPANA AGRAHARA POLICE STATION
JAIL ROAD, OPP. CENTRAL JAIL
SAI SREE LAYOUT
BENGALURU - 560 100.

2 . EMPLOYEES PROVIDENT FUND ORGANISATION
SUB-REGIONAL OFFICE,
BOMMASANDRA
BHAVISHYANIDHI BHAVAN
ANNAPOORNESHWARI COMPLEX
NO.37/1, 6TH MAIN,
SINGASANDRA
BANGALORE - 560 068.
REP BY ITS ENFORCEMENT OFFICER
MR J C SHASHIDHAR KUMAR.

…RESPONDENTS

[BY SRI MAHESHA P., HCGP FOR R1;
SMT.NANDITA HALDIPUR, ADVOCATE FOR R2]

THIS CRIMINAL PETITION IS FILED U/S.482 CR.P.C PRAYING TO QUASH ENTIRE PROCEEDINGS IN C.C.NO.6398/2019 PENDING IN THE COURT OF IV ADDITIONAL CHIEF METROPOLITAN MAGISTRATE AT BENGALURU AND SET ASIDE THE ORDER DATED 15.03.2019 PASSED THEREIN FOR OFFENCE P/U/S.406, 409 OF IPC.

THIS PETITION IS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.09.2026, THIS DAY, THE COURT, PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

CNR: KAHC010530462019

CAV ORDER

Challenging order dated 15.03.2019 passed by IV ACMM, Bengaluru in CC no.6398/2019, taking cognizance of offences punishable under Sections 406 and 409 of Indian Penal Code, 1860 (**IPC**) as well as for quashing of entire proceedings therein, this petition is filed.

2. Sri Venkatesh S Arbatti, learned counsel for petitioners submitted that petitioners were accused no.1 to 3 (**petitioners**) in a complaint filed by respondent no.2 - JC Shashidhar Kumar (**complainant**) on 12.11.2014, stating that he was an 'Enforcement Officer' appointed under Section 13 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**) by Central Government / State Government and attached to office of Regional Provident Fund Commissioner (**PFC**), Bengaluru. It was stated that Bhanu Prakash Pai (accused no.1), Sunil OG (accused no.2) and Rajish D Nambiar (accused no.3) were directors and responsible for conduct of business of 'M/s. Southern Chips & Circuits Pvt. Ltd.' (**Company**) an establishment under EPF Act since 01.07.2003 with Code no.PY/BOM/34503. It was alleged that having deducted employees' share of provident fund (**PF**)

contribution of Rs.2,68,686/- for period from July 2011 to May 2014, deliberately failed to remit same within due date despite repeated request and thereby committed offences punishable under Sections 406 and 409 of IPC.

3. It was stated such conduct would also be in violation of provisions of Employees Provident Funds Scheme, 1952 (**Scheme**). Paragraph 30 of Scheme requires Management to deduct employee's share of PF contribution from their wages and Paragraph 38 of Scheme mandates deposit of same into State Bank of India, EPF Account no.01 on or before 15th day of each month. It was stated as per sub-paragraph 32 of Scheme, PF deduction from wages of employees would be deemed to be entrusted for remittance to PF Authorities. While Explanation to Section 405 of IPC, stipulates that default in PF remittance after deduction from employees' wages to be dishonestly used by him. It was alleged, as there was failure by management to remit PF amount after deduction from Employees wages, Section 405 of IPC would be attracted. Said complainant was registered as Crime no.449/2014 against accused no.1 to 3. And after filing of charge sheet, learned Magistrate took cognizance for offences punishable

under Sections 406 and 409 of IPC against petitioners. Aggrieved, this petition was filed.

4. At outset, it was submitted that initiation of proceedings was riddled with various fatal errors. It was submitted, person contemplated to be prosecuted for offences punishable under Sections 405 and 406 of IPC was 'employer', which in this case was a registered Company. Therefore, initiating criminal proceedings against petitioners (i.e., Directors) alone, without arraigning Company would be illegal. It was further submitted, since default amount was with Company and not in personal accounts of petitioners, offence would have to be deemed committed by Company itself, learned Magistrate erred in taking cognizance of offences against petitioners. It was submitted that this Court in **Sri Prakash R Kota & Ors. v. State of Karnataka & Anr**. [**2022:KHC:19676**], quashed proceedings against directors on this ground alone.

