

(1986) 02 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No's. 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2419 and 2420 of 1981 (R)

M/s. Katras Ceramics and Refractories (P) Ltd., and Others

APPELLANT

Vs

The State of Bihar and another

RESPONDENT

Date of Decision : 11-02-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14(1A), 14(2), 14(2A), 14(A)(1)

Citation : (1986) PLJR 410

Hon'ble Judges : Anand Prasad Sinha, J

Bench : Single Bench

Advocate : S.B. Sinha and U.K. Sarkar, for the Appellant; Debi Prasad, Senior Standing Counsel for Central Government and A. Sahay, J. C., for the Respondent

Judgement

Anand Prasad Sinha, J.—In all these 11 applications, the common point involved as to whether the prosecution against petitioner Nos. 2, 3, and 4, who have been described as the Managing Director and Directors respectively, can be said to be valid in law keeping in view the provisions of section 14-A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (hereinafter to be referred to as the Act). These applications have been directed against the order taking cognizance against the petitioners for the offence u/s 14 of the Act by the learned Sub-divisional Judicial Magistrate, Baghmara at Dhanbad.

2. It appears that complaint petitions had been filed for default on the part of the accused Company M/s. Katras Ceramics & Refractories (P) Limited and petitioners Nos. 2 to 4 for not depositing in time the employees and the employer's contribution as required under the Act. Consequently, the petitioners have been stated to have committed offence under paragraph 76(d) of the Employees' Provident Funds Scheme, 1952 read with section 14(1A).14(2), 14(2A), 14(A) (1) and/or 14(A) (2) and 14AA of the Act for different months and thus separate complaint petitions has given rise to these applications.

3. Mr. S.B. Sinha, learned counsel appearing on behalf of the petitioners, has argued each and every case separately and independently) but the common point taken is as aforesaid.

4. Mr. Debi Prasad, learned Senior Standing Counsel for the Central Government has placed before me the pleadings, the facts of each and every case separately, but as stated above, since common point is involved, for the convenience they are being disposed of by one order.

5. Mr. S.B. Sinha has argued, inter alia, that (1) the names of petitioner Nos. 2 to 4, being the Managing Director and the Directors respectively, have been mechanically mentioned in the complaint petition without specifying the conditions of section 14-A of the Act and that will indicate that there is non-application of mind at the time of taking cognizance; (ii) the cognizance against the Company-petitioner No. 1 is barred by limitation u/s 468 of the Code of Criminal Procedure and (iii) the contributions have already been deposited.

6. Mr. Sinha in support of non-maintainability of the order of cognizance against petitioner Nos. 2 to 4 has relied upon a decision of the Calcutta High Court in the case of M/s. Mahaldaram Tea Estate (Pvt.) Limited and others vs. D.N. Prodhan and others (1976 Lab. J.C. 898). It will be relevant to mention paragraph 5 of the said judgment which runs as follows:--

Under the aforesaid section a Company is made primarily liable for an offence committed under the Act. The liability may be extended to other persons vicariously only under the conditions laid down in the section. A Director of Company may be concerned only with the policy to be followed and might not have any hand in management of its day to day affairs. Such persons must necessarily be immune from such prosecutions. In the three petitions of complaint, filed before the learned Magistrate, apart from the statement that the petitioner Nos. 2, 3 and 4 are Directors of the aforesaid Company and hence responsible for the conduct of its business and management, there is no further material from which the learned Magistrate could satisfy himself that the petitioners Nos. 2, 3 and 4 took some part in the running of the company or its tea gardens. In the absence of such averments in the three petitions of complaint, the cognizance taken by the learned Magistrate against the petitioners Nos. 2, 3 and 4 in the three cases, is bad in law and must be quashed. This view will find support in a decision of the Supreme Court in the case of Girdhari Lal Gupta v. D.N. Mehta (A.I.R. 1971, Supreme Court, 2162).

In addition, he has based his argument on the basis of an un-reported decision contained in Criminal Misc. Nos. 881, 882; 884, 887, 888 & 893 of 1979 (R) disposed of on 23.2.1981 by this Court. In this decision it has been held that there should be some visible sign to indicate that the persons named to be responsible and incharge for conducting the affairs of the Company be, in fact, responsible and incharge and simply mentioning of the statement involving them as responsible and incharge will not be sufficient to attract the penal provisions

and thus the provisions of section 14-A of the Act have to be construed strictly. It appears that a decision of the Supreme Court in the case of Girdhari Lal Gupta Vs. D.H. Mehta and Another, have also been relied upon for the same purpose.

7. Mr. Debi Prasad, learned Senior Standing Counsel for the Central Government, appearing on behalf of opposite party No. 2 has stated reading that part of the complaint petition that the statements made in the complaint petition indicating petitioners Nos. 2 to 4 being the Incharge and responsible for conducting the business of the Company is enough and the details are matters of evidence which cannot be gone into in these applications at this stage. Further it has been stated that the details of the facts in the nature of evidence need not be mentioned in the complaint petition at all. Moreover, with regard to the non-application of the law of limitation, reliance has been placed upon a Full Bench decision of this Court in the case of Ram Kripal Prasad and Others Vs. The State of Bihar and Others, .

8. It is true, so far the element of limitation is concerned, that does not appear to be applicable in the facts and circumstances of the present case and also considering the decision of the Full Bench of this Court in the case of Ram Kirpal Prasad & Others (Supra). Moreover, learned counsel for the petitioner has not seriously urged this point of limitation so far as the Company, petitioner No. 1, is concerned. However, in the facts and circumstances and also considering the submissions of the learned counsel for the petitioners, it is difficult to consider the case of the company accused for quashing of the cognizance against it.

9. Therefore, now the point for real consideration would be as to whether the cognizance against petitioner Nos. 2 to 4 can be said to be valid, keeping in view section 14-A of the Act. It will be relevant to quote section 14-A of the Act which runs as follows :--

14-A :--Offences by Companies:--(1) If the person committing an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme is a Company, every person, who at the time the offence was committed was incharge of and was responsible to the Company for the conduct of the business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, the Scheme, the Family Pension Scheme or the Insurance Scheme has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director or Manager, Secretary or other Officer of the Company, such Director, Manager, Secretary or other Officer shall be deemed to

be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Therefore, it would appear that the conditions laid down in section 14-A of the Act is a pre-condition for the prosecution of the Officers of the Company under certain conditions. It is also clear that the Officers sought to be prosecuted must be shown to be In charge of and responsible to for conducting the business of the Company or it has to be shown that the alleged offence has been committed with their connivance. This will indicate that a statutory protection has been given to the employees and officers of a Company and if they are sought to be prosecuted as a matter of fact, they have to be shown responsible and incharge for conducting the business of the Company concerned or the offence being committed with their connivance. Therefore, the decision of the Full Bench in Ram Kripal Prasad's case (supra) cannot be said to be rally applicable in the facts and circumstances of the case as the point considered in the Full Bench case was that as to whether all the details should be mentioned in a petition of complaint or not and it has been held that it is not accessory to mention all the details of facts and that has been further illustrated that the number of the, employees in a concern was not necessarily a must" to be mentioned for a successful prosecutions A distinction can be derived and that is right springs from right and naturally when a penal provision is to be applied, it has to be based upon such existing facts which) in fact, makes the prosecution valid and without any infirmity what-so-ever. It is because, not necessarily, all the Officers of Company be put on trial because that will amount to a futile prosecution, unjustified, not in accordance with the mandate of justice and putting a person on trial without any basis what-so-ever. Under the circumstances, insertion of the provision as contained in Section 14-A of the Act and similar such provision is a good number of enactment is only to protect from wrongful prosecution and thus avoiding futile harassments. Therefore, simply mentioning petitioners Nos. 2 to 4 to be incharge and responsible for conducting the business of the Company, which appears to be common in all the cases, cannot be said to be a thoughtful allegation; rather it will indicate that mechanically it has been mentioned as such.

11. Of course in paragraph 8 of the complaint petition, there is further statement that the act has been committed by petitioner Nos. 2 to 4 as they were responsible to and incharge of for conducting the business of the Company and with their connivance, I am afraid such statement further indicates that the wordings of the section has been printed and without any indication what-so-ever, which may make the act visible that the statement made is after due consideration. It is because the Managing Director, as in the case of petitioner No. 2, or Directors are generally the policy makers, high executives and it has to be inferred that the work assigned to the Officers of the Company for making payments for which the prosecution has been launched must be such Officers who are strictly entrusted with the work of finance and looking after the scheme of the Act. Therefore, I am inclined to agree that the names of petitioners Nos. 2,

3 and 4 have been mechanically mentioned as such and that cannot be said to be complete compliance of the provisions of section 14-A of the Act and also considering the fact that a penal provision has to be strictly construed, the; order of cognizance against petitioners Nos. 2, 3 and 4 cannot be said to be sustainable.

12. Under the circumstances, the prosecution launched against petitioner No. 1 Company is maintained. After considering the facts and circumstances, I am unable to agree that the prosecution launched against petitioner Nos. 2, 3 and 4, namely, Narendra Kumar Role, M.L. Rathore and Srimati Nalini Bhokhlie is valid and that being so the orders of cognizance passed against petitioner Nos. 2, 3 and 4 in all these applications is only set aside. In the result, these applications, so for petitioner No. 1, namely, M/s. Katras Ceramics & Refractories (P) Limited is concerned, fail and are dismissed. These applications on behalf of petitioners Nos. 2, 3 and 4 are allowed.