

(2014) 11 DEL CK 0258

In the Delhi High Court

Case No : CRL. M.C. Nos. 3728, 3737, 3738, 3739, 3740, 3741, 3742, 3743, 3744, 3745, 3746, 3747, 3748, 3749, 3750, 3751, 3752, 3753, 3754, 3755, 4310, 4315, 4319, 4320, 4321, 4322, 4323, 4324, 4325, 4326, 4327, 4328, 4329, 4330, 4331, 4332, 4333, 4334, 4336, 4338,

Kishan Lal

APPELLANT

Vs

Provident Fund Inspector

RESPONDENT

Date of Decision : 12-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A), 14(1B), 14A, 17, 6

Penal Code, 1860 (IPC) — Section 405

Citation : (2015) 1 JCC 206

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Bhavesh Kumar Sharma, Advocate for the Appellant; K.R. Chawla, Advocate for the Respondent

Judgement

V.P. Vaish, J.—By filing the present petitions under Section 482 of Code of Criminal Procedure, 1973 (hereafter referred to as "Cr.P.C.") the petitioner seeks quashing of complaint case under paragraph 7 & 8 of Employees Deposit Linked Insurance Scheme, 1976 read with Section 6C & 14(1B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") .

2. Since all these petitions involve similar question of law, they are being disposed of by this common order.

3. The factual matrix of the case is that the petitioner is the sole proprietor of M/s. Kishan Lal Building Construction, which is an establishment within the meaning of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and is the person in-charge of the said establishment for its day-to-day business. The said establishment has been allotted Code No. DL/12261. The case against the

petitioner is that the petitioner failed to pay the employees' pension fund contribution within the stipulated period and violated the provisions of paragraph 4 of Employees Pension Scheme, 1995 and section 6-A(2) of the Act and thus committed an offence punishable under Section 14(1A) of the Act.

4. Learned counsel for the petitioner urges that during pendency of the case, the petitioner has deposited the entire amount as per demand of the respondent, which fact was confirmed before the trial court on 21.10.2013 by the Enforcement Officer of the respondent/ complainant. He also submits that the petitioner has already cleared the outstanding dues and there is no liability on the part of the petitioner. Therefore, no useful purpose will be served by continuing with the complaint. In support of his submission learned counsel for the petitioner has relied upon Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, .

5. Per contra, learned counsel for respondent contends that the petitioner failed to deposit the contribution on account of deduction from the wages of the employees. An order on proceedings under Section 7-A of the Act was passed by Assistant Provident Fund Commissioner, Delhi on 19.08.2004 wherein the petitioner was directed to deposit the amount of contribution along with interest in accordance with the provisions of Section 7-A of the Act. The petitioner, however, failed to make payment of the aforesaid amount in default of which the respondent initiated criminal proceedings against the petitioner. After filing of the complaint, the petitioner deposited the amount in instalments partly in the years 2008 and 2011 and the balance in the year 2012. According to him, the amounts have been deposited after filing of the complaint and, therefore, complaint cannot be quashed. He has relied upon judgment of Division Bench of this Court in Birla Cotton Spinning and Weaving Mills Ltd. Vs. Union of India and Others, and Organo Chemical Industries and Another Vs. Union of India (UOI) and Others, .

6. I have carefully given my thoughtful consideration to the submissions made by learned counsel for both the parties and have also gone through the material on record.

7. Before advertng to the facts of the present case, it is necessary to reproduce relevant provisions of Section 405 of IPC, which reads as under:-

"405. Criminal breach of trust. - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1." A person, being an employer of an establishment whether exempted under section 17 [of the Employees' Provident funds and

Miscellaneous Provisions Act, 1952 (19 of 1952) , or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

Explanation 2." A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948) , shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

8. The judgment relied upon by the learned counsel for the petitioner in Adoni Cotton Mills" case (supra) is not applicable to the present case as in the said case the amount was deposited before institution of the complaint.

9. The establishment of the petitioner attracted the provisions of the Act. There is statutory obligation casted on the employer to deposit the contribution for each month. In the present case, the order under Section 7-A of the Act was passed by Assistant Provident Fund Commissioner on 19.08.2004 and the petitioner was directed to deposit the amount on contribution along with interest @ 12% per annum in accordance with the provisions of Section 7-Q of the Act. Even thereafter the petitioner failed to deposit the said amount.

10. The respondent filed complaints under Section 200 of Cr.P.C. read for committing the offence under paragraph 38 of the Act read with Sections 6 and 14-A of the Act in the month of March, 2011. As per counter affidavit filed on behalf of respondent, the petitioner made the payment in instalments on various dates i.e. 11.11.2008, 21.11.2008, 28.03.2011, 21.04.2011 and 28.08.2012. The same shows that the petitioner deposited the entire amount after about 16 months of filing of the complaint. The deposit of amount after filing of the complaint does not wipe out the offence and the complaint cannot be quashed by invoking powers under Section 482 of Cr.P.C.

11. In view of the aforesaid discussion, the petitions fail and the same deserves to be dismissed and the same are hereby dismissed.