

(1999) 03 KAR CK 0032

In the Karnataka High Court

Case No : Criminal Appeal No's. 1020 to 1035 of 1996

K.M. Shivarama

APPELLANT

Vs

K.C. Purushothama

RESPONDENT

Date of Decision : 03-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 468, 472

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

Citation : (1999) 2 ALD(Cri) 21 : (1999) 2 ALT(Cri) 229 : (2000) 84 FLR 387 :
(1999) ILR (Kar) 3988 : (1999) 4 KarLJ 471 : (1999) 2 LLJ 1062

Hon'ble Judges : M.P. Chinnappa, J

Bench : Single Bench

Advocate : Sri Harikrishna S. Holla, for the Appellant; M/s. Ravi and Ravi Associates, for the Respondent

Judgement

1. The appellant filed 16 complaints against the respondent herein u/s 200 of the Cr. P.C. for the offence punishable u/s 14(1-A) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act") read with Paragraph 38 of the Employees' Provident Fund Scheme, 1952, (hereinafter referred to as "the Scheme"), for non-payment of the contributions due to the fund for various months mentioned in the complaint. Those complaints were filed before the learned Additional Munsiff, JMFC, Madikeri, Kodagu District and the learned Magistrate after taking cognizance directed issue of process to the respondent herein in all the 16 cases assigning respective numbers. Thereafter, the complainant let in evidence and after appreciating the oral and documentary evidence, the learned Additional Munsiff and JMFC, Madikeri, dismissed all the complaints and the respondent was acquitted in all the cases. Being aggrieved by the judgments of acquittal, the appellant has preferred these appeals.

2. Heard the learned Counsel for the appellant and the learned Counsel for the respondent. Since common questions of law and facts are raised in all these appeals between the same appellant and respondent, all these cases are

disposed of by this judgment. Retain a copy of this judgment in each file.

3. There is a dispute that the respondent is governed under the Provident Fund Scheme and the Act and the Scheme are applicable to the respondent-establishment. It has been alleged that the respondent been allotted Code No. KN/2867 and the same is situated at K. Chettalli, Kodagu District. K.C. Purushotham is the person in charge of the said establishment and responsible for the day-to-day conduct of the business. The respondent was required to pay the P.F. contribution as per Section 14(1-A) of the Act and Section 38 of the Scheme but he failed to pay the same. Therefore, the appellant submitted that after obtaining necessary sanction complaints were lodged. But, the learned Magistrate dismissed the complaints.

4. The learned Counsel for the appellant has vehemently argued that the Court below has committed an error in dismissing the case filed against the respondent for non-remittance of the provident fund which was due every month and failing to submit the Form 5-A though it is covered under the Act and Scheme. To substantiate this argument, he has submitted that the true copy of Form 5-A marked as Ex. P. 3 is produced which disclosed that the respondent had filed Form 5-A used for unexempted establishments where the name of the respondent is mentioned as the owner of Srimangala Estate and it also disclosed the code number of the establishment under the Act bearing No. KN 2867. Therefore, he submitted that this copy is admissible in evidence and therefore, it clearly establishes that the establishment was covered under the Act. To further substantiate his argument he placed reliance on a decision rendered by the Supreme Court in *Pirithi Chand v State of Himachal Pradesh*. In that case, their Lordships have discussed Sections 32 and 62, Explanation 2 and held that carbon copy made by one uniform process of certificate of doctor given in discharge of her professional duty was admissible in view of Section 32 as the doctor's attendance could not be procured without an amount of delay. It is also held that the copy is also admissible being primary evidence within Explanation 2 to Section 62. In that case, the prosecutrix was examined by Dr. C.S. Vedwa and she had issued a medical certificate as per Ex. P. E, dated 16-6-1979. That lady doctor was not available for giving evidence as she had proceeded on long leave. However that doctor's certificate was marked through Dr. Kapila who was conversant with the handwriting and signature, he having worked with her for two years. He stated that the carbon copy of the certificate Ex. P. E was prepared by Dr. Vedwa by one process and bears her signature. Under those circumstances, their Lordships have held that the copy could be marked and acted upon.

