

**(2003) 03 CAL CK 0037**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 2774 (W) of 2003**

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|--------------------------------------------------|------------|
| Antonie Bentz Private Limited and Others         | APPELLANT  |
| Vs                                               |            |
| Regional Provident Fund Commissioners and Others | RESPONDENT |

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**Date of Decision :** 19-03-2003

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Penal Code, 1860 (IPC) — Section 406, 409

**Citation :** (2003) 2 CALLT 552 : (2004) CriLJ 346

**Hon'ble Judges :** Amitaya Lala, J

**Bench :** Single Bench

**Advocate :** Shyamal Sarkar and Ashis Chakraborty, for the Appellant; Dipankar Dutta and Sampa Sarkar, Mihir Kundu, for the Respondent

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## Judgement

A. Lala, J.

1. In the instant case, the petitioners invoked the writ jurisdiction of this Court basically for the purpose of quashing the criminal proceeding pending before the learned Sub-Divisional Judicial Magistrate, Alipore, 24-Parganas (South) being Ballygunge P.S. Case No. 5 dated 11.1.02 (State v. Pradeep Mehta and Ors.) u/s 406 of the Indian Penal Code.

2. Out of the four petitioners, first petitioner is the company which has been shown as defaulter and the petitioner Nos. 2, 3 and 4 are the Directors of such company. The petitioners Nos. 2 and 4 are already obtained a bail, but, as and when actions are going to be taken as against the petitioner No. 3, the writ petition was moved by taking a plea that a sum of Rs. 160/- was only due and payable and as against the same a criminal proceeding was initiated against the elderly lady who is also having terminal disease.

3. The Court prima facie accepted the view and passed interim order which was extended from time to time and directed hear out all the parties at length. Today, the petitioners, the appropriate Provident Fund Authority and the Enforcement

Department through their respective counsels have made their arguments at length. The petitioners' case is that the alleged non-payment of Rs. 8,181/- was the subject matter of dispute in the complaint u/s 405 (Explanation-1) punishable u/s 406/409 IPC as well as in the FIR. But, before the FIR was lodged on 11.01.2002, the respective payments were made and communicated on 04.01.2002 and 07.01.2002. The only remaining unpaid amount, if any, is a sum of Rs. 125/- which was wrongly stated to be Rs. 160/- on the earlier occasion on account of damages and/or interest which was also paid on 25.02.2003. Therefore, nothing is due in connection with any payment on account of Provident Fund by the employer. In *Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others*, : *Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others*, the Court held that whenever payment of arrears of Provident Fund in respect of the prosecution was paid within the time prescribed by the Court the prosecution against them shall come to an end. Such judgment was followed by a Division Bench of this Court in 1995 (1) CHN 115 (*The Regional Provident Fund Commissioner, West Bengal v. Raj Kumar Nemani and Ors.*) where it was held that when the entire arrears of Provident Fund being the subject matter of the complaint made by the Regional Provident Fund Commissioner, having been deposited prior to the lodging of the complaint the prosecution could not be proceeded with. The Division Bench was also followed the principles of well celebrated judgment of *Bhajan Lal* case reported in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . It is well known by now that the scope and ambit of the invocation of writ jurisdiction is only lying within the four corners of the *State of Haryana and others Vs. Ch. Bhajan Lal and others*, : *State of Haryana and others Vs. Ch. Bhajan Lal and others*, . In the *Bhajan Lal*'s case several exceptions are given by saying when the extraordinary power under Article 226 or the inherent powers u/s 482 Criminal Procedure Code will be made applicable for the purpose of quashing the proceedings. One of such clauses for the purpose of quashing the criminal proceeding is that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

4. The learned counsel appearing for the petitioners strongly relied upon such part of the exceptional clauses under para, 108 of such judgment. Thereafter, he has drawn my attention to a judgment reported in *Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta*, : *Central Bureau of Investigation, SPE, SIU (X), New Delhi Vs. Duncans Agro Industries Ltd., Calcutta*, where also the reference was made in connection with such judgment. Para 29 of the judgment speaks that there is enough justification for the High Court to hold that the case was basically a matter of civil dispute. Even if an offence of cheating is *prima facie* constituted, such offence is compoundable offence and compromise decrees passed in the suits instituted by the Banks, for all intents and purposes, amounting to compounding

of the offence of cheating. Therefore, considering the view of the High Court ultimately held that in the special facts of the case, it appears that the decision of the High Court in quashing the complaints does not warrant any interference under Article 136 of the Constitution of India.

