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**(2007) 02 CAL CK 0044**  
**In the Calcutta High Court**  
**Case No : C.R.R. No's. 2791-2814 of 2006**

Hotel Dock Palace Pvt. Ltd. and Another APPELLANT  
Vs  
State of West Bengal and Another RESPONDENT

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**Date of Decision :** 14-02-2007

**Acts Referred:**

Constitution of India, 1950 — Article 142  
Criminal Procedure Code, 1973 (CrPC) — Section 482  
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14A, 7A

**Citation :** (2007) 2 CALLT 259 : (2007) 113 FLR 692

**Hon'ble Judges :** Partha Sakha Datta, J

**Bench :** Single Bench

**Advocate :** Arijit Chatterjee and M.L. Chatterjee, Sandip Kr. De and Nikhilesh Mittal, for the Appellant; Prabir Chatterjee, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Partha Sakha Datta, J.—These 24 applications u/s 482 of the Cr PC are being disposed of by this common Judgment and order since the facts are identical and the points of law are common.

2. The petitioner No. 1, a company, in the name and style of M/s. Hotel Dock Palace Private Limited and the petitioner No. 2, the Managing Director of this company have been prosecuted by the Regional Employees' Provident Fund Commissioner-II, West Bengal for their failure to make deposit of the Provident Fund dues, under the Employees' Pension Fund Scheme and under Insurance Scheme and submission of return within the period prescribed by the statute during the months from December, 2000 to March, 2005.

3. The petitioners pray for quashing of all the proceedings on the ground that subsequent to the launching of the prosecution they have deposited the dues and since payments have already made, albeit belatedly, there is no point in continuing with the prosecution.

4. The question, therefore, is whether criminal proceedings initiated against the petitioners on account of their failure to deposit the provident fund dues (both of the employer and employee) and other dues on account of the Pension Scheme and Insurance Scheme and submission of return thereon can be quashed under section 482 of the Cr PC on the ground of payment subsequent to launching of the prosecution. The question in other words is whether payment subsequent to the launching of the prosecution can be a lawful ground for quashing of the proceeding.

5. Mr. Arijit Chatterjee, learned advocate for the petitioners placed reliance upon a decision of the Hon'ble Supreme Court in *Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others*, , a Division Bench decision of this Court in *Jasoda Glass & Silicate and Ors. v. Regional Provident Fund Commissioner and Ors.* as reported in 2002(2) Cri LJ 407, and two decisions of learned single Judge of this Court, one in *Air Transport Corporation and Ors. v. State of West Bengal and Anr.* as reported in 2006(1) C.Cr.LR (Cal.) 616 and the other in *Howrah Motor Company Limited and Others Vs. Samir Kumar Das*, .

6. Mr. Sandip Kumar De, learned Advocate appearing for the Regional Provident Fund Commissioner placed a good number of decisions namely, a Division Bench decision in *Pranati Textiles and Ors. v. State of West Bengal and Anr.* as reported in 1989 I CHN 173, *Smt. Ginia Devi Agarwalla Vs. The Provident Fund Inspector and Others*, and in order to establish his contention that the decisions cited by the learned Advocate for the petitioners are inappropriate in the context of the facts and circumstances of the instant cases, Mr. De cited the decisions in *State of Haryana and Others Vs. AGM Management Services Ltd.*, , *A.R. Antulay Vs. R.S. Nayak and Another*, , *Parkash Singh Badal and Another Vs. State of Punjab and Others*, .

7. Let us, therefore, discuss the relevant decisions cited by the learned advocate for the petitioners Mr. Arijit Chatterjee. The decision of the Hon'ble Supreme Court in *Adoni Cotton Mills (supra)* case reveals that the Hon'ble Supreme Court directed quashing of the proceedings initiated through some notices in connection with offence u/s 14 and 14A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short the "Act"). In the case there was a default for a period of four months following which notices were given under the Act and on receipt of the notices the appellants therein filed writ petitions which were dismissed by the High Court and then during hearing of the civil appeal "in the Hon'ble Supreme Court directed quashing of the proceedings initiated through some notices in connection with offence u/s 14 & 14A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short the "Act"). In the case there was a default for a period of four months following which notices were given under the Act and on receipt of the notices the appellants therein filed writ petitions which were dismissed by the High Court and then during hearing of the civil appeal in the Hon'ble Supreme Court it transpired that the

