(2015) 03 KAR CK 0237

In the Karnataka High Court

Case No : Criminal Revision Petition Nos. 391, 392, 394, 395, 396, 397, 398, 399, 401, 404, 407, 408, 390, 393, 403, 410, 400, 405, 402, 406 and 409/2011

M.R. Patel APPELLANT

Vs

The Enforcement Officer RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1)(A), 14(1)(B), 14(1A), 14(1B), 14(2)

Citation : (2015) 03 KAR CK 0237

Hon'ble Judges : A.S. Pachhapure, J.

Bench : Single Bench

Advocate : Kiran Kumar R., for the Appellant; Nandita Haldipur, Advocates for the Respondent

Final Decision : Partly Allowed

Judgement

A.S. Pachhapure, J.—The petitioner has challenged his conviction and sentence for the offences punishable under Sections 14(1A), 14(1B) and 14(2) read with Section 14A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as ''the Act'' for short) directing him to undergo simple imprisonment for one month (in second and third batches of cases) and to pay a fine.

2. The facts reveal that the petitioner is the Managing Director of M/s. Sunsu Garments Private Limited, a company situated at II Stage, Industrial Suburb, Yeshwanthapur, Bangalore. The said company is governed by the provisions of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 so far as the employees'' working under the said company and therefore, it has to collect and contribute the provident fund every month. The failure on the part of company to pay the contribution would attract the provisions of Section 14(2) read with Section 14A of the Act.

The respondent herein is the Enforcement Officer of the Employees'' Provident Fund, Bangalore Division who submitted a complaint to the Trial Court alleging that the petitioner and other accused who are the persons in-charge of aforesaid company are required to pay the employees'' share of the provident fund for a period from June, 1997 to January, 1999 and as they have failed to pay the same within the time, alleging that they have violated Section 6 read with P.38 of the EPF Scheme, 1952 and having committed the offences under the different provisions of Sections 14(1A), 14(1B) and 14(2) read with Section 14A of the Act. The petitioner and other accused appeared before the trial Court.

On behalf of the respondent, P.W. 1 was examined and in his evidence, Exs. P1 to Ex. P12 were marked in all the cases. After recording the statement of petitioner under Section 313 of Cr.P.C and as no defence evidence was led, the Trial Court heard the respective counsel for the parties and on appreciation of the evidence on record, convicted the petitioner and other accused for the offences punishable under Section 14(2) read with Section 14A of the Act in CC Nos. 804 to 810 of 2002 for the offences punishable under Section 14(1A) read with Section 14A of the Act, in CC Nos. 811 to 817 of 2002 and for the offences punishable under Section 14(1B) read with Section 14A of the Act and in CC Nos. 818 to 824 of 2002 (the aforesaid cases are referred to as ''first batch'', ''second batch'' and ''third batch'' respectively for the sake of convenience).

In the second and third batches of the cases, the Trial Court ordered him to undergo simple imprisonment for one month and to pay a fine of Rs. 5,000/- each (in second batch of cases) and Rs. 1,000/- each (in the third batch cases), whereas in the first batch of cases, the petitioner was ordered to pay a fine of Rs. 1,000/- only. Aggrieved by the conviction and sentence, the petitioner approached the Sessions Court and all the appeals came to be dismissed. Aggrieved by the orders of Courts below, these revision petitions have been filed.

3. Heard the learned counsel appearing for both the parties.

4. The point that arises for my consideration is:

"Whether the petitioner has made out any grounds to warrant interference with the conviction and sentence ordered by the Courts below?" 5. Learned counsel for the petitioner would submit that the company is under liquidation and in the circumstances, the respondent cannot seek contribution of the provident fund. It is also his submission that the petitioner is not in-charge of the aforesaid establishment and therefore, he is not liable to undergo the imprisonment or to pay the fine. Further more, it is his submission that there are no employees working in the company and therefore, he is not liable to pay any contribution. He also submits that the sanction order granted is not in accordance with law.

It is his alternative submission that the petitioner is 70 years old and as the company is under liquidation, he seeks exemption of imprisonment and reduction of fine.

6. On the other hand, learned counsel for the respondent supports the orders and submit that the Courts below have taken a just decision on the basis of admitted documents exhibited in the course of trial and no grounds have been made out by the petitioner to interfere with the order of Courts below.

7. The copy of sanction order has been produced at Ex. P11. Though it is in printed form and the names of company, amount of contribution, the period for which there was failure on the part of petitioner to pay the contribution and the names of the persons responsible was filled in. But, anyhow, the aforesaid information which is to be filled in the blanks itself is sufficient to take a decision as to whether the sanction for prosecution is to be granted for violation of the provisions of the Act. It appears that there were numerous cases against the petitioner to be filed, the authority must have printed the forms and having filled in all the requirements for granting sanction, orders were issued. I do not think that the sanction order produced at Ex. P11 has any defect to invalidate it.

8. Perusal of the material placed on record would reveal that Ex. P5 is Form No. 5(A) which relates to return by the owner sent to the Regional Commissioner under the Employees'' Provident Fund Scheme, Family Pension Scheme and Deposit Insurance scheme. Perusal of Ex. P5 would reveal that it is the petitioner who has signed Ex. P5 as the employer of the aforesaid company (M/s. Sunsu Garments Private Limited) and in column No. 11 relating to the particulars of the persons mentioned who are in-charge and responsible for the conduct of business of the establishment, it is the petitioner''s name which has been shown as the person responsible for the conduct of business of the establishment. It is not in dispute that Ex. P5 was submitted by the petitioner before the Competent Authority. The petitioner is the Managing Director of the aforesaid company and this fact is admitted by the petitioner even as seen in the cause title of these revision petitions.