5. Further, default period was three years from July 2011 to May 2014 and Assistant PF Commissioner, SRO, Bengaluru issued a notice dated 17.10.2014 called upon petitioners to appear for hearing at 11:00 a.m. on 19.11.2014. It was submitted

that with malafide intention and without even providing opportunity, complaint was filed on 12.11.2014.

6. It was submitted that petitioners were not persons who had deducted and failed to remit PF deductions. It was submitted that this Court in **Ms.Swapna & Anr. v. State of Karnataka & Anr.** [**2024:KHC:18170**], had clarified that proceedings could not be initiated if PF deductions were not made.

7. In support of submission that employer for purposes of Sections 406 and 409 of IPC was Company and not individual Directors, he relied on decision of Hon'ble Supreme Court in **Employees' State Insurance Corporation v. S.K. Aggarwal & Ors.** reported in **(1998) 6 SCC 288**. In said decision, term *'a person being an employer'* under Explanation 2 of Section 405 of IPC was held referred to Company. Therefore, in absence of express provision under IPC, individual directors cannot be prosecuted for offence of criminal breach of trust.

8. It was lastly submitted that failure to make remittances to PF Authorities was due to financial constraints caused on failure by BPL Electronics to make payments of

amounts due to Company. It was submitted, Company had later made full remittances with penalty, damages and interest. Therefore, allegation of criminal breach of trust consequent to dishonest misappropriation would be uncharitable and unsustainable. On above grounds sought for allowing petition.

9. On other hand, Sri Mahesha P, learned counsel for respondent no.1 - State, opposed petition.

10. Even Smt.Nandita Haldipur, learned counsel for complainant opposed petition. It was submitted Form-5A filed in compliance with mandate of Paragraph 36-A of Scheme showed petitioners as directors and they admitted themselves to be in-charge of and responsible for conduct of business of Company. Therefore, Company was not required to be arrayed as accused and Directors could be prosecuted. Insofar as contention about lack of opportunity, it was submitted, petitioners were given no less than 10 opportunities on various dates from November 2013 till August 2014. Therefore, contention was untenable.

11. It was submitted though late remission was permissible, same would not cure or efface offence committed. It

was submitted that High Court of Calcutta in case of **Ajay Jalan and Ors. v. State of West Bengal and Anr.** reported in **2018 SCC OnLine Calcutta 1367,** held bare deduction and retention would constitute an offence inviting liability and late remission could not be a ground for quashing of proceedings. It was lastly submitted that petition was not bonafide as remittance was only after filing of complaint. And prayed for dismissal.

12. Heard learned counsel, perused impugned order and material on record.

13. This petition is by accused challenging order taking cognizance as well as for quashing of entire proceedings for offences punishable under Sections 406 and 409 of IPC.

14. Main ground of challenge is non-arraignment of Company who was 'Employer' as accused and untenability of proceedings after remittance with penalty, damages and interest. Petitioners being directors of Company, deduction of employees contribution to Provident Fund for period from July 2011 to May 2014 from their wages and failing to remit it within time to PF Authorities are not in dispute.

15. Both above contentions are covered by decision in case of **S.K. Aggarwal**'s case (supra), wherein Hon'ble Supreme Court held:

> "… The respondents were, at the material time, Directors of a company M/s Indo-Japan Steel Ltd. The Company has a factory and Head Office at Calcutta. Under the provisions of Section 40 of the Employees' State Insurance Act, 1948, the "principal employer" is required to pay, in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution. Under sub-section (2) of Section 40, the principal employer, in the case of an employee directly employed by him, is entitled to recover from the employee the employee's contribution by deduction from his wages. Under sub-section (4), any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted. The complainant who is the appellant before us inspected the Head Office of the Company and found that the Company had deducted a sum of Rs 2,223.50 as the employees' share of contribution from their wages during the period February 1981 to September 1981. The employer, however, had failed to deposit the said amount in the Employees' State Insurance Fund within the specified time.
>
> 2. Thereupon the appellant lodged a complaint against the respondents of criminal breach of trust under Section 405 Explanation 2 of the Penal Code, 1860 read with Section 406 of the Penal Code, 1860. On the basis of this complaint, the learned Magistrate took cognizance and issued summons against the respondents to stand trial.

