(1999) 10 PAT CK 0055

In the Patna High Court

Case No : C.M. No. 17061 of 1994

Gopta B.P. and Others — APPELLANT

Vs

State of Bihar — RESPONDENT

Date of Decision : 13-10-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2
Penal Code, 1860 (IPC) — Section 405

Citation : (2000) CriLJ 781 : (2000) 1 LLJ 1138 : (2000) 1 PLJR 593

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard counsel for the petitioners. However, no one appears on behalf of the State.

2. This is an application for quashing order dated August 31, 1994 passed by the learned Judicial Magistrate 1st Class, Patna in G.R. No. 4085/82 whereby and whereunder the prayer made on behalf of the petitioners for their discharge u/s 239 of the Code of Criminal Procedure has been rejected. It appears that upon a complaint filed by the Provident Fund Inspector, Patna, a case was registered and after submission of charge sheet cognizance of the offence was taken against the petitioners under Sections 406 and 409 of the IPC. The petitioners thereafter filed an application for their discharge in terms of Section 239 of the Cr. P.C. which has been rejected by the order impugned. Learned counsel for the petitioners submitted that petitioners 1, 2 and 3 were the Directors of Bihar Cotton Mill registered under the Companies Act whereas petitioner No. 4 was the Commercial Manager. Learned Counsel further submitted that the petitioners have been prosecuted for non deposit of P.F. amount of the employees of the company. From the complaint petition it appears that a sum of Rupees two lacs thirty two thousand and odd were collected from the employees of the company

but the same were not deposited before the authorities under the Provident Fund Act (hereinafter referred to as the Act). Learned Counsel for the petitioner, therefore, submitted that since the petitioner Nos. 1, 2 and 3 are not the Principal employer and occupier of the company in question the present prosecution launched against them is not maintainable and it will be an abuse of the process of the Court. At the same time it is also stated on behalf of the petitioner No. 4 that though petitioner No. 4 was the Commercial Manager but for the relevant period he was not the Commercial Manager of the company and, therefore, prosecution against him as well is liable to be quashed. It is further submitted on behalf of the petitioners that in view of the explanation 2 to Section 405 of the IPC, the Directors of the company would not be covered by the definition of Principal employer when the company itself owns the factory and is also employer of the employee as per Section 2(e) of the Employees'' Provident Funds Act. Explanation 1 to Section 405 of the IPC contemplates that a person being an employer who deducts the employees'' contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount for the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

3. Section 2(e) of the Act defines the "employer" in the following terms:

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where, a person has been named as a manager of the factory under Clause (f) of Sub-section (1) of Section 7 of the Factories Act, 1948, the person so named; and

(ii) in relation to any other establishment, the person who or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

4. In view of the definition of the employer the employer is the occupier of the company in question and he is a person who has ultimate control over the affairs of the company in view of the definition of the employer and in view of the explanation 1 to Section 405 of the IPC the employer is the person who deducts the employee''s contribution under the Act from the wages payable to the employees for credit to Provident Fund or Family Pension Fund established under the law and, therefore, in no way the Directors of the company can be held liable for prosecution under Sections 406 to 409 IPC as there was no entrustment to them in terms of Explanation 1 to Section 405, IPC. In this connection reference can be made to the case of Employees State Insurance Corporation Vs. S.K. Aggarwal and Others, . Section 2(e) of the Act appears to be pari materia to Section 2(17) of the Employees'' State Insurance Act. The Apex Court in the case

of Employees'' State Insurance Corporation (supra) has held that in view of the definition of the employer u/s 2(17) of the Employees'' State Insurance Act and in view of Explanation 2 to Section 405 of the IPC, the expression employer does not include the Director. Here in the instant case the ratio laid down by the Apex Court, in my opinion, is wholly applicable in view of the definition of the employer u/s 2(e) of the Act and in view of Explanation 1 to Section 405 of the IPC.

5. In that view of the matter, I will have no hesitation to hold that the Directors of the company in no way can be held liable for criminal prosecution for non deposit of contribution of the employees for contravention of the provisions of Employees'' Provident Funds Act. So far as petitioner No. 4 is concerned, certain questions of facts have been urged showing that at the relevant time he was not the Commercial Manager of the company and therefore he was not liable for fault of the employer. The questions of fact as raised by the learned Counsel for the petitioner No. 4, in my opinion should not be gone into at this stage as the Commercial Manager of the company has direct nexus with the dealings of the company or with the day-to-day affair of the company. However, the questions raised on behalf of the petitioner No. 4 may be raised at the stage of trial which shall be examined by the learned trial Court on the basis of evidence.

6. For the reasons and discussions aforesaid, this application is allowed so far as petitioner Nos. 1, 2 and 3 are concerned and the prosecution launched against them is hereby quashed and so far as petitioner No. 4 is concerned, this application is dismissed at this stage.