offences were committed some 15 years ago and two of the appellants died and during the pendency of the appeal the appellants deposited money along with furnishing bank guarantee. Taking into account of these circumstances the Hon''ble Supreme Court ordered that the proceedings for prosecution initiated by the impugned notices should be quashed. Taking a cue from the decision of the Hon''ble Supreme Court a Division Bench of this Court in Jasoda Glass and Silicate and Ors. (supra) made a similar order of dropping of the proceedings initiated against the appellants of that case pursuant to a proceeding u/s 7A of the Act. In Howrah Motor Company Limited and Ors. (supra) a very special circumstances emerged in this that there was an order of injunction restraining the petitioners from withdrawing money from bank followed by the order of an appointment of special officer which prevented the petitioners from operating the banking transaction for the purpose of deposit of dues and taking a cue from Adoni Cotton Mills case (supra) a learned single Judge dropped the proceeding. In M/s. Air Transport Corporation and Ors. (supra) a learned single Judge of this Court dropped the proceeding having relied on the Howrah Motor Company's case and Adoni Cotton Mills Limited case. Mr. Chatterjee argued that the Division Bench decision of this Court in Jasoda Glass and Silicate case and the decision of the Hon''ble Supreme Court in Adoni Cotton Mills Limited case are quite sufficient to strengthen me to order for dropping of the proceedings which according to Mr. Chatterjee would be abuse of the process of the Court. Mr. Sandip Kr. De, learned advocate for the Regional Provident Fund Commissioner very strenuously argued that the decision in Jasoda Glass and Silicate and Ors. case wherein dropping of the proceedings was ordered should not be relied on in view of an earlier Division Bench Judgment of this Court in Pranati Textiles and Ors. v. State of West Bengal and Anr. (supra) wherein it has been held that if failure to pay within the prescribed time is an offence under the Act and the Scheme, and there has been such a failure to pay in time, any later payment cannot by itself in law stand in the way of the prosecution. It can be a mitigating circumstance, a relevant factor to be taken into consideration in determining the sentence, but not one to forestall prosecution and conviction. With the aid of the decisions in A.R. Antulay's case it is argued by Mr. De that the later Division Bench decision of this Court is a decision "per in curium". Mr. De argued that the facts in Howrah Motor Transport Company's case are indeed in a very special circumstances which justified dropping of the proceedings but in M/s. Air Transport Corporation case the facts have not been made explicit in the decision and no blind reliance can be placed on the Judgment of the learned single Judge in that case. Mr. De argued that in case of Adoni Cotton Mills Ltd. (supra) the question was not decided as to whether payment of the Provident Fund dues and other dues under the Act subsequent to the launching of the prosecution should invite the attention of High Court for quashing of the proceeding u/s 482 of the Cr. PC. According to Mr. De in Adoni Cotton Mills Limited case some notices under the Act were issued and the Hon''ble Supreme Court directed dropping of the proceeding on the special grounds namely 15 years elapsed since issuance of the notices and meanwhile two of the appellants had already died and it is on consideration of

the special circumstances that order of quashing of the proceeding was made and Mr. De submits that the order of the Hon"ble Supreme Court does not reveal that it has laid down any general proposition of law within the meaning of Section 141 of the Constitution and rather it is a decision reached justly on consideration of special circumstances in order to meet the ends of justice and the said decision can be said to be an order in terms of Article 142 of the Constitution. Mr. De having relied on the Supreme Court decision in State of Haryana and Ors. (supra) and Prokash Singh Badal and Anr. (supra) submitted that a decision is an authority for what it actually decides and, the Court should not place reliance on decisions without discussing as to how the factual situation fits with the fact situation of the decision on which reliance is placed. In support of his submission Mr. De takes me to *Genia Debi Agarwala's* case wherein in a similar case under the Act a learned Judge of this Court refused to quash proceeding on the strength of the decisions of the Hon"ble Supreme Court holding that the decision in *Provident Fund Inspector, Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others*, was in exercise of the jurisdiction under Article 142 of the Constitution of India and the provision of Article 142 which may not be a declaration of law is not available to the High Court. In this *Genia Debt Agarwala's* case payments were made even before launching of the prosecution belatedly still then the learned Judge in his erudite Judgment after elaborate discussions of a good number of decisions of the Hon"ble Supreme Court declined to quash the proceeding on the ground that the decisions relied on by the learned Advocate for the petitioners did not lay down any fundamental proposition of law but they were the decisions so reached in consideration of facts and circumstances of the case and those decisions were indeed under Article 142 of the Constitution.

