

(2010) 07 CAL CK 0098

In the Calcutta High Court

Case No : C.R.R. No. 3499-3503, C.R. R. No. 3499-3503 of 2008 With 750-760 of 2009, 3505 of 2008 With 761 of 2009, 3507-3509 of 2008 With 762-764 of 2009, 3513-3515 of 2008 With 765-767 of 2009, 3517-3518 of 2008 With 768-769 of 2009, 3521-3545 of 2008 With 770-794

Kartick Ch. Das and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 28-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A), 7A, 7B, 7Q

Citation : (2010) 4 CALLT 267 : (2011) 128 FLR 814

Hon'ble Judges : Prasenjit Mandal, J

Bench : Single Bench

Advocate : Dinabandhu Chowdhury and Iresh Paul, for the Appellant; Shiv Ch. Prosad, Kasem Ali Ahmed, S.S. Roy, Debabrata Roy and S.K. Mullick, in CRR 3540/08 and CRR 3550/08 Jay Sengupta in CRR 3510/08 Tirthankar Ghosh in CRR 3507/08 Rabi Sankar Chattopadhyay in CRR 3548/08 and CRR 3549/08 Chandreyi Alam, CRR 3499/08 and CRR 3500/08 Barin Roy in CRR 3539/08 and CRR 1048/08 Jharna Biswas in CRR 3508/08, CRR 3509/08 and CRR 3514/08, for the Respondent

Final Decision : Dismissed

Judgement

Prasenjit Mandal, J.—These applications have been filed u/s 482 of the Criminal Procedure Code praying for quashing the complaint cases bearing Nos. 1035C/07 - 1047C/07, 1068C/07 -1078C/07, 1117C/07 - 1132C/07 and 1168C/07 - 1171C/07 pending before the learned Chief Judicial Magistrate, Howrah.

2. Since identical questions are involved in these applications; all these applications are disposed of by this common judgment.

3. The fact of the case in short is that the applicants are the accused persons in

the respective cases. The applicant No. 1 is the proprietor of the applicant No. 2, a cinema hall. The cinema business has become uneconomical and for that reason the applicant No. 1 has been suffering huge financial losses. So the work of the applicant No. 2 had been stopped completely with effect from 01.06.2007. On 14.09.2007, one Mr. Samiran Mukherjee, inspector of the Provident Fund, came to the residence of the applicant No. 1 and asked him to put his signature on certain papers. He demanded Rs. 10,000/- from him. Over such an issue an altercation took place; when the applicant No. 1 refused to pay the said demand of bribe, Sri Mukherjee began to shout loudly in front of the residential house of the applicant No. 1 for attracting the attention of the people. A large crowd gathered in front of the residential house of the applicant No. 1. When the son of the applicant No. 1 protested and asked him to answer why he had come to their residence, then Sri Mukherjee could not offer enough explanation.

4. Thereafter the applicant No. 1 lodged a complaint before the S.P., Howrah over the said fact.

5. The applicants submitted Returns from time to time. But an order u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was passed on 09.10.2007 for the period from March 1999 to March 2007 ex parte. The applicants made payments from time to time and the statement of accounts would show that an excess payment had been made. Thereafter the applicants filed an application for review u/s 7B of the said Act. That application was rejected without assigning any reason. Being aggrieved, the applicants filed a writ petition being W.P. No. 27415(W) of 2007 before the High Court and the learned Single Judge passed an order directing the provident authority to make a fresh calculation of the net arrears together with interest for the period from March 1999 to March 2007. Subsequently, a notice was issued and the authority, after hearing the parties, passed the Final Order on 31.07.2008. From the said Final Order, it would appear that an excess amount had been realised and the same was lying with the provident fund authority. However, a demand of interest had been made and the applicants submitted a representation against the said order dated 31.07.2008.

6. But the provident fund authority lodged several complaints falsely u/s 14(1A) of the said Act for non-payment of certain dues namely, insurance fund contribution and administrative charges before the learned Chief Judicial Magistrate, Howrah. Such complaints were lodged out of grudge. So, the applicants have prayed for quashing the said proceedings.

7. Mr. Chowdhury, learned Advocate appearing on behalf of the applicants, submitted that the provident fund authority passed orders u/s 7A of the said Act on 20.09.2007 for the period from March 1999 to March 2007 ex parte (vide annexure P-2). By that order, it was observed that an amount of Rs. 3,51,474/- only was due as provident fund contribution and other allied dues and interest accrued thereon was to the tune of Rs. 1,77,122/- u/s 7Q of the said Act for the period from March 1999 to March 2007. Therefore, the total dues were to the

