(1986) 04 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No. 7757 with Criminal Miscellaneous No''s. 9035, 9036, 9037, 9047, 9052, 9053, and 9158 of 1912 with Criminal Miscellaneous No''s. 229, 230, 233, 234, 235, 236, 237, 242, 243, 244, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277,

Jagdish Prasad Choudhary APPELLANT

Vs

State of Bihar and Another RESPONDENT

Date of Decision : 09-04-1986

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 19A

Citation : (1986) PLJR 1133

Hon'ble Judges : A.P. Sinha, J

Bench : Single Bench

Advocate : S.C. Bharuka, Navniti Pd. Singh and Ramesh Kumar Agrawal, for the Appellant; R.S. Pradhan, for the Respondent

Final Decision : Allowed

Judgement

A.P. Sinha, J.—All these applications involved common points. That being so, they have been heard together and are being disposed of by this common judgment. The prosecution has been launched against the petitioner, for violating the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 and the Employees Provident Fund Scheme, 1952 alleging that administrative charges have not been deposited, returns have not been filed and the amount of provident fund has also not been deposited. This relates to the period 1977 to December, 1978. Kalyani Stone works is the firm of which the petitioner is one of the partners. It appears that cognizance had been taken on 7.12.1981 and the complaint had been filed on 26.10.1981. In the meantime, the petitioner had filed a revision before the Central Government mainly challenging the liability of the firm in the manner that the scheme and the rules were not applicable to the business carried on by the firm and also that the period of liability had not been correctly fixed after due consideration of the infancy period and other exemptions as provided under the Scheme.

2. It appears that revision application has been filed as contemplated u/s 19A of the Act. The matter was heard and the Central Government disposed of the revision application on 31.3.1984. Form of the firm is concerned, by virtue of the nature of business that has been remained unaltered. However, with certain directions the case has been remanded back and the main direction being that the date of liability, in other words, the date of coverage after allowing the infancy period permissible under the law, has to be fixed.

3. The contention of the learned Advocate is that definitely there happened to be a. dispute with regard to the date of coverage and that will indicate that the clear liability of making out a case against the petitioner had not been made out. In other words, the submission is that a criminal case is premature.

4. Mr. R.S. Pradhan, the learned Advocate appearing on behalf of the Provident Fund Commissioner has resisted this claim and it has been stated that once it is established that the firm by virtue of its nature of business is liable to pay the provident fund, a criminal case will definitely maintainable as it would appear that admittedly there had not been payment of the administrative charge, provident fund and also submission of the returns.

5. It would appear that in order to completely fix legal obligations, the breach of penal provisions, has to be construed strictly and, in this view of the matter, I am inclined to agree that a prosecution after fixing of the date of coverage can said to be warranted under the Act, In case, if the alleged date of offence is not covered for the date of coverage in the case, I am afraid, there could not be any prosecution at all. That being so, the present cognizance has to be set aside. However, it is observed that after the date of coverage is fixed and, in fact, there be breach of the provisions of the Act, a prosecution will lay and in that case; the order by which the petitioner is being exonerated will stand as no bar for not facing a criminal prosecution. With this observation, all the applications are allowed.

