
(1988) 09 PAT CK 0021

In the Patna High Court

Case No : Criminal Miscellaneous Case No's. 8926 to 8940 of 1983

Bihar Cotton Mills Ltd. and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 05-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14A,
14A(1), 14A(2), 14AC

Citation : (1990) 67 CompCas 143 : (1989) PLJR 446

Hon'ble Judges : Bhuvaneshwar Prasad, J

Bench : Single Bench

Advocate : K.D. Chatterjee, J. Krishna, R.K. Das and Shivajee Pandey, for the Appellant; Satya Narain Prasad and Rama Shankar Pradhan, (P.F. Inspector), for the Respondent

Final Decision : Dismissed

Judgement

Bhuvaneshwar Prasad, J.—These fifteen criminal miscellaneous cases have been heard together as they involve a common question of law. In the applications u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter called "the Code"), various identical points have been raised and, therefore, it would be convenient to deal with those points in a common judgment.

2. All criminal miscellaneous cases are directed against the order dated 6th October, 1982, passed by the learned Chief Judicial Magistrate, Patna, in various complaint cases, namely, Complaint Case No. 444(M) of 1982, Complaint Case No. 441(M) of 1982, Complaint Case No. 434(M) of 1982, Complaint Case No. 432(M) of 1982, Complaint Case No. 437(M) of 1982, Complaint Case No. 438(M) of 1982, Complaint Case No. 446(M) of 1982, Complaint Case No. 442(M) of 1982, Complaint Case No. 435(M) of 1982, Complaint Case No. 436(M) of 1982, Complaint Case No. 439(M) of 1982, Complaint Case No. 433(M) of 1982, Complaint Case No. 445(M) of 1982, Complaint Case No.

440(M) of 1982 and Complaint Case No. 443(M) of 1982. According to the impugned orders, the learned Chief Judicial Magistrate has taken cognizance against the various petitioners u/s 76(d) of the Employees' Provident Funds Scheme, 1952 (hereafter referred to as "the Scheme") read with Sections 14A and 14AA of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act"). By the same order, the learned Chief Judicial Magistrate transferred the various complaint cases to the court of the Judicial Magistrate, 1st Class, Patna, for favour of disposal.

3. The petitioners are Bihar Cotton Mills Limited, Phulwarishariff, Patna, and the persons in charge of the said factory and responsible to it for the conduct of its business. The complainant, in all these cases, is Shri Ram Chandra Jha, Provident Fund Inspector, Grade (II), Bihar, who figures as opposite party No. 2. The allegation against the petitioners is that they did not deposit the employer's contribution to the provident fund account of the employees for the various periods mentioned in the complaint petitions thereby infringing the provisions of the Act and the Scheme.

4. It has been contended by the petitioners that petitioner No. 1 is a very small unit in the textile industry having only one factory at Phulwarishariff in the district of Patna. In spite of the best efforts and due diligence on the part of the petitioners, the petitioner-company had been running at a considerable financial loss. Consequently, a lock-out was declared which remained in force from 7th May, 1979, to 31st May, 1979. Again, the workers resorted to a strike with effect from 10th September, 1979, to 15th January, 1980. Once again, the factory was put under lockout from 24th July, 1981, to 20th January, 1982. Thus, petitioner No. 1 has suffered tremendous financial loss. It is a well-settled principle of law that the expression "the person in charge of and responsible for the conduct of the affairs of the company" means a person who is in overall control of the day-to-day business of the company. Thus, a director who may be a party to the policy-making body and yet not in charge of the business of the company cannot be called a person in charge of and responsible for the conduct of the affairs of the company. There was no material before the learned Chief Judicial Magistrate by which he could satisfy himself that the petitioners took some part in the running of the business of the petitioner's company.

5. It is clear that the complaint petitions were barred by limitation in terms of Section 473 of the Code. In this connection, a reference may be made to Section 468(2)(d) of the Code according to which the period of limitation for taking cognizance of the offence mentioned in the complaint petition would be only one year. In this view of the matter, the allegations made out in all the complaint petitions against the petitioners will show that in some of them, the alleged occurrence had taken place more than one year before the date of taking cognizance. Hence, the orders taking cognizance themselves are barred under the provisions of Section 468 of the Code. In this connection, a reference may also be made to Section 473 of the Code which provides for the extension of the

period of limitation in certain cases. It has been pointed out in the applications that no petition for condonation of delay was filed by the complainant along with any of the complaint petitions and the impugned orders dated 6th October, 1982, passed by the learned Chief Judicial Magistrate do not show that the learned Magistrate has condoned the delay in the filing of the complaint petition. It would appear from this that the cases were clearly barred by the law of limitation and, therefore, no cognizance could have been taken by the learned Chief Judicial Magistrate.

