

(2015) 12 CAL CK 0021
In the Calcutta High Court
Case No : C.R.R. No. 2862 of 2014

Jai Kishore Singh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 16-12-2015

Acts Referred:

Constitution of India, 1950 — Article 141
Criminal Procedure Code, 1973 (CrPC) — Section 482
Employees Provident Funds Family Pension Fund And Deposit-linked Insurance Fund
Act, 1952 — Section 14, 14A, 7A
Penal Code, 1860 (IPC) — Section 406, 409

Citation : (2015) 12 CAL CK 0021

Hon'ble Judges : Sankar Acharyya, J.

Bench : Single Bench

**Advocate : Debojyoti Deb and Sanjoy Kumar Das, Advocates, for the Appellant;
Pawan Kumar Gupta, Advocate, for the Respondent**

Final Decision : Dismissed

Judgement

Sankar Acharyya, J.—This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by petitioner against The State of West Bengal and Abhijit Ghosh as Enforcement Officer, Employees' Provident Fund Organisation, Sub-Regional Office, Howrah as opposite party Nos. 1 and 2 respectively for quashing the charge-sheet in Special Case No. 1 of 2014 arising out of Golabari Police Station Case No. 492 dated 01.08.2012 under Sections 406 /409 of the Indian Penal Code pending before learned Judge, Special Court cum District and Sessions Judge, Howrah.

2. Undisputedly, the petitioner is the Director of Aryan Heemghar (P) Ltd. and said company made default in depositing Rs. 2,25,225/- with the Employees' Provident Fund Organisation although said amount was deducted from salary of the employees of the company for the period of January, 2011 to March, 2012. Alleging said fact the opposite party No. 2 lodged FIR at Golabari Police Station on 01.08.2012. Within a week thereafter said amount was deposited by the

company and acknowledged by Employees' Provident Fund Organisation. Petitioner has alleged that he was not aware about the fact as he would not look after the matter of disbursing salary and deposit of Employees' Provident Fund (in short E.P.F.) and as soon as he came to learn the fact he arranged for deposit of the due E.P.F. within one week of lodging FIR.

3. Determining questions are whether the petitioner is liable to be prosecuted and whether the proceeding in the Court of learned Special Judge is liable to be quashed.

4. Mr. Debajyoti Deb, learned Advocate for the petitioner has advanced his arguments that the petitioner, being Director cannot be held responsible for the alleged offence and since deposit of the outstanding dues of E.P.F. has been made within a short period the proceeding is liable to be quashed. He has relied upon a decision of the Hon''ble Supreme Court of India in the case of Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, and the judgments of Calcutta High Court in the cases of Howrah Motor Company Limited and Others Vs. Samir Kumar Das, , Air Transport Corporation and Others Vs. State of West Bengal and Another, and Jasoda Glass and Silicate and Others Vs. Regional Provident Fund Commissioner and Others, .

5. On the other hand, Mrs. Aparna Banerjee, learned Advocate for the State argued that there is no such law, nor any decision which conclusively dictates that in case of subsequent payment of the amount of employees' share of contribution towards P.F., however, belated it might be, the criminal prosecution must be quashed as held by Hon''ble Justice Sailendra Prasad Talukdar in a decision of Calcutta High Court in the case of Kamala Tea Company Limited & Ors. v. The State of West Bengal & Anr. and four other cases reported in 2007 (2) CLJ (Cal) 124 . Relying upon the same judgment Mrs. Banerjee submitted that the liability of petitioner as Director of the Company, can be best decided at a subsequent stage. She has also relied upon a decision of Hon''ble Justice Partha Sakha Datta in the case of The Eastern Tea Company Limited v. Provident Fund Authority in six cases including C.R.R. No. 2918 of 2007 of Calcutta High Court and has argued that all the decisions cited on behalf of petitioner were discussed by Hon''ble Justice Datta in that case and dismissed the revisional applications which decision has refused claim of petitioners similar to the claim of present petitioner. Mrs. Banerjee has also relied upon another decision of Hon''ble Justice Partha Sakha Datta of this High Court in the case of Hotel Dock Palace Pvt. Ltd. and Another Vs. State of West Bengal and Another, . She has also cited the case of Howrah Mills Co. Ltd. & Ors. v. Regional Provident Fund Commissioner & Ors. of this High Court in Case No. W.P. 3382 of 1993.

6. I have gone through the judgments cited before me. In the case of Adoni Cotton Mills Limited, the Hon''ble Apex Court has not prescribed any general rule to follow under Article 141 of the Constitution of India. But pleased to express opinion in the particular case considering the facts of launching the prosecution after about 15 years and death of two appellants during pendency of the appeal.

