

(1984) 06 MAD CK 0030

In the Madras High Court

Case No : Criminal R.C. No. 743 of 1980 and 744 of 1980

M.S. Dhananjayan

APPELLANT

Vs

State, by Provident Fund Inspector, Madras

RESPONDENT

Date of Decision : 22-06-1984

Acts Referred:

Citation : (1989) LW(Cri) 210

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

Bench : Single Bench

Advocate : S. Byravan, for M/s. O.V. Baluswamy and A.K. Sridharan, for the Appellant; Kannappa Rajendran, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.A. Kader, J.—The revision is directed against the judgment of the Second Metropolitan Magistrate. Egmore, Madras finding the revision

Petitioner guilty u/s 14-AA of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, convicting him thereunder and sentencing

him to undergo imprisonment for a period of three months and to pay a fine of Rs. 50 for each of the six counts, the sentence to run concurrently.

2. The case of the prosecution is that the accused who was the proprietor of Rhaenko Printers Company governed under the above Act, did not

deposit the members' share and also the employee's share of the employees Provident Fund contribution, Family Pension Fund, Employees

Deposit Insurance contribution and the administrative charges for the months of October, November and December, 1977 within time.

3. The learned Magistrate found the accused guilty on that score. The accused was once prosecuted for the very same offence previously in 1976

and he had been convicted in C.C. No. 6030 and 6031 of 1976 for offence u/s 14(1A) of the Provident Fund Act. Being a second charge, he has

been found guilty u/s 14(AA) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, hereinafter referred to as the Act and

convicted and sentenced as stated above. Hence this revision.

4. The main argument advanced by the learned Counsel for the petitioner is that the previous conviction of the accused has not been proved in

accordance with law. u/s 298 of the Crl. P.C., the previous conviction has to be proved by producing an extract certified under the hand of officer

having custody of the records of the Court in which such conviction or acquittal may be proved, or in case of a conviction either by a certificate

signed by the officer in charge of the jail in which the punishment or any part thereof was undergone, or by production of the warrant of

commitment under which the punishment was suffered. No such extract has been produced. The learned Magistrate has stated that when

questioned, the accused admitted the previous conviction and on this basis he has proceeded to convict him u/s 14(AA) of the Act. In *Yasin v.*

King Emperor ILR 28 Cal 689, a Bench of that Court has held that:

In order to support a charge of a previous conviction, there should be on the record a copy of some judgment or extract from a judgment or some

other documentary evidence of the act of such previous conviction, as is required by Section 91 of the Evidence Act or Section 511 of the Crl. P

C. The examination by a Magistrate of the accused in respect of such previous conviction is without legal warrant or justification

I therefore hold that the Magistrate, without the extract of the judgment in the previous case, ought not to have questioned the accused and his

reliance on the admission of the accused for holding that he has been previously convicted is unsound. It must therefore be taken that the previous

conviction of the revision Petitioner has not been satisfactorily established.

5. It is not disputed that the Petitioner committed the offence for which he was charged in this case. As pointed out by the learned Counsel, it

becomes his first conviction and the provisions of Section 14(1A) of the Act are attracted,

6. In the result, the conviction and sentence imposed upon the revision Petitioner u/s 14-AA of the Act are modified and the revision Petitioner is

found guilty and convicted u/s 14(1 A) of the Act. Section 14(1A) (a) and (b) impose a minimum sentence of three months and one month

respectively. But, the Court is empowered to give a lesser punishment for adequate or special reasons. It is represented by the revision Petitioner

that the revisioner has since ceased to carry on business and this circumstance will therefore will be taken into consideration in imposing

punishment.

7. In the result, I find the revision Petitioner guilty u/s 14(1A) of the Act(sic) and sentence him to pay a fine of Rs. 50 on each of the six counts in

default to suffer imprisonment for 15 days on each of the counts. The fine if paid already will be adjusted. Subject to this modification, the revision

fails and is dismissed.