(1993) 01 CAL CK 0035

In the Calcutta High Court

Case No : Criminal Revision No. 27 of 1990

K.L. Jalan and Others APPELLANT

Vs

State of West Bengal and Another RESPONDENT

Date of Decision : 08-01-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14A, 17(3), 4(2A)

Citation : (1993) 1 CALLT 454 : (1994) 1 LLJ 224

Hon'ble Judges : Arun Kumar Dutta, J

Bench : Single Bench

Advocate : Bulu Chatterjee, A.K. Sengupta and Sandip Ghosal, for the Appellant;

Final Decision : Allowed

Judgement

Arun Kumar Dutta,J.

1. By the instant application under Sections 410 and/or 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), along with three other applications, the petitioners have prayed the Court for quashing the relevant proceedings, being Case No. 595-C of 1982, as also Case Nos. 593-C, 594-C and 596-C, before the Chief Judicial Magistrate at Howrah.

2. On 18th November, 1982 the opposite party No.2-comptainant had filed complaints before the learned Chief Judicial Magistrate at Howrah against the petitioners u/s 14(2-A), read with Section 14-A(1) of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter shortened into Act). It is contended that M/s. Naskarpara Jute Mills Co. Ltd. had its office at 8, B.B.D. Bag, Calcutta-1, within the jurisdiction of Hare Street Police Station, which is an establishment within the meaning of the relevant provisions of the said Act. The petitioners accused persons have been described in the petition of complaints as the persons in charge of the Establishment, responsible to it for the conduct of its business. They were required to comply with the provisions of Clause (a) of

Sub-section (3) of Section 17 of the Act and the condition subject to which an exemption was granted in respect of the said Establishment. The complainant sought to prosecute the accused persons, who are the Directors of the said Company, on the allegation that the accused persons, being the employers, had failed to comply with the requirements of the provisions of Section 17(3)(a) of the Act. On perusal of the said complaints, the learned Chief Judicial Magistrate at Howrah had taken cognizance of the alleged offences, and had directed issue of processes against all the accused persons.

3. Being aggrieved by the order so passed by the learned Magistrate the petitioners have come up in revision before this Hon''ble Court for quashing the relevant proceedings on the grounds set forth therein.

4. It is sought to be contended by the petitioners that there is no averment in the complaints that the accused persons, as Directors of the aforesaid Company, had ultimate control over the affairs of the Establishment, and as such the same are not maintainable in law, and no valid cognizance could be taken on the face of vague, baseless and perfunctory complaints. It had also been urged on behalf of the petitioners that the relevant proceedings before the learned Chief Judicial Magistrate at Howrah are not maintainable in law in as much as the learned Magistrate was not competent to take cognizance of the alleged offences which had admittedly and allegedly been committed outside the territorial jurisdiction of his court.

5. Under the relevant complaints the complainants, as noted, sought to prosecute the petitioners-accused for offences committed u/s 14(2-A) of the aforesaid Act, read with Section 14-A(1) and/or 14-A(2) of the said Act, on the allegation that as Directors of the Company; they being the persons in charge of the Establishment responsible to it for the conduct of its business, had failed to transfer monthly Provident Fund contributions to the Board of Trustees for the periods mentioned in the relevant complaints, in contravention of the relevant conditions of exemption, read with the Government of India Notification issued under Sub-section (3) of Section 17 of the Act.

6. Section 14(2-A) of the relevant Act reads as follows:-

"Whoever contravenes or makes default in complying with any provisions of this Act or of any condition subject to which exemption was granted u/s 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable, with imprisonment which may extend to three months or with fine which may extend to one thousand rupees, or with both."

Section 14 deals with punishment for breaches of the provisions of the Act and the Scheme.

7. Section 14-A of the Act deals with the prosecution of the companies and relates to the procedure for such prosecution thereunder. As already noted, the

complainant had alleged in paragraphs 4 and 5 of the complaints that the accused-petitioners "at all material times were the persons in charge of the Establishment and were responsible to it for the conduct of its business. They were thus required to comply with the provisions of clause (a) of sub-section (3) of Section 17 of the said Act and the conditions subject to which exemption was granted in respect of the said Establishment." The Petitioners-accused, being Employers, had failed to transfer the monthly Provident Fund contributions to the Board of Trustees in respect of the amounts and the periods mentioned therein, in contravention of the requirements of law in respect thereof.

Section 17(3)(a) of the Act reads as follows:-

(3) Where in respect of any person or class of persons employed in an establishment an exemption is granted under this section from the operation of all or any of the provisions of any Scheme (whether such exemption has been granted to the establishment wherein such person or class of persons is employed or to the person or class of persons as such), the employer in relation to such establishment-

(a) shall in relation to the provident fund, : pension and gratuity to which any such person or class of persons is entitled, maintain such accounts, submit such returns, make such investment, provide for such facilities for inspection and pay such inspection charges as the Central Government may direct,".

