(2014) 05 DEL CK 0091

In the Delhi High Court

Case No : Crl. M.C. No. 1101 and Crl. M.C. Nos. 1109 to 1123 of 2013

Atelier Fashion Flash Pvt. Ltd. APPELLANT

Vs

Provident Fund Inspector RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A), 6

Citation : (2014) 2 JCC 1455

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Jagdev Singh and Jugal Kishor Gupta, Advocate for the Appellant; Rajesh Manchanda, Advocate for the Respondent

Judgement

V.P. Vaish, J.—By way of these petitions under Sections 482 of the Code of Criminal Procedure, the petitioners are seeking quashing of order dated 21.03.2011 passed by learned ACMM-01, Dwarka Courts, New Delhi in complaint case Nos. 31/1/11, 41/1/11, 38/1/11, 32/1/11, 43/1/11, 35/1/11, 39/1/11, 36/1/11, 42/1/11, 33/1/11, 40/1/11, 44/1/11, 46/1/11, 34/1/11, 45/1/11 and 37/1/11 whereby the cognizance was taken and the petitioner was summoned for the offence under Para 38 of Employees Provident Fund Scheme, 1952 read with Section 6 and 14(1A) of the Employees Provident Fund and the Misc. Provisions Act, 1952. Since all the 16 complaints are between the same parties and also similar question of law arise in all the complaints, therefore, all the petitions are disposed of by this common order.

2. Learned counsel for the petitioners submits that the petitioner has paid the entire amount of Rs. 77,189/- (Rupees Seventy Seven Thousand One Hundred and Eighty Nine) deposited on 22.10.2010 with State Bank of India, "Nehru Place Branch, New Delhi before launching the prosecution by the respondent. He further submits that there is a circular No. FD/E-11/22/74 dated 30.10.1974 issued by Central Provident Fund Commissioner which provides that the

prosecution may not be filed where the establishment has paid the dues before the prosecution is launched. The complaints were filed before Additional Chief Metropolitan Magistrate, Dwarka Courts on 19.03.2011.

3. Counsel for the petitioner further submits that the respondent issued a notice regarding payment of interest on the said amount and the petitioner had also paid the interest amounting to Rs. 59,318/- (Rupees Fifty Nine Thousand Three Hundred and Eighteen) on 12.05.2011 with State Bank of India, Nehru Place Branch, New Delhi. Copy of receipt has been filed as Annexure P-8 to the petition.

4. In support of his submissions, counsel for the petitioner has relied upon judgment of Calcutta High Court in Jasoda Glass and Silicate and Others Vs. Regional Provident Fund Commissioner and Others, and Air Transport Corporation and Others Vs. State of West Bengal and Another, wherein after deposit of the amount, the criminal proceedings were quashed.

5. Mr. Rajesh Manchanda, learned counsel for the respondent submits that the Recovery Officer has certified that the amount of Rs. 77,189/- (Rupees Seventy Seven Thousand One Hundred and Eighty Nine) was deposited on 22.02.2010 by M/s. Atelier Apparels & Footwear (P) Ltd. The counsel for the respondent submits that in the meantime, the competent authority has given the sanction on 18.01.2013 and the prosecution was initiated. He also submits that the office of respondent received Rs. 2,46,683/- (Rupees Two Lakhs Forty Six Thousand Six Hundred Eighty Three) from the petitioner for the period 08/02 to 05/2006 as per the report of the Enforcement Officer.

6. The affidavit of Mr. K.L. Parihar, Assistant Provident Fund Commissioner (Legal) dated 15.04.2005 has been filed to the effect that the petitioner has deposited the amount of Rs. 77,189/- (Rupees Seventy Seven Thousand One Hundred and Eighty Nine).

7. The Apex Court in Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, , it was observed that in case the entire amount of the provident fund is deposited, the proceedings of the prosecution need not be pursued.

8. Section 482 Cr.P.C inheres in the High Court the power to make such order as may be considered necessary to, inter alia, prevent the abuse of the process of law or to serve the ends of justice. While it will be wholly unnecessary to revert or refer to the settled position in law with regard to the contours of the power available u/s 482 Cr.P.C it must be remembered that continuance of a criminal proceedings which is likely to become oppressive or may partake the character of a lame prosecution would be good ground to invoke the extraordinary power u/s 482 Cr.P.C.

9. Considering the facts and circumstances of the case and the fact that the petitioner has deposited the entire amount of Provident Fund of Rs. 77,189/- (Rupees Seventy Seven Thousand One Hundred and Eighty Nine) on 22.10.2010,

the criminal proceedings "Initiated by the respondent in the aforementioned complaints stands dropped. With the aforesaid observation, all the petitions stand disposed of.

Crl. M.A. No. 3385/2013 in Crl. M.C. No. 1101/2013

Crl. M.A. No. 3400/2013 in Crl. M.C. No. 1109/2013

Crl. M.A. No. 3402/2013 in Crl. M.C. No. 1110/2013

Crl. M.A. No. 3404/2013 in Crl. M.C. No. 1111/2013

Crl. M.A. No. 3406/2013 in Crl. M.C. No. 1112/2013

Crl. M.A. No. 3408/2013 in Crl. M.C. No. 1113/2013

Crl. M.A. No. 3410/2013 in Crl. M.C. No. 1114/2013

Crl. M.A. No. 3412/2013 in Crl. M.C. No. 1115/2013

Crl. M.A. No. 3414/2013 in Crl. M.C. No. 1116/2013

Crl. M.A. No. 3416/2013 in Crl. M.C. No. 1117/2013

Crl. M.A. No. 3418/2013 in Crl. M.C. No. 1118/2013

Crl. M.A. No. 3420/2013 in Crl. M.C. No. 1119/2013

Crl. M.A. No. 3422/2013 in Crl. M.C. No. 1120/2013

Crl. M.A. No. 3424/2013 in Crl. M.C. No. 1121/2013

Crl. M.A. No. 3426/2013 in Crl. M.C. No. 1122/2013

Crl. M.A. No. 3428/2013 in Crl. M.C. No. 1123/2013

The applications are dismissed as infructuous.