
(2016) 08 JH CK 0117
In the Jharkhand High Court
Case No : Cr. Rev. No. 1246 of 2015

Awadhesh Kumar Pandey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 24-08-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14 A,
Section 14(1A), Section 14(2), Section 14-AA

Citation : (2017) 2 AIRJharR 521 : (2017) CriLJ 2545 : (2017) 2 ECrC 509 :
(2017) 2 ECrC 176

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. Sanjay Peprawal, Advocate, for the Petitioner; APP, for the State;
Mr. Rupesh Singh, Advocate, for the Opposite Party No. 2

Final Decision : Allowed

Judgement

Mr. Rongon Mukhopadhyay, J.— Heard Mr. Sanjay Peprawal, learned counsel for the petitioner and Mr. Rupesh Singh, learned counsel for the opposite party No. 2.

2. This application is directed against the order dated 06.07.2015 passed by learned Sub Divisional Judicial Magistrate, Dhanbad in E.P.F. Case No. 02 of 2012 by which an application preferred by the petitioner u/s 245 of the Code of Criminal Procedure (Cr.P.C.) has been rejected.

3. A complaint case was instituted by the opposite party No. 2 against Dhanbad Municipal Corporation as well as the petitioner wherein it was alleged that the employer failed to pay on account of Family Pension Fund and the amount of the employees and employer contribution for the month from January, 2011 till the date of filing of the complaint within 15 days of close of each said month. The complaint case was instituted for the offence punishable u/s 14(1A) and 14(2) and 14(A) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952

(for short "the Act") and Para-76 (b) of the Employees Provident Fund Scheme 1952 (for short "the Scheme") r/w Sections 14(A), 14A(1) and 14AA of the Employees Provident Fund Act, 1952.

4. After filing of the complaint petition, cognizance was taken by the learned Sub Divisional Judicial Magistrate, Dhanbad on 20.02.2012 for the offence punishable u/s 14(1A) and 14(1B)) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952. The petitioner had filed an application u/s 245 Cr.P.C. (Code of Criminal Procedure) for discharge which was rejected vide order dated 2.06.07.2015 passed by learned Sub Divisional Judicial Magistrate, Dhanbad and which is the subject matter of the present application.

5. Mr. Sanjay Piprawal, learned counsel for the petitioner has assailed the impugned order by submitting that the purported sanction granted on 19.09.2012 was not properly accorded as sanction was merely granted u/s 14(2) of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 and r/w Para-76 (b) (c) and (d) of the Employees Provident Fund Scheme 1952, whereas cognizance has been taken for the other offences. Learned counsel further submits that the petitioner had joined as Chief Executive Officer of the Dhanbad Municipal Corporation on 24.02.2012, whereas the offence which was committed was w.e.f. 08.01.2011 and in such circumstance the petitioner cannot be prosecuted for the offences. Learned counsel in support of his contention has referred to a decision in the case of Md. Reyazuddin & others v. The State of Bihar & another reported in 1998 (1) PLJR 839. It has also been submitted by the learned counsel that the allegations made in the complaint petition are vague and in fact the complaint has been filed in a format which has also not been filled up and such vague complaint petition cannot form the basis of summoning the petitioner. Learned counsel referred to the judgment in the case reported in 1978 LAB I.C. NOC 178 (CAL) (C.J.O. Johnston and others v. L.B. Roy) as well as the 1982 LAB I.C. 1777 (K. N. Genda and another etc. v. The State and etc.) wherein the resultant effect of a vague complaint has been discussed. Learned counsel further submits that the allegations which are made in the complaint petition are bald allegations and in absence of there being any specific act committed by the petitioner, as admittedly at the relevant point of time when the offence with respect to various provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 was committed, the petitioner was not working in Dhanbad Municipal Corporation. Learned counsel further submits that since the Provident Fund Pension is contributory in nature as such in terms of Section 16(1) (b) of the Act, Dhanbad Municipal Corporation cannot come within the purview of the Act and such circumstance also denotes that the petitioner cannot be prosecuted. He further submits that these facts had not been properly appreciated by the learned trial court while refusing to 3. discharge the petitioner for the offence alleged against him. Learned counsel further adds that the impugned order dated 06.07.2015 has not gone into the contention raised by the petitioner. It has also been submitted that the petitioner being a Government servant no sanction u/ s 197 Cr.P.C. had been accorded and on such score the entire prosecution deserves

to be set aside.