9. P.W. 1 - the Enforcement Officer, EPFO Regional Office, Bangalore in his evidence in para 2, states that the petitioner is the Managing Director who is in-charge of the said establishment. Learned counsel for the petitioner brought to the notice of this Court a suggestion made to P.W. 1 in the cross-examination at para 11. It reads as under:

"It is true that Ex. P5 is dated 22.10.1992. It is not true to suggest that the names of the persons shown in column No. 11 are the persons who are responsible for the conduct of the business of the establishment from 22.10.1992." 10. Anyhow, the aforesaid suggestion made was, admitting the fact that the petitioner was in-charge of the establishment. Even if this suggestion is denied that makes no difference in view of the admitted document - Ex. P5 signed by the petitioner. Therefore, I do not think that this confusing suggestion made in the cross-examination has any relevance, in view of the fact that there is no dispute that the petitioner is the Managing Director of establishment.

11. The total contribution in all the three batches of cases would be Rs. 16,40,922/-. The aforesaid sum is bifurcated to different months periodically for three months each and separate cases have been registered against the petitioner. In case, if the respondent is to seek the recovery of aforesaid sum and to approach the criminal Court for the offences aforesaid, he has to pass an order under Section 7(a) of the aforesaid act. For the said purpose, there has to be an enquiry by the Assistant Provident Fund Commissioner. This enquiry has to be done only after notice to the parties.

12. Ex. P7 is the order which has been produced by the respondent and admitted in the evidence before the Trial Court. It is not in dispute that the order at Ex. P7 was after notice to the petitioner. It is no doubt true that there is subsequently an order which has been produced at Ex. P8. It relates to the correction of order that was pronounced under Ex. P7. The correction was only to an extent of correcting the clerical mistake by reducing payable amount of contribution. The orders were passed by the Assistant Provident Fund Commissioner vide order dated 08.04.1999.

13. There is an appeal against this order to the Employee''s Provident Fund Appellate Tribunal and if the employer is aggrieved by the said order, he could file an appeal. The petitioner has not challenged the order by filing an appeal and therefore, the order passed by the Assistant Provident Fund Commissioner under Ex. P7 or the corrected order Ex. P8 has attained finality. The grant obtained by the petitioner before the learned Magistrate, the contribution that has been calculated is in respect of all those employees of the company and in this context, the petitioner cannot dispute either number of employees or the contribution to be made.

14. That apart, Ex. P7 reveals that the petitioner himself has appeared before the Assistant Provident Fund Commissioner and filed the statement. Therefore, the contention that there are no employees in the establishment or that there was no liability to contribute the provident fund does not arise for consideration either by the Trial Court or before this Court.

15. So far as the contention of petitioner as regards the liquidation of company is concerned, even assuming for the time being that it is under liquidation, it does not bar the criminal action under any of the provisions of law. It makes some difference so far as civil proceedings are concerned and therefore, the contention in this regard has no force as the petitioner is the person in-charge of the establishment being the Managing Director of the aforesaid company and as he was to pay the contribution and having committed the default, is liable to the conviction and also the sentence.

16. So far as the first batch of cases are concerned, the charges are under Section 14(2) of the Act and the petitioner has been ordered to pay a fine of Rs. 1,000/-, in default to undergo simple imprisonment for one month. There is no sentence of imprisonment ordered by the Courts below. The maximum fine that

is payable is Rs. 4,000/-. I think that the fine at Rs. 1,000/- ordered, does not need any interference.

17. So far as the second batch of revisions are concerned, the punishment is under the provisions of Section 14(1)(A) of the Act and the third batch are under Section 14(1)(B) of the Act. In the second batch, he was ordered to undergo imprisonment for one month and to pay fine of Rs. 5,000/-, whereas in the third batch, he is ordered to undergo imprisonment for one month and to pay fine of Rs. 1,000/- with default sentences. It is not in dispute that the petitioner is 70 years old. It appears that the company is under liquidation. In the circumstances, learned Counsel has placed reliance on the decision of this Court reported in M.R. Joseph Vs. John Menezes, .

18. This Court while considering the provisions of Section 14(1)(a) and the sentence of imprisonment, held that it is not a fit case to impose any sentence of imprisonment. It directed only to pay the fine amount. It is relevant to note that the minimum imprisonment has been provided is six months. It is only for adequate reasons, it can be reduced. But anyhow, it does not mean that the petitioner has to be exempted from punishment of imprisonment, as there has to be minimum imprisonment irrespective of whether six months or otherwise. When the law mandates punishment of imprisonment as the minimum sentence, though it can be reduced, the petitioner cannot be exempted from liability to undergo the imprisonment contrary to the provisions of law.

19. In the aforesaid circumstances, the decision lose the binding force as the minimum imprisonment as provided under the provisions of Section 14(1)(A) of the Act, the minimum sentence has to be awarded. But anyhow, as the petitioner is old aged and company is under liquidation, I think imprisonment till raising of the Court for a day can be appropriate in addition to paying the fine as ordered by the Courts below, with default sentences.

20. Consequently, the revision petitions are partly allowed. The conviction ordered by the Courts below are confirmed. The sentence is modified.

Crl. R.Ps. 390, 395, 398, 401, 403, 405, 407/2011 are dismissed.

Crl. R.Ps. 391 to 394, 396, 397, 399, 400, 402, 404, 406, 409, 410 and 408 are allowed in part.

The sentence of imprisonment is modified. The petitioner is directed to undergo imprisonment till raising of the Court. The petitioner shall appear before the Trial Court on 15.04.2015 to undergo the sentence.

The order of fine is confirmed. The substantive sentence of imprisonment shall run concurrently.