
(2013) 03 P&H CK 0110
In the Punjab And Haryana At Chandigarh
Case No : C.R.M. No. M-14194 of 2011

M.P. Singh

APPELLANT

Vs

Assistant Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 26-03-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 14(2), 462, 482, 82, 82(4)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A),
14(A)(1), 14A, 14A(1), 2(e)

Citation : (2013) 3 RCR(Criminal) 37

Hon'ble Judges : Jitendra Chauhan, J

Bench : Single Bench

Advocate : Rakesh Bhatia, for the Appellant; Karminder Singh, for the Respondent

Final Decision : Dismissed

Judgement

Jitendra Chauhan, J.—This judgment of mine will dispose of a bunch of 51 petitions (CRM Nos. M 14194, 15153, 15154, 15155, 15156, 15157, 15158, 15159, 15160, 15161, 15162, 16386, 16387, 16388, 16389, 16390, 16391, 16392, 16393, 16394, 16395, 16396, 16397, 16398, 16399, 17695, 17706 of 2011 and CRM Nos. M 24184, 24185, 24186, 24187, 24188, 24189, 24190, 24191, 24192, 24193, 24194, 24195, 35703, 35704, 35705, 35706, 35707, 35708, 35709, 35710, 35711, 35712, 35713, 35714 of 2013) filed u/s 482, Code of Criminal Procedure. The facts and the parties in all the above cases are almost similar. All the petitions have been filed by M.P. Singh, the Managing Director of the company known as M/s. Teck Tools Limited. The Respondents are Assistant Provident Fund Commissioner, Chandigarh and Enforcement Inspector officer of Regional Provident Fund Commissioner, Chandigarh. The complaint was moved by the Inspector, Provident Fund Inspector against the Petitioner and the Company for offences under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the Act) and the Schemes framed thereunder. The Petitioner was prosecuted for failure to deposit the Provident

Fund amount. The period of default is different in each case. In application No. 14194 of 2011, the complaint relates to non-payment of the Employees Provident Contributions (Employees share and Employers Share) amounting to Rs. 233331/- and administrative charges of employees Provident Fund amounting to Rs. 16433/- for the period 11/2004 to 1/2005 by the stipulated dates and thus have committed offence, which is punishable offence under sections 6, 14(1A), 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. In different cases, the period of default is different and it is not necessary to mention the same because it is not relevant for setting the issue in question.

2. For the sake of convenience, the facts of the case are being extracted from CRM No. M 14194 of 2011. The Provident Fund Inspector lodged a complaint (Annexure P20 to the Petition) on 16th December, 2008, alleging that M/s. Teck Tools Limited is an establishment to which the provisions of the Act and Schemes framed under the Act are applicable. M/s. Teck Tools Limited is a Company within the meaning of Explanation to Section 14A of the Act and the respondent No. 2 (Petitioner in this Court) is the Managing Director of the aforesaid establishment and was responsible to the establishment for the conduct of business of the said establishment for the said period and is liable to be punished. The accused have failed to deposit the amount of employers share of contribution for the period 11/2004 to 1/2005, and have thereby, committed an offence punishable under sections 6, 14(1A), 14A(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Almost similar allegations have been made in the other cases and the difference is only with regard to the period or the amount.

3. The learned counsel for the petitioner submits that the impugned order dated 17.2.2011, declaring the petitioner as proclaimed offender is bad in law. The Courts at Mohali have no jurisdiction, as the establishment falls within the territory of police station Kurali, District Ropar. He further argues that the amount due towards the petitioner has already been deposited by way of Bank guarantee. He further submits that the service was not effected upon the petitioner as the summons were sent at his factory address, which is lying closed for the last few years. He further argues that there is no evidence to show that the petitioner is incharge and responsible person for the conduct of the business of the company.

4. The learned counsel for the respondents submitted that once default was proved in respect of payment under the Act, the offence was complete. Though deposits had been made subsequently, such deposits would not exonerate the applicants from the criminal liability. The applicants were rightly held liable for the offence as disclosed in the petitions of complaint. Therefore, he prays for dismissal of the petitions. The following questions emerge for consideration; (i) whether the complaints filed by the provident fund authority for offence under Sections 6, 14(1A), 14(A)(1) are maintainable; and (ii) whether the prosecution, if allowed to continue would be an abuse of the process of the court.