6. Mr. Rupesh Singh, learned counsel for the opposite party No. 2 while countering to the argument made by the learned counsel for the petitioner has submitted that in view of Section 14 AC of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 no sanction u/s 197 Cr.P.C. is necessitated as Section 14AC is a self contained Section which deals with various related issues in the provisions of the Act. Learned counsel further submits that so far as the claim of the petitioner is concerned with respect to the petitioner not being in charge of Dhanbad Municipal Corporation as Chief Executive Officer at time of the offence such stand taken by the petitioner cannot absolve the petitioner from the liability of facing criminal prosecution. Learned counsel also submits that before instituting a case an assessment u/s 7(A) of the Act was made and only thereafter the proceeding was initiated. It has been submitted that since Para 76(D) of the Scheme and Section 6 of the Act brings within its periphery the allegations which have been levelled against the petitioner. It has also been submitted that so far as Section 16(1)(B) of the Act is concerned, the complaint petition itself reveals that Dhanbad Municipal Corporation was brought within the periphery of the Act w.e.f. 08.01.2011 and therefore no challenge has ever been made with respect to the coverage under the Act of the Dhanbad Municipal Corporation and therefore no plea can be taken with respect to the corporation not being concerned under the Act in terms of Section 16(1)(b) of the Act. Learned counsel further submits that even otherwise the petitioner being the Chief Executive Officer of the Dhanbad Municipal Corporation even at the time when the offence was continuing can be made vicariously liable for which the learned counsel has referred to Section 14(A) of the Act. Submission has also been advanced that the provisions of the Act and the scheme cannot be read in isolation as both are intermingled and inter-joined. It has also been submitted that 4. while considering the basic objects and purport of the Act as well as the scheme in the context of the allegations which have been made against the petitioner, a prima facie offence is made out against the petitioner and therefore the discharge application preferred by the petitioner has rightly been rejected by the impugned order dated 06.07.2015. It has also been submitted that proviso to Section 14(A) of the Act needs to prove at the time of trial that the offence has not been committed with the consent or connivance of, or without the knowledge of the petitioner or has been committed in exercise of due diligence to prevent the commission of such offence and if at all the petitioner was never responsible for the alleged offence, at the stage of discharge the petitioner cannot be precluded from commission of such offence in terms of proviso to Section 14(A) of the Act.

7. In order to appreciate the rival contentions it is to be seen at first as to whether the Dhanbad Municipal Corporation comes within the purview of the Act or not. Section 16(1)(b) of the Act lays down that the Act shall not be applicable to establishment belonging to under the control of the Central Government or the State Government whose employees are entitled to the benefit of contributory

Provident Fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefit.

8. Much reliance has been placed on a certificate dated 04.09.2015 which suggests about contributory Provident Fund granted to the employees of the Dhanbad Municipal Corporation. However, the complaint petition itself reveals that Dhanbad Municipal Corporation was brought within the periphery of the Act and the Scheme w.e.f. 08.01.2011. Nothing has been brought on record to suggest that any attempt has been made by the Dhanbad Municipal Corporation to have disputed its coverage under the Act and the Scheme. Accordingly, on the basis of certificate so issued recourse cannot be taken to Section 16(1)(b) of the Act in view of the acceptance of the coverage of the Corporation within the purview of the Act as well as the Scheme. It is therefore held that the Dhanbad Municipal Corporation does come within the periphery of the various provisions of the Act as well as the Employees Provident Fund Scheme, 1952.

9. It has strenuously been argued by the learned counsel for the petitioner with respect to the vagueness of the allegations and that the complaint petition is a typed format wherein certain irrelevant paragraphs have been inserted, not germane to the allegations made and on the other hand several paragraphs which could have been made applicable to the case of the petitioner have not been properly filled-up. Further argument has also been made with respect to the fact that sanction have not been properly accorded as the offence for which sanction has been accorded does not form part of the order taking cognizance, which however has been disputed by the learned counsel for the opposite party No. 2 in view of the provisions of Para-76 of the Employees Provident Fund Scheme 1952 as well as Section 6 of the Act and if the sanction order if read in totality would indicate various violation which had been made by the Corporation as well as by the petitioner.

10. The contention raised by the learned counsel for the petitioner and controverted by the learned counsel for the opposite party No. 2 has not been properly appreciated by the learned trial court while rejecting the application preferred by the petitioner u/s 245 Cr.P.C. The impugned order virtually restricts itself only to the factual aspect of the matter that the petitioner has failed to pay the provident fund amount of the employees' share of contribution for the month of January, 2011 till date of filing of the complaint without entering into the various material issues which have been raised by the petitioner. The impugned order dated 06.07.2015 itself is a thoroughly nonspeaking order which does not reflect either any reasons or any factual or legal aspect which forms part of the impugned order so as to justify the rejection of the discharge application preferred by the petitioner u/s 245 Cr.P.C.

11. Since this Court is of the view that the matter be reheard by the learned trial court, the contentious issues which have been raised by both the parties have not been discussed as the same is left open to the learned trial court to consider in accordance with law.

12. In view of the aforesaid facts, this application is allowed and the impugned order dated 06.07.2015 passed by learned Sub Divisional Judicial Magistrate, Dhanbad in E.P.F. Case No. 02 of 2012 is quashed and set aside and the matter is remanded back to the learned Sub Divisional Judicial Magistrate, Dhanbad to pass a fresh order after considering the materials available on record and after hearing both the parties as well as on consideration of various legal issues which have been raised by both the parties before this Court.

13. It is once again noted that this Court has not entered into the merits of the case.