8. The said provision being what it is, it is for the "employer" in relation to an establishment to comply with the requirements thereof. It naturally follows that for non-compliance/contravention of the said requirements/breaches of the provisions of the Act and the Scheme it is the Employer who would be liable for the offence punishable u/s 14 of the Act. The expression "whoever" occurring in Sub- section (2-A) of Section 14 in relation to contravention or default of the conditions/requirements of Section 17(3)(a) obviously, therefore, refers to Employer, who is obliged to comply with the requirements thereof.

9. It is pertinent to note that all petitioners-accused have been described in the complaints as Directors of the Company in question, stated to be an establishment, and not a Factory. The expression "Employer" in relation to an establishment (other than a Factory) has been defined in Section 2(e)(ii) to mean "the person who, or the authority which, has the ultimate control: over the affairs of the Establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent". It would seem significant and observable to note that Director of an establishment has clearly been excluded from the said definition. It has thus been submitted on behalf of the petitioners-accused that in the absence of any specific averment in the complaints that the petitioners, as Directors of the Company/Establishment, had ultimate control over the affairs of the Establishment the learned Magistrate could not conceivably have taken cognizance of the alleged offences. The expression "Employer", as; defined in

Section 2(e) of the Act, and the expression "person in charge of and responsible to" the Company for the conduct of its business in Section 14A of the Act are distinct and different; and a person cannot be prosecuted for non-compliance of the requirements of Section 17(3), merely because he has been described as person in charge of and responsible to the Company for the conduct of its business.

10. Gauged in the background of the averments in the complaints, as already indicated above, in the light of the aforesaid relevant provisions of the Act, there could be no mistaking that in order to make the petitioners-accused liable for the alleged offences, it has to be shown that they, as Directors, were responsible to the Company for the conduct of its day-to-day business. In the absence of any specific averment in the complaints that the petitioners-directors were in ultimate control over the Company, they could hardly be proceeded against. The aforesaid view would find support from the decision in Krishna Kumari Dalmia v. The State, 1981 (II) CHN 301, as also the observation of a learned Single Judge of this Hon''ble Court in H.P. Nathani & Ors. 1991 Cri.LR 203, with which I am in complete agreement. It may as well be noted in this context that in the decision in Municipal Corporation of Delhi v. Ramkrishna Rohtagi & Ors. 1983 Cr. LJ 159, Their Lordships of the Hon''ble Supreme Court had been pleased to quash a proceedings under the Prevention of Food Adulteration Act, 1954 in the absence of clear allegations against the Manager and Directors that they were responsible for conduct of business. And, as held by a learned Single (Bench) Judge of this Hon''ble Court in the decision in Abdul Rahaman and Ors. 1977 CHN 1073, even at the stage of issuing process the learned Magistrate has to be satisfied that there is a prima facie case against the accused and for obtaining such satisfaction, the materials on which the learned Magistrate decides to issue the process must indicate the necessary ingredients of the offence and also materials to connect the accused with the crime. It had been held by the Lordships therein that in the absence of any averment in the petition of complaint that the accused were, at the time the offence was committed, running the affairs of the business, no such prosecution lay against them, nor was the Magistrate justified in issuing process against them.

11. In view of the aforesaid authorities, the mere allegations in the complaints that the petitioners-accused as Directors were responsible to the Company for the conduct of its business and in discharge of such responsibilities took part in the running of the business without more, without any specific averment that they had ultimate control over the affairs of the Establishment do not clearly make out an offence punishable u/s 14(2-A) for contravention/non-compliance of the provisions/ requirements of Section 17(3)(a) of the Act.

12. On the point of jurisdiction as well, it appears from the petition of complaints that the address of the Establishment has been described as No.8, B.B.D. Bag (East), Calcutta-1, P.S. Hare Street. The allegations made therein are on the failures on the part of the Board of Trustees in respect of the said Establishment.

There is no allegation whatsoever that the accused-petitioners had failed to submit the Provident Fund 2 Return in contravention of Sub-section (3) of Section 17 of the Act. With the complaints, as they are, the alleged offences had allegedly been committed on the Establishment of the Company at the aforesaid address with P.S. Hare Street under the jurisdiction of the Court of the learned Chief Metropolitan Magistrate, Calcutta. The relevant proceedings before the learned Chief Judicial Magistrate at Howrah could not clearly be maintained as such. On the very averment in the complaints, the learned Chief Judicial Magistrate clearly could have no jurisdiction to entertain the same.

13. Upon the premises above, the learned Chief Judicial Magistrate at Howrah has clearly gone grievously wrong in taking cognizance of the alleged offences and directing issue of processes against the accused-petitioners, the way he did, The Instant revisional application, along with the three other applications filed in the matter, be accordingly allowed. The relevant proceedings before the learned Magistrate, being Case 5 Nos. 593-C, 594-C, 595-C of 1982 be hereby quashed.