5. I have heard the learned counsel for the parties and carefully gone through the pleadings of the parties.

6. The underlined object of the Act is based on the ideals of human dignity and social justice. Every worker wants to be certain not only of his next meal but also of his subsistence for the rest of his life and subsistence of his dependants as well. With this need of the social security, which is an element of stability and protection in the modern life, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, has come into existence in achieving the objects of the Directive Principles of our Constitution.

7. Keeping in view the above, this Court now proceeds to examine the issues raised in the instant petition.

8. So far as the issue of the territorial jurisdiction of the JMIC, Mohali, with regard to the passing the summoning order is concerned, it is worthwhile to mention here that on 27.8.2012, the complaint cases were transferred by the JMIC, SAS Nagar, Mohali to the District and Sessions Judge, Rupnagar at the request of the complainant. The Courts at Mohali falls under the Rupnagar Sessions Division. Mohali has not been designated as a full fledged Sessions Division so far. As per the provisions of Section 14(2) of the Cr.P.C., the Magistrate passing the summoning order has the territorial jurisdiction over the entire district. As per Section 462 of the Code, no order of any criminal court shall be set aside merely on the ground that the trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong Sub Division or a local area, unless it appears that such error has in fact occasioned a failure of justice. Moreover, no prejudice or failure of justice has been caused to the present petitioner by the summoning order of the JMIC, who has power to take cognizance of the offence. At present the complaint cases are being tried by the competent court having the jurisdiction. So, this argument is repelled.

9. The next point argued by the learned counsel for the petitioner is regarding declaring the petitioner as proclaimed offender. The contention has some force as u/s 82 of the Code, the Magistrate has no power to declare a person as proclaimed offender except as provided in Section 82(4) of the Code. In the present case, the petitioner is accused of offences under The Employees Provide Funds and Miscellaneous Provisions Act, 1952, which are not covered under the offences mentioned in Section 82(4) of the Code. Therefore, the impugned order dated 17.2.2011 is set aside. The petitioner has already appeared before the trial Court in all the complaint cases, in which he has been ordered to be admitted to bail vide order dated 10.5.2011 by this Court. The order dated 10.5.2011 is made absolute and the petitioner shall remain on bail during trial in all the complaint cases.

10. The main thrust of the learned counsel of the petitioner is on the point that as all the dues alongwith the penalty stands cleared, and nothing remains due, criminal complaints are not legally sustainable.

11. Once the offence is committed, any payment made subsequent thereto will not absolve the accused of the liability of criminal offence, though in the matter of awarding of sentence, it may have some effect on the court trying the offence. However, by no stretch of imagination, criminal proceedings can be quashed on account of such deposit. Therefore, such deposits are of no consequence.

12. The last argument is with regard to the petitioner being the incharge and responsible person for the conduct of the establishment. Since, petitioner is the Managing Director of the establishment and he is the one who was in the control of the affairs of the establishment and therefore, he falls within the definition of employer as contained in Section 2(e) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Therefore, he cannot escape from his liability.

13. In *State of Karnataka Vs. M. Devendrappa and Another*, the Hon''ble Supreme Court has held as under:-

As noted above, the powers possessed by the High Court u/s 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See: *Janata Dal Vs. H.S. Chowdhary and Others*, *Dr. Raghubir Sharan Vs. The State of Bihar*, It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers u/s 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the

High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in Court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceeding. [See: Dhanalakshmi Vs. R. Prasanna Kumar and Others, , State of Bihar and Another Vs. P.P. Sharma, IAS and Another, : State of Bihar and Another Vs. P.P. Sharma, IAS and Another, Rupan Deo Bajaj (Mrs.) & Anr. v. Kanwar Pal Singh Gill & Anr., Mrs. Rupan Deol Bajaj and another Vs. Kanwar Pal Singh Gill and another, , State of Kerala and Others Vs. O.C. Kuttan and Others, State of U.P. Vs. O.P. Sharma, , Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada, Satvinder Kaur Vs. State (Govt. of N.C.T. of Delhi) and Another, , Rajesh Bajaj Vs. State NCT of Delhi and Others,

14. The questions raised in the present petitions are not simply the questions of law. These are mixed questions of fact and law, on which evidence of both the parties is required to be led.

15. In view of my above, discussion, this Court is of the considered view that the present complaints are maintainable and the continuance of the trial by no stretch of imagination can be said to be an abuse of the process of the court. Therefore, all the above bunch of 51 petitions are dismissed. However, nothing herein above shall be construed to mean as an expression of opinion on the merits of the case. However, the petitioner may take all the pleas at the stage of trial at an appropriate stage.