The learned Magistrate also issued a search warrant for seizure of certain records of the Company as prayed for by the complainant. Aggrieved thereby, the respondents filed an application under Sections 401/482 of the Criminal Procedure Code for quashing the proceedings in the said case. The High Court by its impugned judgment has quashed the proceedings on the ground that the respondents cannot be considered as "employers" within the meaning of Explanation 2 to Section 405 read with Section 406 of the Penal Code, 1860. Hence they were not liable for prosecution under Section 406. From this judgment, the present appeal has been filed by the original complainant.

3. Section 405 Explanation 2 is as follows:

"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.—***

Explanation 2.—A person, being an employer, who deducts the employee's 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, 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."

Explanation 2 was inserted by the Employees' State Insurance Amendment Act 38 of 1975. Explanation 2 makes "a person being an employer" who deducts the employee's contribution from the wages payable to the employee liable for criminal breach of trust if he commits a default in the payment of such contribution to the Employees' State Insurance Fund. Under Section 11 of the Penal Code, 1860, the word "person" includes any company or association or body of persons whether incorporated or not. The High Court has held that the term "a person being an employer" in Explanation 2 to Section 405 of the Penal Code, 1860 can refer only to the company who had employed the employees in question. The directors of that company could not be considered as employers under Explanation 2 to Section 405 of the Penal Code, 1860. The complainant, however, contends that Explanation 2 to Section 405 of the Penal Code, 1860 should be read in the light of the Employees' State Insurance Act, 1948. Under Section 40 of the Employees' State Insurance Act, the obligation to pay contribution in the Employees' State Insurance Fund has been cast on the principal employer. The relevant provisions of Section 40 are as follows:

"40. Principal employer to pay contributions in the first instance.—(1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of this Act and the regulations, if any, made thereunder, the principal employer shall, in the case of an employee directly employed by him (not being an

exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relate to the period or part of the period in respect of which the contribution is payable, or in excess of the sum representing the employee's contribution for the period.

(3) ***

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5)***"

The term "principal employer" has been defined in Section 2(17) of the Employees' State Insurance Act, 1948 as follows:

"2. (17) 'principal employer' means—

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [the Factories Act, 1948 (63 of 1948)], the person so named;

(ii) ***

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;"

Section 2(17) defines the "principal employer" in a factory as the owner or occupier of the factory. "Occupier" of a factory is defined in Section 2(15) as having the same meaning assigned to it in the Factories Act, 1948. Section 2(n) of the Factories Act, 1948 as it stood at the relevant time, defined

an "occupier" to mean the person who has ultimate control over the affairs of the factory. Section 100 of the Factories Act dealt with the determination of occupier in certain cases. Under sub-section (2), where the occupier was a company, any directors thereof could be prosecuted and punished for any offence for which the occupier was liable.

4. Section 2(17) of the Employees' State Insurance Act, however, defines the principal employer as either owner or occupier — taking care of all eventualities. When the owner of the factory is the principal employer, there is no need to examine who is the occupier. The owner will be the principal employer under Section 40.

5. The Employees' State Insurance Act does not define the term "employer" although under Sections 85-B and 85-C of that Act, the term "employer" is used.

6. The provisions of Section 40 in the light of these definitions have been considered by various High Courts in order to decide whether a director of a limited company can be considered as the principal employer liable to pay contribution under Section 40. A Division Bench of the Bombay High Court in the case Suresh Tulsidas Kilachand v. Collector of Bombay [1984 Lab IC 1614 : 1984 LLN 312 (Bom)] held that a director of a company by virtue of being a director is not the principal employer contemplated by Section 2(17) of the Employees' State Insurance Act. He is not personally liable to pay employer's contribution under the Act. In the context of Section 2(17) read with Section 2(15), the Court held that whether a person is occupier or not has to be ascertained with reference to whether he is in ultimate control over the factory. When the definition of principal employer in Section 2(17) refers to the "owner" or "occupier" of a factory, the principal employer can be either the owner or

the occupier depending upon the facts of each case. When there is an owner of the factory, that owner must be considered as the principal employer liable for contribution.

7. Under Section 40 [sic 2(17)] the words "owner" and "occupier" have been used disjunctively. The Court also referred to Section 100 of the Factories Act and said that even under the Factories Act, 1948, the legislature has clearly contemplated that in the case of a factory, a company can be the "occupier". Therefore, when the owner of a factory is a company, it is the company which is the principal employer and not its director. The Bombay High Court overruled the judgment of the Single Judge of the Bombay High Court in so deciding.