6. The impugned orders show a total non-application of the mind on the part of the learned Chief Judicial Magistrate inasmuch as nowhere has he stated that he was satisfied on the perusal of the complaint petition that a prima facie case was made out against the petitioners. Moreover, since, admittedly, as stated in the complaint petition, there was delay in filing the complaint petition, no cognizance of the offence could have been taken by the learned Chief Judicial Magistrate without condoning the delay under the provisions of Section 473 of the Code. This also shows the non-application of the mind of the learned Chief Judicial Magistrate. On these, amongst other grounds, the petitioners have contended that the cognizance taken against them by the impugned order be quashed.

7. At the time of the hearing, Shri R.D. Chatterjee, learned counsel appearing on behalf of the petitioners, has seriously contended that the cognizance taken by the learned Chief Judicial Magistrate is hit by Section 468 of the Code and, therefore, on this ground alone, it should be quashed. In this connection, he has drawn my attention to the fact that in all these cases, cognizance was taken against the various petitioners by the order dated 6th October, 1982. Referring to the various complaint petitions, he has submitted that, in all of them, the alleged occurrence had taken place during various months of the year 1981. It was his submission that since in some of the cases, the alleged offence was committed on 16th of each month, i.e., April, May, June, July, August and September, 1981, therefore, the complaint petition was filed one year after the commission of the alleged offence. On this ground, according to him, the cognizance taken by the learned Chief Judicial Magistrate was hit by Section 468 of the Code. In this connection, he has drawn my attention to paragraph 14 of the complaint petitions, to show that the complainant had mentioned therein that the delay in filing the complaint petition may be condoned u/s 473 of the Code. Drawing my attention to the impugned order dated 6th October, 1982, he submitted that there was no whisper in this order to show that the prayer for condonation of delay in filing the complaint petitions was ever considered and allowed by the learned Chief Judicial Magistrate. Apart from this, he has further submitted that, along with the complaint petitions, the complainant has not filed a separate petition for condonation of delay.

8. However, I do not find any force in this contention of learned counsel appearing on behalf of the petitioners. It is well-settled that the offences alleged in the complaint petitions are continuing offences in which the provision of

Section 472 of the Code will be applicable. As such, there would not be any question of limitation arising in these cases. In this connection, Shri Rama Shankar Pradhan, learned counsel appearing on behalf of opposite party No. 2 and also Shri Satya Narain Prasad, learned Additional Public Prosecutor have drawn my attention to the case of Bhagirath Kanoria and Others Vs. State of M. P., . This was also a case under the Act and the complaint petition was filed u/s 14(2A) of the Act. Also a reference was made to paragraph 38(1) of the Scheme. It was held that the offences mentioned in the Act and the Scheme are continuing offences and cognizance could be taken by applying the provisions of Section 472 of the Code. In view of this authoritative pronouncement by the Hon''ble Supreme Court, I do not find any force in the contention of Shri Chatterjee, learned counsel appearing on behalf of the petitioners, so far as the period of limitation is concerned ; notwithstanding the fact that, in paragraph 14 of the complaint petition, a prayer had been made for condoning the delay u/s 473 of the Code in filing the complaint petition. This appears to have been made under some misconception and ignorance of law. However, on this ground, it cannot be said that the complaint petitions were barred under the provisions of Section 468 of the Code since there is no estoppel against law.

9. This decision of the Hon''ble Supreme Court has been followed by a Full Bench of this court in the case of Ram Kripal Prasad and Others Vs. The State of Bihar and Others, . This was also a case under the Act and the Scheme. Paragraphs 38 and 76 of the Scheme as also Section 14 of the Act were considered by this Full Bench case. Following the decision of the Hon''ble Supreme Court in the case of Bhagirath Kanoria and Others Vs. State of M. P., , the Full Bench of this court held that the offence u/s 14 of the Act read with paragraphs 38 and 76 of the Scheme was a continuing offence and the limitation as mentioned in Section 468 of the Code will not apply. Accordingly, it was held that the relevant provision of law could be found in Section 472 of the Code and as such a fresh period of limitation will start running at every moment of time during which the offence continued. From these two decisions, it, would appear that the offences mentioned in the complaint petitions are continuing offences covered by Section 472 of the Code and, therefore, there could be no question of any limitation so far as taking cognizance is concerned. Thus, I do not find any merit in this contention of learned counsel appearing on behalf of the petitioners.

