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**(1997) 01 AHC CK 0060**

**In the Allahabad High Court**

**Case No :** Criminal M.A. No's. 3619 to 3621 of 1982

B.I.C. Ltd. Cawnpore Woollen Mills Branch and Others

APPELLANT

Vs

Provident Fund Inspector and Another

RESPONDENT

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**Date of Decision :** 02-01-1997

**Acts Referred:**

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14A(1),  
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**Citation :** (1997) 2 AWC 863 : (1998) 2 LLJ 1145

**Hon'ble Judges :** D.C. Srivastava, J

**Bench :** Single Bench

**Advocate :** V.B. Singh, for the Appellant; J.N. Tiwari and A.G.A., for the Respondent

**Final Decision :** Partly Allowed

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## **Judgement**

Srivastava, J.—These three petitions u/s 482, Cr. P.C. involving common question of law and fact are proposed to be disposed of by a common judgment.

2. In Criminal Misc. Application No. 3619 of 1982, 10 petitioners have challenged the complaint dated March 5, 1980 filed by Provident Fund Inspector, after obtaining requisite sanction for prosecution of the petitioners u/s 14A(1) of the Provident Fund Act. In the Other Petition No.3620 of 1982 similar complaint filed on January 8, 1980 has been challenged and in the third petition identical complaint against the petitioners filed on May 17, 1980 has been challenged.

3. The record shows that Sri. J.N.Tiwari Advocate represented the opposite party No. 1 and the opposite Party No.2 was represented by learned A.G.A. but no counter affidavit has been filed by either of them. Sri J.N.Tiwari is not present even in the revised list as such Sri Vijay Bahadur Singh, learned counsel for the petitioners and learned A.G.A. have been heard.

4. Learned counsel for the petitioners strenuously argued that Smt. N.Bajoria is the Executive Director, Sri Anand Prakash is Finance Director, S/SriN.S. Bhat,

D.C. Sawhney, R.B. Mathur, M.G. Diwan, R. Ramakrishna and R.P. Srivastava are the Directors of the Petitioner No. 1 whereas Sri J.S.Bindra is the General Manager of tile Company. In the Other Petition No. 3620 of 1982, Smt. N.Bajoria is the Executive Director, Anand Prakash is the Finance Director and A.G.S. Menon is the Finance Manager whereas: J.S.Bindra is the General Manager, and whereas in the 3rd petition No.3621 of 1982, Smt. N.Bajoria is described as Executive Director, Sri Anand Prakash as Finance Director, Sri. T.N.Srivastava as General Manager and S/Sri. N.S.Bhat, D.C.Sawhney, R.B.Mathur and Sri M.G.Diwan as Directors of the Company and that these persons are not liable for prosecution. Referring to the allegations made in the complaint it has been argued that the com-: plaint has been filed without application of mind to the duties of the Directors and also without considering as to who is responsible for the payment of Provident Fund Subscription and against whom prosecution should have been launched. It has been contended that the Executive Director, Finance Director and Directors of the Company are in no way responsible for the alleged commission of offence u/s 14A(1) of the Provident Fund Act and in so far as the General Managers are concerned it has been contended that they may be occupiers within the meaning of Section 2(e) of the Provident Funds Act and they may be liable to prosecution provided then1 latest position vis-a-vis company is ascertained. It was also argued that the complaint does not disclose that it was the duty of all the petitioners to pay the amount of provident fund of the employees nor it is disclosed as to how the Directors or the General Manager who is not an occupier is liable for prosecution.

5. Section 14A(1) of the Provident Funds Act provides that "if the person committing an offence under this Act, the scheme or (the Family Pension Scheme or the Insurance Scheme) is a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly." Referring to the complaint in question it has been argued that it has not been disclosed what role was played by various Directors of the Company as well as Finance Director and Executive Director and on such vague allegation prosecution against such Director is nothing but harassment of the petitioners and abuse of the process of the Court and law.

6. The expression "every person, who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company" was considered by the Apex Court in Girdhari Lal Gupta v. D.N.Mehta AIR 1971 SC 2163. In para 6 it was considered what then does the expression "a person in charge and responsible for the conduct of the affairs of a company mean? and it was held that in the context company the person in charge must mean that the person should be in over all control of the day to day business of the company, it was further held that it mentions Director who may be a party to the policy being followed by a company and yet not be in charge of the business of the company. Further it

mentions Manager who usually is in charge of the business but not in over all charge. Referring to the case of State v. S.P.Bhadani, AIR 1959 Patna 9 where similar provision of Employees' Provident Funds Act, was under consideration, it was held with reference to Section 14 of the Provident Funds Act that the first sub-section would be confined only to officers in the immediate charge of the management of the Company. Later on it was observed that it is, therefore, manifest that all the officers of the company not in direct charge of the management of the business are immune from the liability for the offence unless they have contributed to its commission by consent, connivance or neglect." It was also observed that the mere fact that the accused person is a partner of a firm or Director of the Company shall not make him criminally liable for the offences committed by the Company unless the other ingredients are established which make him criminally liable.