8. I have heard the respective lengthy submissions of the learned Advocates for the parties and find that the question whether the payments of the provident fund dues after launching of the prosecution would be warranting High Court's interference u/s 482 of the Cr.PC for quashing of the proceeding has not been decided in the case of *Adoni Cotton Mills Limited* pronounced by the Hon"ble Supreme Court. The Hon"ble Court dropped the proceedings "taking into account of all the circumstances" namely before the Hon"ble Court 15 years had already passed and two of the appellants had already died and moneys were deposited in the reported decision. It does not appear that the prosecutions were actually launched and it appears that some notices were issued prior to initiation of proceeding and those notices were quashed in consideration of the circumstances. In fact, in *Jasoda Glass and Silicate and Ors.* case it was not decided at all that subsequent payment would liquidate the offence but on the other hand Their Lordships in this case have clearly held that "the facts still remain that as soon as default was committed it constituted an offence punishable u/s 14 of the Act". In the earlier Division Bench case (*Pranati Textiles and Ors.*) the law has been clearly propounded which has not been disturbed by any Judgment of the Hon"ble Supreme Court. It has been clearly held there that

failure to pay in time even before prosecution of the offence and cannot by itself in law stand in the way of the prosecution. It is in this connection, profitable to refer to Judgment of the Hon''ble Supreme Court, in Provident Fund Inspector, Faridabad v. M/s. Jaipur Textile, Faridabad and Anr. (supra) which has been referred to in Ginia Debi Agarwala's case and in this decision of the Hon''ble Supreme Court arrears payments were made and the Hon''ble Court directed the provident fund authorities not to proceed with further but while holding so it has been observed by way of caution that "this order will not serve as a precedent as it is passed in the peculiar facts and circumstances of these cases". It can be safely said that the facts in Adoni Cotton Mills Limited (supra) were extraordinary as has been discussed above and neither Adoni Cotton Mills Ltd. case nor M/s. Jaipur Textile appear to have laid down any legal proposition. The Hon''ble Supreme Court is armed with power to make any order as Their Lordships would find fit in terms of Article 142 of the Constitution. Article 142 empowers the Hon''ble Supreme Court to make such order as is necessary for doing complete justice in any cause or matter pending before it and an order so made is enforceable throughout the territory of India. The decision in Jasoda Silicate and Ors. (supra) was passed by the Division Bench in appellate writ jurisdiction in consideration of the submissions on behalf of the petitioners that no notice was served in connection with a proceeding u/s 7A of the Act and it was further submitted that the prosecution was launched obtaining any sanction and reliance was placed on a decision in Union of India and Others Vs. Dinanath Shantaram Karekar and Others, wherein in relation to service of a chargesheet the Hon''ble Supreme Court held that since the delinquent has to submit his reply actual service was essential and had to be proved. Thus, upon various facts and circumstances the Division Bench in Josoda Glass & Silicate case dropped the proceedings and the facts of our case are completely dissimilar in this that payments were made not only after launching of the prosecution but also after elapse of four years from the date when they were due for payment. I am reminded of the decision of State of Haryana and Ors. (supra) wherein it has been given a caution that Courts should not place reliance on the decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliable is sought to be placed. In this decision there is a reference of an English case (British Railways Board v. Herrington wherein it has been held that it is to be remembered that the judicial utterances are made in the setting of the facts of a particular case. Therefore, none of the authorities cited by either of the parties makes it a law that subsequent payment would liquidate the offence.

9. The case of R.P. Kapur Vs. The State of Punjab, summarized some categories of cases where inherent power can be exercised to quash the proceedings.

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction.

(ii) where the allegations in the first information report or complaint taken at its

face value and accepted in their entirety do not constitute the offence alleged.

(iii) where, the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

None of the conditions is present here.

10. In view of the discussions above I am of the considered Judgment that the applications seeking for quashing of the proceedings u/s 482 of the Cr.PC cannot be allowed. It can only be said that subsequent payments are necessarily a circumstance that should not miss the attention of the learned Trial Court if and when the learned Trial Court proceed to award punishment to the petitioners only when guilt is established according to law and this circumstance is indeed a good circumstance and a mitigating circumstance to be taken cognizance of only at the conclusion of the trial and only when the offender is proved guilty.

11. Thus, the applications under CRR 2791-2814 of 2006 are dismissed.

Let a copy of the Judgment shall be transmitted to the learned Trial Court at once.

Urgent xerox certified copy of this Judgment, if applied for, be given to the learned Advocates for the parties as early as possible.