10. Shri K.D. Chatterjee, learned counsel appearing on behalf of the petitioners, has drawn my attention to paragraph 3 of the complaint petition in which it has been stated that the petitioners were persons in charge of the said factory (petitioner No. 1) and responsible to it for the conduct of its business. They are, therefore, required to comply with all the provisions of the said Act and the Scheme in respect of the said establishment. In paragraph 9 of the complaint petition also, this fact has been reiterated by stating that the petitioners were, during the relevant period, in charge of the said establishment and were responsible for the conduct of its business. It will thus appear from a perusal of the complaint petitions that there is a positive averment in them stating that the

accused persons mentioned therein were persons in charge of running the day-to-day business of the said factory and were responsible for the conduct of its business. It may be mentioned here that, for the present, the learned Chief Judicial Magistrate, taking cognizance of the offence, was concerned with a prima facie case being made out against the petitioners. At this stage, he was not required to determine on the basis of the materials available on record as to whether or not the persons named as accused in the complaint petitions were persons in charge of the said factory and responsible to it for the conduct of its business. At this stage, it was enough to state that an allegation to this effect was made in the complaint petitions. It would be for the trial court to find out whether or not this allegation made in paragraphs 3 and 9 of the complaint petitions was correct. It was, accordingly, submitted by learned counsel appearing for the State and opposite party No. 2 that the impugned order does not suffer from any defect on this account.

11. In this connection, Shri K.D. Chatterjee, learned counsel for the petitioners, has placed reliance on the case of *Girdhari Lal Gupta Vs. D.H. Mehta and Another*, . This was a case under the Foreign Exchange Regulation Act, 1947. Sections 23C(1) and 23C(2) of that Act appeared to be similar to Sections 14A(1) and 14A(2) of the present Act. It was held by the Hon"ble Supreme Court that the word "company" includes a firm or other association and the same test must apply to a director-in-charge and a partner of a firm in charge of a business. In that context, a person "in charge" must mean that the person should be in overall control of the day-to-day business of the company or firm. It was further held that the mere fact that a partner in charge of a business has proceeded abroad will not show that he ceased to be the person in charge of the company or the firm. In this decision, a reference has also been made to the case of *The State Vs. S.P. Bhadani and Others*, . It was further held by the Hon"ble Supreme Court that, in this context, a person "in charge" must mean that the person should be in overall control of the day-to-day business of the company or the firm. In the present case, however, there is a definite allegation in paragraphs 3 and 9 of the complaint petition that the accused persons were the persons in charge of petitioner No. 1 and responsible to it for the conduct of its business. In view of this specific allegation made in the complaint petition, I do not think that there is any infirmity on this account in the impugned order taking cognizance of the offence against the petitioners.

12. It has further been contended, in this connection, that a reference may also be made to paragraph 9 of the complaint petition which shows that the allegations made therein are completely vague and that there is nothing on the record to show that the offences alleged were committed by petitioner No. 1 with the consent or connivance or neglect of the petitioners. On this account also, the impugned order has been challenged. In this connection, a reference may be made to Section 14A(1) and Section 14A(2) of the Act. They provide the procedure in the case of offences by companies. Sub-section (1) shows that if the person committing an offence under this Act or the 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. According to the present complaint petition, there is a definite allegation against rest of the petitioners that they were, at the relevant time, in charge of and responsible to petitioner No. 1 for the conduct of its business. As such, I think so far as Section 14A(1) of the Act is concerned, the allegation is complete.

13. Section 14A(2) of the Act starts as follows :

"Notwithstanding anything contained in Sub-section (1), where an offence under this Act, the Scheme . . . has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, they shall be deemed to be guilty of that offence."

14. The opening expression of Sub-section (2) of this section is "notwithstanding anything contained in Sub-section (1)" of the Act. In a case where Sub-section (1) of the Act fully applied, the provisions of Sub-section (2) can hardly be attracted. No doubt, from paragraph 9 of the complaint petition, it appears that allegations both under Sub-sections (1) and (2) have been made. So far as the allegation under Sub-section (2) is concerned, it appears to be vague. However, in view of the fact that the allegations made under Sub-section (1) of Section 14A of the Act are clear and they constitute the offence, I do not think the complaint petition can be said to be bad on this account. In this connection, learned counsel for the petitioners has drawn my attention to the case of *Katras Ceramic v. State of Bihar* [1986] PLJR 410. This is a decision by a single Hon"ble Judge of this court. It has been held that the condition laid down in Section 14A is a pre-condition for the prosecution of the officers of a company. The officer sought to be prosecuted must be shown to be in charge of and responsible for conducting the business of the company. In that case, the managing director and directors of the company were mechanically added in the complaint petition without specifying any involvement. It was held that it amounted to non-compliance with the provisions of Section 14A and cognizance taken was held to be bad.