7. In Employees' State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, again similar expression with reference to Employees' State Insurance Act was construed and it was held that Directors of the Company are not covered and as such they cannot be held liable to meet the demand of contribution. It was further observed that liability was of the company and in the event of there being an occupier, such occupier shall be liable to: meet the demand.

8. Section 2(e) of the Provident Funds Act defines the term "employer" to mean in relation to a factory, owner or occupier of the factory: and also any person who has been named as manager of the factory in clause (f) of the Factories Act.

9. It is, therefore, clear from the aforesaid: provisions and pronouncements that the various Directors like Executive Director, Director of Finance and Directors are not responsible for the day to day conduct of the business of the Company and as such without specific role being assigned to them they cannot be prosecuted for the alleged breach u/s 14A(1) of the Provident Funds Act.

10. However, so far as General Managers of the Factory are concerned they cannot escape liability in the face of provisions contained in Section 2(e) of the Provident Funds Act. Sri T.N.Srivastava is described as one of the General Managers in Criminal Misc. Application No.3621 of 1982 and Sri J.SrBindta is described as General Manager in Criminal Misc. Application No.3620 of 1982 and Criminal Misc. Application No.3619 of 1982. In Criminal Misc. Application No.3621 of 1982 Sri T.N.Srivastava is shown as General Manager and in para 2 of this petition it is averred that he continues to be General Manager of the Company. In para 19 of the same petition it is disclosed that u/s 2 of the Factories Act, the Board of Directors by complying with all the necessary formalities including resolution, had designated one Sri J.S.Bindra as occupier of the factory. Sri Bindra by virtue of his office which he was holding in the factory, was one of the most senior officers working on the spot of the factory and was thus responsible for the day to day business of the company and had thus ultimate control over the affairs of the company. These averments in this para 19 will certainly bring the General Manager, J.S.Bindra within the ambit of the

expression a person in charge as interpreted by the Apex Court in D.N.Mehta's case (supra) while observing that the person should be in over all control of the day to day business of the company. The over all control mentioned by the Apex Court in the aforesaid case resembles the words "ultimate control over the affairs of the company" used in para 19 of petition No.3621 of 1982 and in Annexure-2 of this petition. Thus Sri Bindra was a General Manager and was also occupier of the factory as well as having ultimate control of Cawnpore Woollen Mills Branch and he alone could be prosecuted. So far as the General Manager T.N.Srivastava, Petitioner No.4 of Petition No.3621 of 1982 is concerned, in view of appointment of occupier for Woollen Mills Branch dated April 6, 1978 (Annexure-2) only Sri J.S.Bindra was appointed as occupier and the Board passed a resolution vesting in Sri Bindra ultimate control of Cawnpore Woollen Mills Branch giving detailed power contained in Annexure-2. Consequently, the General Manager Sri T.N.Srivastava, cannot be described as person in charge or person in over all control of the business of the factory and the mill nor he can be said to be occupier of the factory. As such he also cannot be prosecuted.

11. In view of the aforesaid discussions the complaint dated March 5, 1980 in Criminal Misc. Application No.3619 of 1982 against Smt. N.Bajoria, S/Sri Anand Prakash, A. G. S. Menon, M.S.Bhat, D.C.Sawhney, R.Ramak-rishna, R.B.Mathur, M.G.Diwan and P.P.Sri-vastava is quashed. However, this complaint will proceed against the Petitioner No.4, Sri J.S.Bindra, General Manager and occupier of the factory. This petition is thus partly allowed.

12. The complaint dated May 17, 1980 in Criminal Misc. Application No.3621 of 1982 against Smt. N.Bajoria, S/Sri Anand Prakash, T.N.Srivastava, N.S.Bhat, D.C.Sawhney, R.B.Mathur and M.D.Diwan is quashed. The petition is accordingly allowed.

13. Likewise the complaint dated January 8, 1980 against Smt. N.Bajoria, S/Sri Anand Prakash and A.G.S.Menon in Criminal Misc. Application No. 3620 is quashed but it shall proceed against the Petitioner No.4, J.S.Bindra. This petition is partly allowed.