extent of Rs. 5,28,596/-. The provident fund authority directed the applicants to deposit the said amount within 10 days from the date of receipt of the order and to submit Returns for the period. The applicants preferred a review against the order u/s 7A of the Act. The prayer for review was rejected. Then, the applicants filed a writ application bearing WP. No. 27415(W) of 2007 for setting aside the said order. The learned Single Judge of the Hon'ble Court passed an order dated 28.01.2008 directing the provident fund authority to pass an order afresh for calculation of the net arrears due together with interest for the said period from March 1999 to March 2007 in accordance with law after giving an opportunity of hearing to the applicants within a period of four weeks from the date of communication of the order. Thereafter, the provident fund commissioner passed the order dated 31.07.2008 holding that the applicants paid an excess amount to the tune of Rs. 72,008/- as provident fund contribution and allied dues for the period from March 1999 to March 2007 and observed that an amount of Rs. 1,84,629/- as dues for interest u/s 7Q for the said period from March 1999 to March 2007 (vide annexure C) . Before passing of the Final Order, the Assistant Provident Fund Commissioner intimated the applicants by a letter dated 29.02.2008 intimating that after the adjustment of the attachment money of Rs. 2,07,134/- from the bank account of the applicants and deposits made by five challans on 29.12.2007 and 31.12.2007, it was found that an excess amount of Rs. 62,983/- appeared to have been deposited as provident fund dues. But an amount of Rs. 1,77,122/- was still payable u/s 7Q of the Act. He also submitted that the petitions of complaint against the applicants had been lodged on 27.11.2007, that is, before the passing of the order dated 29.02.2008 and the Final Order dated 31.07.2008. Therefore, the filing of the petitions of complaint before passing of the Final Order is without jurisdiction and so the petitions of complaint are not maintainable. He also submitted that order of sanction made before passing of the order was not also in accordance with the said Act. Therefore, the criminal proceedings should be quashed.

8. On the other hand, Mr. Prasad, appearing on behalf of the provident fund authority, in all cases, submitted that offence as alleged in the petitions of complaint was a continuing offence and so the filing of the complaint cases was quite maintainable in the present form.

9. Mr. Kasem Ali Ahmed, the learned Advocate appearing on behalf of the State in C.R.R. Nos. 3540 of 08 and 3550 of 08, submitted that once default was made in respect of payment under the Act, the offence was complete. Though deposits had been made subsequently, such deposits did not exonerate the applicants from the criminal liability at all. So the applicants could be held liable for the offence as disclosed in the petitions of complaint. So the applications should be dismissed.

10. Mrs. Jharna Biswas and learned Advocates appearing on behalf of the State, in respect of the other cases, endorsed the same views as expressed by Mr. K.L. Ahmed and they submitted to pass appropriate orders.

11. Therefore, the question to be considered in these applications are (i) whether the petitions of complaint filed by the provident fund authority for offence u/s 14(1A) are maintainable and (ii) whether if the prosecution is allowed to continue with the criminal cases against the applicants, it will be an abuse of the process of the Court.

12. After hearing the submission of the learned Counsel for the parties and after perusal of the materials on record, I find that the petitions of complaint u/s 14(1A) were lodged with the learned Chief Judicial Magistrate, Howrah on 26.11.2007. Initially, the provident fund authority passed an order u/s 7A of the said Act with regard to the dues for fund contribution and administrative charges for the period from March 1999 to March 2007 on 20.09.2007 ex parte (vide annexure B) . Thereafter the applicants preferred a review application u/s 7B of the Act before the respondent authority and that was rejected. Thereafter, as per materials on record, the applicants filed the writ application bearing WP.27415(W) of 2007 for setting aside that order. The learned Single Judge of this Hon'ble Court passed the order dated 28.01.2008 directing the provident fund authority to pass an order afresh for calculation of the net arrears due together with interest for the said period accordance with law after giving an opportunity of hearing to the applicants within a period of four weeks from the date of communication of the order (vide annexure P-2) . In compliance with that direction the concerned provident fund authority passed the Final Order dated 31.07.2008 holding that after adjustment of the payments made by the applicants after the filing of the petitions of complaint and bank attachment of the applicants in January, 2008, an excess amount of Rs. 72,008/- had been paid by the applicants with regard to the dues. Thus, I find that at the time of passing the Final Order, there was no due with regard to the provident fund account and administrative charges, at all, in July, 2008. The petitions of complaint had been filed in November, 2007, i.e. much earlier than the date of passing the Final Order. Even though the order of the learned Single Judge dated 28.01.2008 in W.P. No. 27415(W) of 2007 does not indicate anything whether the order passed u/s 7A on 20.09.2007 was set aside or not, yet when a direction was passed to pass an order afresh for calculation of the net arrears due with interest automatically the order passed u/s 7A on 20.09.2007 loses its force.

13. Mr. Chowdhury, appearing for the applicants, referred to the decisions in the case of Provident Fund Inspector, Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, , Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, and Antonie Bentz Pvt. Ltd. and Ors. v. Regional Provident Fund Commissioner and Ors. reported in (2003) 2 CAL LT 552. Thus, he submitted that when the applicants made payments during pendency of the criminal cases and the attachment of the applicants' bank account had been made during pendency of the petitions of complaint effecting excess payment, the proceedings by way of prosecution need not be pursued and the same should be quashed.

14. On the other hand, Mr. Prasad referred to the decisions reported in Bhagwant Singh Vs. Commissioner of Police and Another, , Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, , Howrah Motor Company Limited and Others Vs. Samir Kumar Das, and 2007(1) CHN 882 and thus he submitted that in view of the decisions of such cases, the offence alleged of, is a continuing offence and so, the proceedings should not be quashed.