8. The same view has been taken by the Madhya Pradesh High Court in the case of ESI Corpn. v. Kailashchandra [1989 Lab IC 760 (MP)] . The Madhya Pradesh High Court also said that when there is a default in the payment of contribution by the company, the managing director, or other directors cannot be made personally liable. The contribution can be recovered from the company as the principal employer.

9. In the case of ESI Corpn. v. Gurdial Singh [1991 Supp (1) SCC 204 : 1991 SCC (L&S) 833 : 1991 Lab IC 52] this Court held that the directors of a private limited company were not personally liable to pay contributions under the Employees' State Insurance Act, 1948. The Court was considering a case where a private limited company was the owner of the factory and the occupier of the factory had been duly named under the Factories Act, 1948. The Court said that the directors did not come within the definition of clause 1 of Section 2(17) of the Employees' State Insurance Act. This Court also disapproved of the decision of a Single Judge of the Bombay High Court which has been subsequently overruled by the Division Bench of the Bombay High Court in the case of

> Suresh Tulsidas Kilachand v. Collector of Bombay [1984 Lab IC 1614 : 1984 LLN 312 (Bom)] .
>
> 10. Therefore, even if we read the definition of "principal employer" under the Employees' State Insurance Act, 1948 in Explanation 2 to Section 405 of the Penal Code, 1860, the Directors of the Company, in the present case, would not be covered by the definition of "principal employer" when the Company itself owns the factory and is also the employer of its employees at the Head Office."

16. Though above ratio was laid down in light of provisions under Employees' State Insurance Act, 1948, while quashing of prosecution for offences under IPC, similar conclusion was arrived at by this Court in Crl.P.no.8544/2018 [**2021:KHC:25238**] while quashing of prosecution of Directors without arraying Company for offences under Sections 409 and 420 of IPC for non-remittance of Employees' contribution under EPF Act. And in Crl.P.no.2529/2021 [**2021:KHC:20148**] prosecution of Directors without arraying Company for offences under Sections 406 and 409 of IPC were quashed. Even decisions in **Ms Swapna** and **Sri Prakash R. Kota**'s cases (supra) passed by this Court are on similar lines.

17. Further, three Judges Bench decision of Apex Court in **Aneeta Hada v. M/s.Godfather Travels & Tours (P) Ltd.**, reported in **(2012) 5 SCC 661**, wherein interpreting Section 141

of Negotiable Instruments Act, 1881 pari materia to Section 14A of EPF Act, it was held:

> **"58.** Applying the doctrine of strict construction, we are of the considered opinion that commission of offence by the company is an express condition precedent to attract the vicarious liability of others. Thus, the words "as well as the company" appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof. One cannot be oblivious of the fact that the company is a juristic person and it has its own respectability. If a finding is recorded against it, it would create a concavity in its reputation. There can be situations when the corporate reputation is affected when a Director is indicted.
>
> **59.** In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the drag-net on the touchstone of vicarious liability as the same has been stipulated in the provision itself. We say so on the basis of the ratio laid down in *C.V. Parekh* [(1970) 3 SCC 491 : 1971 SCC (Cri) 97] which is a three-Judge Bench decision. Thus, the view expressed in *Sheoratan Agarwal* [(1984) 4 SCC 352 : 1984 SCC (Cri) 620] does not correctly lay down the law and, accordingly, is hereby overruled. The decision in *Anil Hada* [(2000) 1 SCC 1: 2001 SCC (Cri) 174] is overruled with the qualifier as stated in para 51. The decision in *Modi Distillery* [(1987) 3 SCC 684: 1987 SCC (Cri) 632] has to be treated to be restricted to its own facts as has been explained by us hereinabove."
>
> (emphasis supplied)

18. Though contentions about denial of opportunity and complaint being malafide to harass petitioners besides being in nature of defence requiring trial would fade at this stage as there is prima facie explanation that petitioners were given opportunity, petition would succeed on contention about failure to array Company as accused. Consequently, following:

O R D E R

Petition is ***allowed***, order dated 15.03.2019 passed by IV ACMM, Bengaluru in CC no.6398/2019, taking cognizance of offences punishable under Sections 406 and 409 of Indian Penal Code, 1860 (**IPC**) as well as entire proceedings therein are quashed against petitioners *no.1 to 3*.*

Sd/-
(RAVI V HOSMANI)
JUDGE

YKL
List No.: 1 Sl No.: 71

** Corrected vide court order dt. 6-11.2026*