
(2016) 09 CAL CK 0021

In the Calcutta High Court

Case No : C.P.R. Nos. 1824 to 1833 of 2010 with C.R.R. Nos. 1753, 1756 of 2010

Kartick Chandra Das

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 29-09-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

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

Citation : (2016) 151 FLR 1029 : (2016) LabLR 1191

Hon'ble Judges : Mr. Indrajit Chatterjee, J.

Bench : Single Bench

Advocate : Mr. Dinabandhu Chowdhury, Mr. Amal Kumar Saha and Mr. Iresh Paul, Advocates, for the Petitioners; Mr. S.C. Prasad, Advocates, for the Opposite Parties

Final Decision : Disposed Off

Judgement

Indrajit Chatterjee, J.—The petitioners have filed this application under Section 482 of the Cr.P.C. for quashing of the Complaint Case No. 1246C of 2007 now pending before the learned Chief Judicial Magistrate, Howrah.

2. A complaint was filed by the Provident Fund Inspector on 27-12-2007 before the said court under Section 14(1A) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (hereinafter called as the Act of 1952) wherein it was claimed that Rs. 139/- was not deposited by these petitioners as per the provisions of the said Act.

3. It may be mentioned that the petitioner no. 1 is the owner of Sujata Cinema Hall and the petitioner no.2 is the Cinema Hall itself.

4. It is the submission of Mr. Chowdhury, learned Advocate appearing on behalf of the petitioners, that the petitioner have already deposited the amount in question. He took me to page no. 36 of this petition to show that the Regional Provident Fund Commissioner, Sub-Regional Office, Howrah, as per order dated

31-07-2008 in obedience to the order of this Court passed in W.P. No. 27415(W) of 2007 re-assessed the matter and came to a finding that Rs. 72,008/- was paid in excess by the said establishment as Provident Fund & allied dues for the period from March, 1999 to March, 2007.

5. The said assessment further shows that Rs.1,84,629/- was assessed as interest under Section 7Q of the said Act of 1952 and it is the claim of the present petitioners that the said interest has been paid adjusting the extra payment.

6. Thus, it is the contention of the learned Advocate for the petitioners that since payment has been made by the petitioners, there is no justification to continue with the proceeding.

7. In this context, learned Advocate referred to a decision of this Court as reported in (2010) 4 Cal LT 267, Kartick Chandra Das & Anr. v. State of West Bengal & Ors. where some prosecution arising out of the same Cinema Hall, establishment were taken care of in that case before the floor of the court Complaint Case Nos. 1035C/07 to 1047C/07, 1068C/07 to 1078C/07, 1117C/07 to 1132C/07 and 1168C/07 to 1171C/07 were considered and the Court observed that all the cases were fit to be quashed by exercising the discretionary power granted under Section 482 of the Cr.P.C. 1973 (hereinafter called as the said Code). It may be noted that this Kartick Chandra Das is the petitioner before this court and in that case the said cinema hall's contributions were the subject matter and violation period was the same, but, no appeal was preferred as against that judgment. Thus, the P.F authority conceded to the judgment.

8. Learned Advocate also cited another Single Bench decision of this Court as reported in (2006) 4 CHN 701, Air Transport Corporation & Ors. v. State of West Bengal & Anr. wherein the learned Single Judge relied upon the decision of the Howrah Motor Company Ltd. v. Samir Kumar Das, as reported in 2004 (4) CHN 291 wherein the learned Court held "having regard to the fact that the entire dues have been paid there should not be any justification for a continuance of the proceeding".

9. Mr. Chowdhury also referred to a decision of the Apex Court as reported in 1995 Supp (4) SCC 580, Adoni Cotton Mills Ltd. & Ors. v. Regional Provident Fund Commissioner & Ors. to convince this Court that in that case before the floor of the Apex Court, the Apex Court quashed the prosecution giving license to the said Company to pay the dues even after the due date.

10. It may be noted that in the decision of Air Transport Corporation & Ors. (supra) and the decision of Adoni Cotton Mills Ltd. & Ors. (supra) were also considered.

11. In counter to all these, Mr. Prasad, learned Advocate appearing on behalf of the opposite party no.2, submitted before this Court that actually the violation took place for the period from March, 1999 to March, 2007 and as such, there

was a clear violation of 14(1A) of the said Act of 1952.

12. In this connection, he has relied upon the decision of this Court as reported in 2007(2) CLJ (Cal) 124, Kamala Tea Company Limited & Ors. v. The State of West Bengal & Anr. wherein the Single Bench of this Court declined to quash a proceeding on similar footing and directed that the learned Trial Court will dispose of the criminal prosecution taking note of the subsequent payment etc. He also cited an unreported decision of this Court as passed in C.R.R. No. 1607 of 2015, a prosecution under Section 406 of the I.P.C. wherein this Court declined to quash the criminal proceeding on the ground of delayed payment.

13. He also cited a decision of the Apex Court as reported in AIR 1984 SC 1688, Bhagirath Kanoria & Ors. v. State of M.P. wherein the late payment cannot absolve the prosecution under Sections 468/472/473 of the I.P.C.

14. This Court on scrutiny of the record is satisfied that payment has been made but the payment was made after the due date and as such, there was prosecution. The question now is should I allow such prosecution to be continued in view of the decisions of this Court as passed in Air Transport Corporation & Ors. (supra), Kartick Chandra Das & Anr. (supra) and also the decision of the Apex Court in Adoni Cotton Mills Ltd. & Ors. (supra). I am sorry to say that the decision of the Apex Court as passed in Bhagirath Kanoria & Ors (supra) cannot be a matching decision considering the fact that in that case several sections of the Indian Penal Code were involved. The decision of the Apex Court in Adoni Cotton Mills Ltd. (supra) is just on the point and relying on the said decision, this Court is satisfied that continuance of this prosecution before the learned Trial Court will be against the interest of justice and will consume the time and energy of the Court which is already clogged with such cases.

15. Considering the fact that payment has been made and that several such prosecution have been already quashed by this Court in Kartick Chandra Das (supra), this Court is of the view that this application under Section 482 of the Code is fit to be allowed on contest.

16. Let the proceeding, being Complaint Case No. 1246C of 2007 now pending before the learned Chief Judicial Magistrate, Howrah, be quashed.

17. This order will also govern in CRR No. 1824 of 2010 (arising out of complaint Case No. 1246C/2007), CRR No. 1825 of 2010 (arising out of complaint Case No. 1245C/2007), CRR No. 1826 of 2010 (arising out of complaint Case No. 1231C/2007), CRR No. 1827 of 2010 (arising out of complaint Case No. 1230C/2007), CRR No. 1828 of 2010 (arising out of complaint Case No. 1229C/2007), CRR No. 1829 of 2010 (arising out of complaint Case No. 1228C/2007), CRR No. 1830 of 2010 (arising out of complaint Case No. 1199C/2007), CRR No. 1831 of 2010 (arising out of complaint Case No. 1198C/2007), CRR No. 1832 of 2010 (arising out of complaint Case No. 1197C/2007), CRR No. 1833 of 2010 (arising out of complaint Case No. 1196C/2007), CRR No. 1753 of 2010 (arising out of complaint Case No.

1195C/2007), CRR No. 1754 of 2010 (arising out of complaint Case No. 1194C/2007), CRR No. 1755 of 2010 (arising out of complaint Case No. 1193C/2007) and CRR No. 1756 of 2010 (arising out of complaint Case No. 1192C/2007) which are in between the parties and regarding the same cause of action.

18. Department is directed to transmit a copy of this order to the learned Chief Judicial Magistrate, Howrah, forthwith for compliance and information.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis.