

(1997) 09 KAR CK 0066

In the Karnataka High Court

Case No : Criminal Revision Petition No's. 577 to 587 of 1995 connected with
Criminal Revision Petition No's. 593 to 603 of 1995

M/s. General Beedi Works, Puttur, Dakshina Kannada District
and Another

APPELLANT

Vs

Provident Funds Inspector, Mangalore Division, Balmatta,
Mangalore

RESPONDENT

Date of Decision : 23-09-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 468, 472
Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 14 (1A),
14 A, 17 B

Citation : (2000) 2 KarLJ 86

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : Sri G.S. Visweswara, S.C. and Sri. P.K. Bhat, for the Appellant; Sri
Harikrishna S. Holla, for the Respondent

Judgement

1. These batches of revisions u/s 397 of the Cr. P.C. are directed against the order of the II Additional Sessions Judge, Dakshina Kannada, Mangalore, allowing the appeals in part by confirming the order of conviction rendered by the Trial Magistrate but modifying the sentence.

2. The petitioners are the Managing Directors of a Beedi Factory at Puttur. It is the case of the prosecution that one P.S. Abbas was the Proprietor of M/s. General Beedi Works, Puttur and he died on 2-4-1986. He committed default in paying the contribution to the Provident Fund under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("the Act" for short). The petitioners herein and two others declared themselves as partners of the firm M/s. General Beedi Works after the death of P.S. Abbas. They have also committed default in paying the contributions in spite of notice and therefore, they are prosecuted for committing the offence punishable u/s 14(1-A) and 14A of the Act. The complainant was examined as P.W. 1 who got marked 17 documents on

his behalf and closed his case. The accused have raised three important contentions before the Trial Court. They are, that the complainant was not the Enforcement Officer and has no power to initiate prosecution; that the complaint is lodged after limitation and the Magistrate has erred in taking cognizance of the offence alleged and that the accused have not succeeded to the business of Abbas and there is no liability u/s 17B of the Act as there is no transfer of establishment in terms of Section 17B of the Act. The learned Magistrate has rejected all these contentions holding that P.W.1 was the Enforcement Officer and that the offence is a continuing offence and that the provisions of Section 17B of the Act are applicable to the transfer of management or establishment to the accused and therefore, they have committed the offence punishable u/s 14(1-A) of the Act and sentenced A-1 and A-2 only to pay a fine of Rs. 10,000/- each and in default to suffer imprisonment for 3 months. A-2 was separately sentenced to undergo imprisonment for a period of one month for the said offence.

3. The petitioners who are A-1 and A-2 before the Magistrate, challenged the legality and correctness of that order in Criminal Appeal Nos. 65 to 86 of 1992, before the II Additional Sessions Judge, Dakshina Kannada, Mangalore. Similar contentions were raised which were also not acceptable to the Appellate Court and therefore, the learned Appellate Judge has confirmed the conviction, but held that the offence is punishable u/s 14(1-A), but falls under clause (b) of Section 14(1-A) of the Act and therefore modified the sentence by directing both the accused to pay a fine of Rs. 5,000/- each and that A-2 was sentenced to suffer one day imprisonment till the rising of the Court.

4. Sri G.S. Visweswara, learned Senior Counsel, for the petitioners has reiterated and raised the same old contentions before this Court also. In addition to that, it is pleaded by him that the 2nd petitioner is working as a Lecturer in a college and he was not associated with the working of the company during the life time of his father. Even thereafter he was not actively associated with the factory and that the fine of Rs. 5,000/- each in all these cases means they have to virtually close the factory and therefore the Court has to show lenient view in the matter.

5. Insofar as the first contention that P.W. 1 is not the Enforcement Officer, reliance is placed by the prosecution to Ex. P-6 which is the order passed by the Regional Provident Funds Commissioner, Karnataka, wherein 3 Head Clerks of the Department were promoted to the post of Enforcement Officers with effect from assumption of charge purely on a temporary basis. The accused attempted to avail the advantage of temporary nature of promotions and the conditions imposed in the order of promotion. The Government of Karnataka through the Secretary to the Department of Social Welfare and Labour Department issued a notification empowering all the Provident Funds Officers and Enforcement Officers of the Office of the Regional Funds Commissioner of Karnataka to act as such. In my opinion, the complainant who was appointed as the Enforcement Officer by the Competent Authority was empowered to act under the Act including initiation of prosecution against those who have contravened the

provisions of Section 14 of the Act.

6. It is also contended that Exs. P-2 to P-4 does not amount to grant of sanction and there was no delegation of powers to Regional Provident Funds Commissioner for initiating prosecution. This contention, in my opinion, has no merit at all in view of the delegated powers to the State Regional Provident Funds Commissioner in this aspect. The other contention that the accused are not the transferees u/s 17B of the Act has no merit as transfer of establishment includes sale, gift, lease or licence or in any other manner whatsoever. The employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contributions and other sums due from the employer under any provision of this Act or the Scheme. In this case, the transfer is due to the death of father and husband of the petitioners and therefore though it is not a case of succession as such, the assumption of management of the factory by forming the partnership is sufficient compliance of Section 17B of the Act.

7. Insofar as the delay in filing this complaint, it is the contention of the State that the offence is a continuing offence and this question is settled in a decision of the Supreme Court in Bhagirath Kanoria and Others Vs. State of M. P., , wherein the Supreme Court has held as follows:

"Non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence and, therefore, the period of limitation, prescribed by Section 468 cannot have any application. The offence will be governed by Section 472, according to which, a fresh period of limitation begins to run at every moment of the time during which offence continues. Case law discussed -- 1978 Lab. IC 868 (Bom.), overruled.

The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Contribution before the due date considering the object and purpose of this provision, which is to ensure the welfare of workers, cannot be said that the offence is not of a continuing nature.

Further, where a controversy is raised as to whether the offence is of a continuing or non-continuing nature, considering the object and purpose of the Act, cognizance of the offence ought to be taken after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires".

8. In Srikanta Datta Narasimharaja Wodiyar Vs. Enforcement Officer, Mysore, , the Supreme Court has held as follows:

"A director of a private company, who is neither an occupier nor a manager can be prosecuted u/s 14A of the Employees' Provident Funds and Miscellaneous

Provisions Act, 1952, for violation of the Provident Fund Scheme when in Form 5-A, Columns 8 and 11, the Director has declared himself as one of the persons in charge of and responsible for conduct of the business of the establishment or the factory.

Sub-sections (1) and (2) of Section 14A extend the liability for any offence by any person including a partner by virtue of explanation if he was in charge or was responsible to the company at the time of committing the offence. The expression, "was in charge of and was responsible to the company for the conduct of the business" are very wide in their import. It could not, therefore, be confined to employer only.

Both clauses (i) and (ii) of Section 2(e) again are wide in their sweep. In clause (i) are included not only owner or occupier but even the agent or manager. When it comes to establishments other than factory it is not confined to owner or occupier but to all those who have control or are responsible for the affairs of the company. It includes even Director. Therefore, every such person who has the ultimate control over the affairs of company becomes employer. To say therefore that since Paragraph 36-A requires an employer to do certain acts, the responsibility for any violation of the provision should be confined to such employer or owner would be ignoring the purpose and objective of the Act and the extended meaning of employer in relation to establishments other than the factory".

9. Incidentally, Sri G.S. Visweswara has raised another contention regarding sanction. However, this contention has no merit in view of the Delegated Authority on this question. Learned Counsel for the respondent relying on the judgement in Srikanta Datta Narasimharaja Wodiyar's case, supra, has submitted that the question of transfer of liability does not arise in this case, thereby justifying the orders of the Courts below. I have carefully scrutinised the material with reference to the legal contentions raised in these revisions. I find no merit in these contentions. Insofar as the sentencing of the accused is concerned, the First Appellate Court has held the alleged offence as punishable u/s 14(1-A)(b) of the Act. The punishment prescribed is not less than six months and a fine of Rs. 5,000/- in any other case. The word used in the section is "shall". However, the Court may for adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a lesser term.

10. The First Appellate Court has relied upon the proviso to Section 14(1-A)(b) and sentenced A-2 to suffer imprisonment till the rising of the Court, but imposed a fine of Rs. 5,000/-. The proviso empowers the Court to impose a sentence of imprisonment for a lesser term for any adequate and special reasons to be recorded in the judgment. But the proviso does not grant any such discretion in the matter of imposing fine. Therefore, the Court has no discretion to reduce the quantum of fine. Hence, for the foregoing reasons, I do not see any good ground to interfere with the orders of the Courts below. I do not find any merit in these revisions. Hence, the revisions are dismissed.