

(1975) 09 AHC CK 0050
In the Allahabad High Court

Maidhan Gupta and Another

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 03-09-1975

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 300, 403
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14
Insurance Act, 1938 — Section 105
Penal Code, 1860 (IPC) — Section 1, 400, 405, 406, 409

Citation : (1975) AWC 630 : (1976) CriLJ 868

Hon'ble Judges : Hari Swarup, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hari Swarup, J.—This revision has been filed against the order of the Sessions Judge by which he dismissed the applicants' revision.

2. A complaint was filed against the applicants for an offence u/s 409 I- P.C. The allegations were that the accused being the employers had deducted from the wages of the complainant and the other workmen the amount which they were liable to contribute under the Employees' Provident Funds Act but had not deposited the same as required by law. It was alleged that the accused had misappropriated this amount and were accordingly liable to be punished for an offence u/s 409 I. P.C.

3. The accused in the case filed as application praying that the prosecution be not continued as the same was barred by Section 403 Criminal P. C and also by the absence of sanction contemplated by Sub-section (3) of Section 14 of the Employees' Provident Funds Act. The contention of the accused was that on their committing default in making the deposit of the amounts deducted out of the employees' wages, they had already been prosecuted and punished u/s 14 of the Employees' Provident Funds Act, and were accordingly not liable to be prosecuted and punished again on the basis of the same omission made by them

in not complying with the provisions of law.

4. The learned Magistrate overruled both the objections and dismissed the application. In revision the Sessions Judge also took the view that the prosecution was not barred either by reason of Section 403 Criminal P.C. or Section 14(3) of the Employees' Provident Funds Act.

5. learned Counsel for the applicant has contended that the prosecution is barred by reason of Section 403 Criminal P.C. because the offence for which the applicants were convicted u/s 14 of the Employees' Provident Funds Act is identical to the offence contemplated by Section 400 I. P- C. According to him the two constitute the same offence. The contention is that it is not really the name of the offence or provision of law under which it is punishable but the act or omission of the accused which has to be taken into consideration for applying the bar of Section 403 Cr.P.C. I am unable to accept that the offences are the same. Section 403(1) Criminal P. C- which is equivalent to Section 300(1) of the Criminal P.C. 1973, provides that a person who has once been tried by a court for an offence and convicted of such offence, shall not be liable to be tried again for the same offence. The other condition u/s 403 is not relevant for the present case. Section 403 bars the trial for the same offence and not for different offences which may result from the commission or omission of the same set of acts. This was made clear by the Supreme Court in the case of *The State of Bombay Vs. S.L. Apte and Another*, . In that case the Supreme Court had to consider the offence u/s 105 of the Indian Insurance Act and Section 409 of the Indian Penal Code. It was held that the ingredients of the two offences were not the same and hence the prosecution under the two Sections 1 would be a prosecution for two separate offences. It was pointed out that Section 405 I.P.C. requires entrustment of property while Section 105 of the Insurance Act did not require any such entrustment Similarly, the ingredient of misappropriation and conversion contemplated by Section 405 I. P.C. was not an ingredient in the offence under I Section 105 of the Indian Insurance Act. The (position is similar in the present case. The ingredients of Section 14 of the Employees' Provident Funds Act are not the same as of Section 406 I. P.C. The offence u/s 409 I. P.C. and Section 14 Employees' Provident Funds Act cannot, therefore, be deemed to be the same offence. Section 403 Criminal P.C. accordingly will not bar the trial.

6. The other contention of the learned Counsel about the want of sanction has also no merit. Under Sub-section (8) of Section 14 of the Employees' Provident Funds Act sanction is required only for prosecution for an offence under the Employees' Provident Funds Act. No sanction is required for the prosecution of a person for an offence u/s 409 I. P.C. As regards prosecution u/s 14 of the Employees' Provident Funds Act, there was already sanction. The question of the sanction for the offence u/s 409 I. P. C- does not arise.

7. learned Counsel for the applicant then contended that from the facts alleged in the complaint, entrustment of property and other essential ingredients of Section 405 I P.C. cannot be spelled out. The contention is that no offence contemplated

by Section 409 I. P.C. is made out on the allegations in the complaint. On this ground the learned Counsel urges that the prosecution itself may be quashed. He also contended that the prosecution may be quashed as there is already sufficient delay and the money of the complainant is already secured. These are, however, contentions foreign to the present inquiry. The present revision has been filed against the- order of the Sessions Judge dismissing the revision against the order of the Magistrate by which he rejected the specific objection about the maintainability of the complaint raised by the accused in their application. I have only to see whether the Magistrate or the Sessions Judge committed any error in deciding the controversy or objections raised by the applicants. Such a relief may be available in a proper proceeding, but cannot be granted in this revision which is directed only against the order of the Sessions Judge passed in revision.

8. The revision is dismissed.