15. The facts of the present case are, however, quite different. As stated above, in paragraphs 3 and 9 of the complaint petitions, there are specific allegations that the petitioners (apart from petitioner No. 1) were persons in charge of the affairs of petitioner No. 1 and responsible for the conduct of its business. In this view of the matter, I think that the requirements of Section 14A of the Act have been properly complied with inasmuch as at this stage the learned Chief Judicial Magistrate was simply concerned with making out of a prima facie case for the purposes of taking cognizance, and not with the proof of the allegations made in the complaint petitions. Hence, I do not find any force in this contention also.

16. In paragraph 13 of the complaint petition, it has been clearly stated that the sanction of the prosecution has been taken by the Regional Provident Fund Commissioner, Bihar, Patna, by his sanction dated 30th August, 1972, the original copy of which was being enclosed with the complaint petition. Only the copy of the complaint petition has been annexed as annexure "2" with these applications and the copy of the sanction order has not been produced. Therefore, it is not clear from the allegations made in the present petitions that the prosecution of the petitioners suffers for want of sanction as required under law. In this connection, a reference may be made to Section 14AC of the Act according to which no court shall take cognizance of any offence punishable under this Act, except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf. On behalf of the State, the learned Additional Public Prosecutor has submitted that, in exercise of the power, the Central Government has authorised the Regional Provident Fund Commissioner, Bihar, to accord sanction for the prosecution for the offences under the Act and the Scheme. No doubt, he should have produced a copy of this authorisation to show that the Regional Provident Fund Commissioner was "such other officer" within the meaning of this section and authorised by the Central Government. However, in the complaint petition itself there is a specific statement on this point and, therefore, at this stage, it cannot be held that the prosecution of the petitioners was bad on account of want of previous sanction by the competent authority.

17. Lastly, a reference has been made to the case of State of Karnataka Vs. L. Muniswamy and Others, , to show the true scope of Section 482 of the Code. No doubt, it is well-settled as also held in this case, that, in exercise of the wholesome power u/s 482, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice required that the proceeding ought to be quashed. The learned Additional Public Prosecutor has, however, not disputed this proposition of law. His contention was that this is not one of those cases in which it can be held that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice required that the proceeding ought to be quashed" In this connection, he has drawn my attention to paragraph 10 of this judgment to show that the Hon''ble Supreme Court held that, for the purpose of determining whether there is sufficient ground for proceeding against an accused, the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be said to be reasonably possible. In this view of the matter, I do not find any force in this contention also.

18. Further, my attention has been drawn to paragraph 12 of the complaint petition in which a reference has been made to Sections 221(7), 225A and 511 of

the Code. Obviously, this appears to be a mistake since probably the complainant was referring to these sections of the old Code of Criminal Procedure. This will not, however, make any difference so far as the taking of cognizance is concerned. Learned Additional Public Prosecutor has submitted in this connection that this was clearly done by oversight.

19. On behalf of the petitioners, it has been submitted that the impugned orders do not show that the learned Chief Judicial Magistrate found a prima facie case made out against the petitioners. In this connection, he has referred to the impugned order dated 6th October, 1982. No doubt, the learned Chief Judicial Magistrate has not mentioned in this that he found a prima facie case made out against the petitioners. However, since he took cognizance of the offence against them, the factum of finding out a prima facie case against the petitioners is implied. What the law requires is that, before the Magistrate takes cognizance of the offence, he should find whether a prima facie case was made out or not. However, it is not always necessary for the Magistrate taking cognizance of the offence to mention that a prima facie case has been made out. The very fact that cognizance was taken will mean that the learned Chief Judicial Magistrate found that a prima facie case was made out against the petitioners. The fact of finding a prima facie case against the petitioners is implied in the order of the learned Magistrate taking cognizance of the offence. Therefore, I do not find any defect on this account.

20. For the reasons stated above, I do not find any merit in these miscellaneous cases which are, accordingly, dismissed and the orders staying further proceedings in the case in the court below are vacated.