(2017) 02 KL CK 0058

In the High Court Of Kerala

Case No : Crl. M.C. No. 443, 444, 445, 446 and 447 of 2016

Mathew Jose APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 15-02-2017

Acts Referred:

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

Citation : (2017) 2 ILRKerala 597 : (2017) 1 KerLJ 914 : (2017) 1 KLT 1005 : (2017) LabLR 454

Hon'ble Judges : Mr. Sunil Thomas, J.

Bench : Single Bench

Advocate : Sri. V.B. Hari Narayanan, Advocate, for the Petitioner; Dr. S. Gopakumaran Nair, Sr. Advocate, Sri. S. Prasanth, SC, Employees Provident Fund Organisation, for the Respondent No. 2; Ramesh Chand, Public Prosecutor, for the Respondent No. 1; Sri. S. Prasanth, SC, Employees Provident Fund Organ, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Sunil Thomas, J.—These Crl. M.Cs. are filed by accused Nos. 1 and 2, who are the Managing Director and Director respectively of the first accused company. The Enforcement Officer of the Employees Provident Fund Organization laid separate complaints against the accused alleging that they have committed default of payment of contribution to the Employees Provident Fund, under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (the"EPF Act" for short), read with Employees Provident Fund Scheme, 1952 and Employees'' Pension Scheme 1995. Prosecution was initiated for offences punishable under sections 6A, 14(1A) and 14A of the above Act and Schemes thereunder, after issuing demand notices for different periods of default.

2. According to the petitioners herein, pursuant to the notice, entire amount including the penalty and fine payable was remitted. Hence, it was contended that the prosecution launched against them was not sustainable, in the light of

the payment of the entire amount. It was further contended by the petitioners that, there was no break of PF coverage and, hence the employees were also not affected. It was contended that the prosecution will not survive in the light of payment of dues to the satisfaction of the PF authorities.

3. Learned counsel for the petitioners, to substantiate his contention, relied on the decisions reported in Adoni Cotton Mills Ltd. and Ors v. Regional Provident Fund Commissioner and Ors, 1995 (S4) SCC 580, Provident Fund Inspector, Faridabad v. Jaipur Textile, Faridabad (AIR 1987 SC 1738) and that of the Division Bench of the Calcutta High Court in Jasoda Glass and Silicate and others v. Regional Provident Fund Commissioner and others (2002 (3) LLN 1146), to contend that payment of the entire amounts due will wipe off the criminal liability and that the criminal proceedings initiated under the Act, Rules and Schemes can be quashed exercising the power under section 482 Cr.P.C.

4. In Adoni Cotton Mills Ltd.''s case(cited supra), notice for recovery of money due against the establishment covered under the EPF Act was issued. The proposed prosecution was unsuccessfully challenged before the High Court. When challenged, the Hon''ble Apex Court held that, since the amounts due have been paid to the satisfaction of the P.F Commissioner, the proceedings for prosecution initiated by the impugned notice was liable to be quashed.

5. In Provident Fund Inspector, Faridabad v. Jaipur Textile, Faridabad''s case (cited supra), the Hon''ble Supreme Court had occasion to deal with an identical situation and had quashed the prosecution initiated under the EPF Act on the ground of payment of arrears.

6. Both the above decisions were referred to by the Division Bench of the Calcutta High Court in Jasoda Glass and Silicate and others'' case(cited supra). After elaborate consideration of the various decisions, the Court concluded that, in the light of payment of arrears, no purpose will be served by prosecuting the accused and hence, directions were given to the parties to file details regarding the payment before the court below and directed the learned Magistrate to drop the proceedings, if it was satisfied that the payments were duly made.

7. Learned counsel for the respondent Provident Fund Organization, on the other hand, contended that the decisions referred to above by the learned counsel for the accused do not lay down the legal proposition that in the event of discharge of the liability due, the prosecution will not survive. It was also contended that, the above three decisions were rendered in the peculiar facts and circumstances of the case and do not lay down the law on the subject. The learned counsel on the other hand, relied on the decisions of the Calcutta High Court in Pranati Textiles and Ors. v. State of West Bengal and Anr.(1989 Crl.LJ 1804), Anjuman Tea Company Ltd. And Ors. v. State of West Bengal and Ors.(2008 (1) CHN1061) and Hotel Dock Palaces Pvt. Ltd. And Ar. v. State of West Bengal and Anr. (2007(113) FLR 692) to buttress the contra legal proposition.