15. Mr. Kasem Ali Ahmed referred to the decisions reported in Rajneesh Aggarwal Vs. Amit J. Bhalla, and thus he submitted that when the applicants failed to make deposits of the provident fund contribution of the employees, though realised and deposits made subsequently, such deposits at subsequent stage did not exonerate the applicants from the criminal liability.

16. In the present case, upon due consideration of the entire situation, I am of the view that when the learned Single Judge passed orders for calculation of the dues afresh with interest on 28.01.2008, then virtually there was no due at all, on the part of the applicant. The previous calculations as made in the order dated 20.09.2007 should not be taken into consideration in determining the criminal liability of the applicants. It may be pointed out here that as per materials on record, the applicants made certain payments in December, 2007 and the attachment of the bank account of the applicants had been effected in December, 2007 and then in the first week of January, 2008 an amount of Rs. 2,07,134 had been attached from the bank account of the applicants resulting in an excess amount of payment of Rs. 62,983/-after adjustment of the outstanding net dues of Rs. 3,51,474/-(vide the letter dated 29.02.2008 of the provident fund authority addressed to the applicants). So, I am of the opinion that at the time of passing of the order dated 28.01.2008 by the learned Single Judge, there was no due, at all, on account of the charges as claimed save the quantum of interest of Rs. 1, 77, 122/-. It is pertinent to mention here that the applicants filed an application for exemption from payment of interest in the circumstances stated in the application and it was not considered at all. I like to mention here also that the petitions of complaint had been filed for non-payment of provident fund dues and administrative charges only and not at all, for non-payment of interest. So, the question of payment of interest does not arise in the instant petitions of complaint. Therefore, the question of payment of interest will not be a matter of consideration to determine the lis between the parties in the petitions of complaint. What I find is that the Final Order was passed on 31.07.2008 holding that an excess amount of Rs. 72,008/- had been recovered from the applicants towards dues. So, even at the time of passing the Final Order by the provident fund authority pursuant to the order of the learned Single Judge there was no due on account of the provident fund charges as claimed by the concerned authority.

17. Though at the time of passing orders in February, 2008 and July, 2008 by the concerned provident fund authority, there was no due, the complaint cases were then pending. The applicants stated in the application under what circumstances

they could not pay their dues. The Apex Court has clearly stated that the orders u/s 7A is to realise the dues from the employer recovered from the employees and such dues had been duly recovered. Even an excess amount had also been recovered by way of attachment. In such a situation, according to the decision reported in Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, the proceedings should not be pursued and the same should be quashed. The complaint cases have been lodged for non-payment of provident fund dues and administrative charges and the same having been paid immediately after filing of the petitions of complaint even before passing of the order of the Hon"ble Court in the writ application, there remains nothing for the purpose of determining the lis in the respective petitions of complaint. This has been clearly described in the case of (2003) 2 CAL LT 552 in paragraph 8 which is quoted below for convenience:

8. The second stage is whether the Court will quash the criminal proceeding when element of criminal offence was available at the time of filing the FIR or not. In such question if the scope and ambit of the decisions reported in State of Haryana and others Vs. Ch. Bhajan Lal and others, read with the Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, and 1995 (1) CHN 115 (supra) are correctly understood a ratio will come out that when there is no dispute is available for the purpose of determining the lis, the criminal proceeding should not be proceeded with.

18. Therefore, after payment of the dues and adjustment of the money attached from the bank account of the applicants, there having been no lis for determination between the parties, the continuation of the criminal proceedings would be nothing but an abuse of the process of the court. Above all, as per order of the learned Single Judge of the Hon"ble Court, the Final Order being passed on 31.07.2008 and the petitions of complaint having been filed on 26.11.2007, i.e., before passing of the Final Orders by the provident fund authority, I am of the view that no useful purpose will be served if the criminal proceedings are permitted to be continued. The decisions cited by the learned Advocate for the opposite parties, I hold, are not applicable in the given situation. Therefore, I am of the view that these are all fit cases where the applications u/s 482 of the Cr.P.C., 1973 should be allowed. Therefore, the petitions of complaint are not maintainable and they are liable to be dismissed.

19. Accordingly, the C.R.R. 3499-3503/08, C.R.R. 3505/08, C.R.R. 3507-3509/08, C.R.R. 3513-3515/08, C.R.R. 3517-3518/08, C.R.R. 3521-3545/08, C.R.R. 3547-3548/08, C.R.R. 3549-3551/08 and C.R.R. 1048 of 2008, in all 45, are, therefore, allowed.

20. Consequently, the complaint case Nos. 1035C/07 - 1047C/07, 1068C/07 - 1078C/07, 1117C/07 - 1132C/07 and 1168C/07 - 1171C/07, in all 45, stand quashed.

21. In the circumstances, the respective CRAN applications have become

infructuous and these are dismissed.

22. Considering the circumstances, there will be no order as to costs.

23. Urgent xerox certified copy of this order, if applied for, be supplied to the learned Advocates for the parties on their usual undertaking.