5. The learned Counsel for the appellant submitted that a Director of private company by naming himself as in charge and responsible for the management of the factory can be prosecuted u/s 14-A even if he is neither an occupier nor manager under para 36-A, Form 5-A of the Scheme and in support of his argument he has placed reliance on a decision in *Srikanta Datta Narasimharaja*

Wodiyar v Enforcement Officer, Mysore , wherein their Lordships have held:

"A director of a private company, who is neither an occupier nor a manager can be prosecuted u/s 14-A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 for violation of the Provident Fund Scheme when in Form 5-A, Columns 8 and 11 the Director has declared himself as one of the persons in charge of and responsible for conduct of the business of the establishment or the factory".

In this case as stated above, Form 5-A does not bear the signature of this respondent. There is nothing to indicate that this respondent is either owner or the manager or the director and he has any concern or interest over this property. Therefore, this decision on facts is not applicable to this case.

6. In this case, Ex. P. 1 though is a carbon copy, is not signed by the respondent. On the other hand, it is merely stated as "signed". The date also is not mentioned. The Enforcement Officer has signed it. Therefore, it cannot be said that this Form 5-A was submitted by the respondent. Though the respondent has specifically denied that he is either the owner of the coffee estate or the manager of the same, not even a scrap of paper was produced by the appellant to show that he is the person who had filed Form 5-A. It was not difficult for the appellant to either produce some documentary evidence to show that the respondent is the owner of the coffee estate or for managing and conducting the business and responsibility for the day-to-day transaction of the concern. The evidence of P.W. 1 in the course of his cross-examination is very vague. He has clearly stated that he has not verified any document to show as to whether he is managing the affairs of the Srimangala B Estate during the year 1988. He does not know who was managing the affairs of the said estate in the year 1988. He has not verified any document to show the extent of the said estate. He has denied the suggestion that Srimangala B Estate was not in charge of the accused. He has also denied the suggestion that the accused was not managing the affairs of the said estate at any point of time. He admits that Ex. P. 3 is the carbon copy. If Ex. P. 3 is the carbon copy, the original should be available in the office of the complainant or the Provident Fund Commissioner. He should have produced the original to show the signature of the respondent to establish the case beyond all reasonable doubt. He has also denied the suggestion that the accused has not furnished Ex. P. 3 and that he has not issued any show-cause notice to the accused. However, with all that he denies the suggestion that the accused is not liable to furnish returns and also the contribution. It is also denied that the Act is not applicable to the accused and he filed a false complaint. All these denials could have been established by the appellant by producing documentary evidence available in his office. More so it was very easy for the appellant to establish it when it claims that a permanent number is given to the respondent-estate. Necessary document pertaining to the assignment of permanent number could have been produced to convince the Court that the establishment is covered by the Act and when once it is covered, it is not open to the respondent

to deny it. But unfortunately in this case, there is not even a scrap of paper on which the Court could rely to establish that this estate was covered under the Act and Scheme. That being the case, the Court has rightly not acted on Ex. P. 3 which is said to be the copy of Form 5-A.

7. The Court below has also rejected the complaint on the ground that it is barred by time. This finding of the Court was based on the judgment of this Court in *Provident Fund Inspector, Coorg v N.S. Dayananda*, wherein this Court has held that failure to pay contribution under paras 30(1) and 38(1-A) of the Scheme is not a continuing offence. Therefore, Section 468 of the Cr. P.C. is applicable and the complaint filed after the time prescribed therein is barred by time. But, their Lordships of the Supreme Court in *Bhagirath Kanoria and Others v State of Madhya Pradesh*, held:

"Non-payment of employer's contribution to the Provident Fund before the due date, is a continuing offence and, therefore, the period of limitation prescribed by Section 468 cannot have any application. The offence will be governed by Section 472 according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues.

The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act an offence. The failure to pay the employer's contribution before the due date considering the object and purpose of that provision, which is to ensure the welfare of workers, it cannot be said that the offence is not of a continuing nature.

Further, where a controversy is raised as to whether the offence is of a continuing- or non-continuing nature, considering the object and purpose of the Act, cognizance of the offence ought to be taken after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires".

In view of this Judgment of the Hon''ble Supreme Court, the decision in *N.S. Dayananda's* case, *supra*, on the same question of law is impliedly overruled. Therefore, I have no hesitation to hold that it is a continuing offence and not covered u/s 468 of the Cr. P.C. To that extent, the order passed by the learned Magistrate holding that it is barred by time is liable to be set aside.

8. After having given my thoughtful consideration and verifying the entire records, I am fully convinced that the Court below has correctly dismissed the complaints against the respondent and I do not find any merit to interfere with the judgment of the Court below.

Accordingly, all these appeals are dismissed.