

(2004) 09 CAL CK 0021

In the Calcutta High Court

Case No : Writ Petition No. 14751 (W) of 2004

Atmaram Kanoria and Another

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 20-09-2004

Acts Referred:

Citation : (2005) 3 CHN 32 : (2005) 107 FLR 803 : (2005) 3 LLJ 411

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : S.P. Tewary, for the Appellant; Mihir Kundu, for the Respondent

Judgement

Amitava Lala, J.—It appears to this Court that some criminal cases being Nos. C-193/92, C-194/92, C-195/92, C-196/92, C-197/92, C-198/92, C-199/92, C-200/92, C-201/92, C-202/92, C-203/92 and C-204/92 are pending before the appropriate Criminal Court for non-payment of Provident Fund dues. According to the petitioners, the dues are Rs. 8019/- which has been already paid. According to them, as in view of the recent judgment of the Court, a criminal proceeding ought not to be proceeded when the payment has not been made. Thus, this writ petition has been made. The petitioners relied upon a decision of the Supreme Court reported in Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, wherein the Supreme Court has taken a view that the proceeding by way of prosecution need not be pursued provided the amounts deposited in Court and secured by the Bank guarantee are paid over to the Regional Provident Fund Commissioner for credit to the appropriate accounts. I am of the view that such judgment is applicable in respect of the facts situation of this case. It cannot be said that always the same will be accepted as a matter of precedent. The Court after hearing the matter will apply its mind to ascertain the position whether the criminal proceeding will be quashed or not. Moreover, in a case of such proceeding, the Court should take its view that the proceeding is quashable in nature but when the element is available at the time of filing the criminal proceedings, the writ petition is disposed of by directing the petitioners

to make a formal application before the learned Magistrate as early as possible and in turn, the learned Magistrate shall pass an appropriate order in the light of the judgment and order passed by this Court. Such view is also taken in the case of *Antonie Bentz Private Limited and Others Vs. Regional Provident Fund Commissioners and Others*, Hence, I am of the view that the similar principle will be applicable herein to follow such ratio and to come to an appropriate conclusion. With this observation, the writ petition stands disposed of.

2. However, this order or the quashing order to be passed by the appropriate Criminal Court will not debar the Provident Fund authorities in releasing any interest or damages applicable in the case of delayed payment of the Provident Fund dues.

3. Since no affidavit-in-opposition has been used, the allegations contained in the writ petition shall not be deemed to have been admitted.

4. There will be no order as to cost.

5. Let urgent xerox certified copy of this order, if applied for, be given to the Id. Counsel for the parties within the period of a fortnight from the date of putting the requisites.