5. In reply, the learned counsel appearing for the Provident Fund Authority contended before this Court that the complaint was made on 24.12.01 much prior to the date of the deposits made on 04.01.2002 and 07.01.2002. I find that the First Information Report was taken on 11.01.2002 and within such time the payments were made, I also find that the payments are due for the months of October and November, 2001. Therefore, the payments will be due on the 15 of the succeeding month. Therefore, when the complaints were made, there was an apparent case of non-payment of Employees' Provident Fund dues by the employer. But, the question is as and when the payments were received, the Employees' Provident Fund authorities should have informed the appropriate authority framing an FIR in respect of such fact when the amount of default was meagre and the same was already received. But, the same was not done. As a result whereof, criminal proceeding was proceeded and presently a charge-sheet was also filed on 21.01.2003.

6. The learned counsel appearing for the Enforcement Branch relied upon a judgment reported in 1990 CrLR (Cal) 267 (Ramjhora Tea Co. Ltd. and Ors. v. G.P. Sinha, Provident Fund Inspector, Jalpaiguri and Ors.) to establish that when an employer failed to deposit monthly contributions, the appropriate proceeding has to be initiated. She has made emphasis on Section 405 of the Indian Penal Code read with Section 205 of the Code of Criminal Procedure. Her last submission is much more important for the purpose of due consideration by the Court. According to her, whenever FIR was made, the default on account of payment of Provident Fund dues was available. Therefore, there was no fault on their part in lodging FIR. Now, when a charge sheet was framed, it is the domain of such Court to consider the same. Therefore, at this stage, whether the criminal proceeding will justifiably be interfered with by the writ Court for quashing the same or it will be sent back for the purpose of passing the order by the learned Magistrate is a big question. She has also shown her sympathy to the petitioners particularly the petitioner No. 3 who is an elderly lady having terminal disease.

7. According to me, there are three stages of consideration of this matter. Firstly, the question of justifiability of invocation of writ jurisdiction. According to me, there is no bar if it is coming within the four corners of the exceptions given in the well celebrated judgment of the State of Haryana and others Vs. Ch. Bhajan Lal and others, : State of Haryana and others Vs. Ch. Bhajan Lal and others, . Anybody can approach either the writ Court or the Court having Criminal Revisional Jurisdiction for the purpose of quashing of the proceeding. Normally, where the matter is quasi-criminal in nature, litigants prefer to go before the Court having Criminal Revisional Jurisdiction, but, where the dispute in quasi-civil

is nature the litigants prefer to go to the Court having jurisdiction under Article 226 of the Constitution of India. Therefore, there is no embargo in invoking the writ jurisdiction.

8. The second stage is whether the Court will quash the criminal proceeding when element of criminal offence was available at the time of filing the FIR or not. In such question if the scope and ambit of the decisions reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, read with the Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, and 1995 (1) CHN 115 (supra) are correctly understood a ratio will come out that when there is no dispute is available for the purpose of determining the lis, the criminal proceeding should not be proceeded with.

9. Thirdly, the distinguishable feature in between the cases cited and the present one. The Division Bench of this Court following the Supreme Court held that when the deposits are made prior to lodging complaint, the prosecution should not be proceeded with, but, in the instant case, when the complaint was made, the payments were not received, it was only received prior to filing of the FIR. Moreover, the Provident Fund authority only informed about the receipt to the authority in the month of January, 2003.

10. Under such circumstances, although the Court appreciates the position of the petitioners that they become the victim of the circumstances and observes that the proceeding is quashable in nature, but, when element of dispute was available at the time of initiation of the criminal proceeding, disposed of the writ petition directing the petitioners to make a formal application to the learned Magistrate as early as possible to pass an appropriate order in the light of the judgment and order passed by this Court. As soon as such application will be made, the learned Magistrate will be pleased to take up the matter and dispose of the same expeditiously.

11. Supplementary Affidavit filed in Court today be kept with the record.

12. The Petitioners are permitted to take down the gist of the order and to communicate the same to the concerned respondents who will act on the basis of such communication.

There will be no order as to costs.

Let urgent xerox certified copy of this order, if applied for, be given to the learned counsel for the parties within 7 days from the date of putting the requisites. If in case of non-availability of the certified copy of the judgment, the petitioners will be entitled to approach the concerned Registrar for the purpose of taking the appropriate step.