It was not the determining question as to whether making deposit of outstanding dues of E.P.F. after launching prosecution is sufficient ground for quashing the proceeding under Sections 406 /409 of the Indian Penal Code initiated for failure to deposit of employees' share of E.P.F. by the employer in time. Rather, the case of Adoni Cotton Mills Limited was relating to notice to show cause as to why the appellants would not be prosecuted for the default under the provisions of Sections 14 and 14A of the Employees' Provident Funds Act, 1952, and Section 15 of the Additional Emoluments (Compulsory Deposit) Act, 1974 and with Sections 406 and 409 of the Indian Penal Code. In the instant case, the prosecution has already been launched under Sections 406 /409 of the Indian Penal Code lodging FIR at Golabari Police Station before making any deposit of employees' share of E.P.F. which was deducted for more than one year.

7. The case of Howrah Motor Company, decided by Hon'ble Justice Pranab Kumar Deb of this High Court, has discussed a very important special circumstance of preventing the petitioner from withdrawing money from bank by an order of injunction for which the petitioner could not deposit the dues. Such special circumstance is absent in the present case for which this case cannot be treated as a fit case for invoking inherent power of this High Court under Section 482 of the Code of Criminal Procedure, 1973.

8. In view of above discussions it is crystal clear that for want of special circumstances, the judgments of Adoni Cotton Mills and of Howrah Motor Company are not applicable to this case. In the case of Air transport Corporation and Others Hon'ble Justice Sailendra Prasad Talukdar placed reliance on those judgments to quash a proceeding exercising power under Section 482 of the Code after making observation in the body of the judgment, "No doubt the allegation made in the complaint cannot be white-washed by any subsequent payment". Said judgment is not followed here as a precedent.

9. It will not be out of place to mention that subsequently, in the case of Kamala Tea Company & Ors. said Hon'ble Justice Sailendra Prasad Talukdar observed in paragraph 22 -

"22. It is already emerges from the aforesaid discussion that there is no such law, nor any decision which conclusively dictates that in case of subsequent payment of the amount of employees' share of contribution towards P.F., however, belated it may be, the criminal prosecution must be quashed. It is rather the settled position of law that subsequent payment does not by itself condone the lapse but certainly is a factor to be taken into consideration at the subsequent stage and most certainly at the time of imposition of punishment, if at all".

10. In paragraph 23 of that judgment it has been observed -

"Liability of the Directors, as earlier indicated, can be best decided at a subsequent stage. There could be Directors who cannot be held responsible for the alleged offences. But, it is neither possible nor desirable for this Court to

quash the criminal proceedings initiated against them now. This Court at this stage is also not in a position to analyse the allegations against any particular accused person".

11. In the Division Bench Judgment of this Court in Jasoda and Silicate and Others case main contention of the appellants was all the complaints filed on behalf of the Regional Provident Fund Commissioner, West Bengal, were incompetent as the same were based on adjudications said to have been made under Section 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, but in respect whereof no notice had been served on the appellants and no sanction for prosecution had been obtained from the Regional Provident Fund Commissioner, West Bengal, the Andaman and Nicobar Islands for which the cognizance taken thereupon was bad in law and was liable to be quashed. Such contention is absent here. However, in the said judgment of the Hon"ble Division Bench the proceeding was not quashed. Observation in paragraph 23 of that reported case was made as -

"We have carefully considered the submissions made on behalf of the respective parties and have also noted the fact that pursuant to the orders of the Court in this appeal the outstanding dues have been deposited by the appellants. However, the fact still remains that as soon as default was committed, it constituted an offence punishable under Section 14 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, with imprisonment and fine also".

12. Exercising Writ Appellate Jurisdiction the Hon"ble Division Bench granted leave to the appellants to file separate affidavits before the learned Magistrate and disposed of the appeal giving direction upon the learned Magistrate for taking steps to drop the proceedings on being satisfied about payment of the amounts in default. Since the facts of this case are totally different in nature from the above mentioned case said decision cannot be applied in this case.

13. Mrs. Banerjee for the State has rightly submitted that all the decisions cited on behalf of the petitioner have been discussed in the case of The Eastern Tea Company Limited.

14. In summing up my discussions made above I find that the Latin Maxim, "Factum infectum fieri nequit" (A thing done cannot be undone) has not been overruled on the subject matter as yet.

15. As a result, I am not satisfied to quash the proceedings as prayed for. In consequence, this revisional application under Section 482 of the Code of Criminal Procedure is dismissed.

16. Interim order stands vacated.

17. Urgent Photostat certified copy of this judgment, if applied for, be supplied promptly observing all legal requisite formalities.