8. It is pertinent to note that in Adoni Cotton Mills Ltd.''s case the Supreme Court

had specifically referred to the peculiar circumstances which placed that case on a different pedestal than from the other prosecutions under the EPF Act. The prosecution was initiated in that case about 15 years prior to the Supreme Court decision. Two of the appellants had died in the meanwhile. The offence alleged related to failure to deposit the contribution under the enactment for a short period of four months, immediately following the discharge of the company from the receivership. It was also noted that during the pendency of those appeals, the court had granted stay of the further proceedings subject to deposit of the money. After referring to the above special circumstances, the court held that the prosecution was liable to be quashed. Further, the above decision was not one touching upon the quashing of the criminal proceedings, whereas the subject matter involved in that decision was the legality of notices issued prior to the prosecution.

9. In Jaipur Textile''s case the Supreme Court had held that in the light of the payment of arrears, the Provident Fund authority shall not proceed with the prosecution. However, it was specifically directed that, that order will not be treated as a precedent and it was rendered on the peculiar facts and circumstances of the case. That by itself clearly implied that quashing of the proceedings in that case could not be treated as the law, but only as an exception to the proposition that, normally prosecution was not liable to be quashed merely on payment of contribution pending the proceedings.

10. In Jasoda Glass and Silicate''s case, the Division Bench of the Calcutta High Court had referred to both the above Supreme Court decisions and several other decisions. In that case, the specific contention of the learned counsel for the EPF was that, the Supreme Court decisions did not lay down the law that criminal prosecution commenced against the employer was liable to be quashed, on the sole ground that the entire provident fund dues had been liquidated by them. It was contended that, it was immaterial whether the employer had deposited the arrears due, having regard to the provisions of Section 14 of the Act, since offence for the periods in question had already been committed and the learned Magistrate had taken cognizance on the basis of materials disclosed in the complaint. The payments subsequent to commission of offence could only be a mitigating factor on the quantum of punishment to be awarded. It is pertinent to note that the Division Bench did not refer to the earlier Division Bench decision of the Calcutta High Court in Pranati Textiles and Ors v. State of West Bengal and Anr. which had taken a contrary view that failure to pay the arrears within the prescribed time was an offence under the Act and the Scheme and any later payment cannot by itself, in law, stand in the way of the prosecution. It can be a mitigating circumstance, a relevant factor to be taken into consideration, in determining the sentence, but not one to forestall the prosecution. The above Division Bench decision was not referred to in the subsequent Bench decision in Jasoda Glass and Silicate''s case. Further, Jasoda Glass and Silicate''s case did not answer the specific contention of the learned counsel for the EPF that on default, offence under section 14 of the EPF Act punishable with imprisonment

and fine also stood committed. In the above circumstances, the above decisions relied on by the learned counsel for the petitioners cannot be relied on .

11. Learned counsel for the EPF organization relied on the decisions reported in Hotel Dock Palace Pvt. Ltd. and Another v. State of West Bengal and another and Anjuman Tea Company Ltd. v. State of West Bengal. In both the cases the court discussed in detail all the earlier decisions and concluded that Jasoda Glass and Silicate''s case was based on peculiar facts involved therein and cannot be considered as laying down the correct law on the subject that on payment of dues the criminal proceedings is not liable to be quashed. On the other hand, it was held that the Division Bench decision in Jasoda Glass''s case, was without noticing the binding legal precedent laid down by the Division Bench of the Calcutta High Court in Pranati Textiles ''s case.

12. A recapitulation of all the decisions show that the decisions of the Supreme Court in both the above cases do not lay down the law and were only decisions peculiar to the facts and circumstances of the cases involved. The decision in Jasoda Glass''s case did not answer the actual legal question involved and overlooked the earlier binding decision in Pranati Textiles ''s case. It was held in Pranati''s case that failure to pay dues within the prescribed time was an offence under the Act and the Scheme and that had there been a failure to pay in time, any later payment cannot by itself in law, stand in the way of the prosecution. It can be a mitigating circumstance, a relevant factor to be taken into consideration in determining the sentence. Evidently,the above decision lays down the correct law. Hence, the contention that, criminal proceedings for violation under Section 14 of the EPF Act will not survive in the light of the payment of amounts after initiation of the prosecution, is not legally sustainable and is liable to be rejected. However, payment can be a mitigating circumstance which the trial court can take into consideration while moulding the sentence, if it ultimately arrives at a conclusion of guilt of the accused. Further it is also for the complainant to consider whether the prosecution is to be continued in the light of the delayed payment. In the light of the above, Crl. M.C.s are without any basis and are liable to be dismissed.

13. The Cr. M.Cs are dismissed. The petitioners are entitled to seek all their remedies before the court below. If any warrant is issued by the court below, that will be kept in abeyance for a period of 15 days from today to enable the petitioners herein to seek recall of the warrant after appearing in the Court.

