

(1983) 05 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4809 of 1975

M/s Lakshmirattan Engineering Works Ltd. (Diesel Engine Division) New Industrial Town Faridabad APPELLANT

Vs

The Union of India and others RESPONDENT

Date of Decision : 20-05-1983

Acts Referred:

Employees Provident Fund and Family Pension Act, 1952 — Section 14

Citation : (1984) 1 ILR (P&H) 149

Hon'ble Judges : S.S. Sodhi, J

Bench : Single Bench

Advocate : S.P. Jain, for the Appellant; C.D. Dewan with Mr. Shyam Kumar Sharma, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sodhi, J.—This order will dispose of the Civil Writ Petition referred to above as also Civil Writ Petition No. 1574 of 1976 (M/S. Metal Products of India v. The Regional Provident Fund Commissioner and others). The matter arising for consideration being the same, both these petitions were heard together. For the purpose of the controversy raised, it would suffice to set out the relevant facts of the case pertaining to Messers Laxmirattan Engineering Works, Faridabad.

2. Messrs Laxmirattan Engineering Works Limited is a Public Limited Company engaged in the business of manufacture of diesel engines in Faridabad. This company is covered by the provisions of the Employees Provident Fund and Family Pension Fund Act, 1952 (hereinafter referred to as "the Act"). It defaulted in making payments of provident fund contributions for the periods, November and December 1971, March to August, 1972 and September to November, 1972. The employees' share of contributions deducted from their wages during these period besides the employer's share were not paid within the stipulated period. Prosecutions were accordingly launched against the officers of the petitioner-company u/s 14 of the Act read with paragraph 76 of the Employees Provident

Fund Scheme, 1952.

3. Further, a report was made to the Station. House Officer, Faridabad, by the Provident Fund Inspector on December 27, 1972 and another on May 18, 1973, where it was alleged that the petitioner-company had dishonestly misappropriated the money collected out of the wages of the employees under the Act. A request was made to the police to investigate the matter and to take necessary action for the prosecution of the petitioner and their officers. No action appears to have been taken on these reports and the Regional Provident Fund Commissioner then addressed a communication to the Inspector General of Police, Haryana, on April 18, 1975, requesting him to issue instructions to the police authorities concerned for registration of a case against the petitioners. It was thereafter that a case came to be registered against the petitioners. On July 4, 1975 the First Information Report (Annexure P. 3) was recorded. The relief sought in this Writ Petition is the quashing of this report.

4. Before proceeding further, it may be mentioned that an explanation was added to Section 405 of the Indian Penal Code by the Employees Provident Fund and Family Pension Fund (Amendment) Act, 1973. This explanation came into effect from November 1, 1973 and reads as under :--

A person being an employer who deducts the employees contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund Established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund, in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

5. It was the contention of Mr. Satya Parkash Jain counsel for the petitioner that the amendment, referred to above, was violative of the provisions of Article 20 of the Constitution, inasmuch as it placed the onus of proving his innocence upon the accused. It was also argued that this amendment could not, at any rate, render the petitioner liable for any defaults in the payment of contributions under the Act in respect of the periods prior to the coming into force of this explanation, namely, November 1, 1973. The contention being that as the First Information Report (Annexure P. 3) was in respect of contribution due from the petitioner prior to this date, the petitioner could not be charged u/s 406 or Section 409 of the Indian Penal Code with regard thereto. Finally, it was sought to be contended that the prosecution of the petitioner under sections 406 and 409 of the Indian Penal Code was again violative of Article 20 of the Constitution of India under the principle of double jeopardy as in respect of the same cause of action the petitioner was also being prosecuted under the provisions of the Act.

6. The stand taken up by Mr. C.D. Dewan counsel for the Regional Provident Fund Commissioner, on the other hand, was that the explanation added to Section 405 of the Indian Penal Code merely incorporated a new Rule of evidence. No new

offence, he contended, was brought into being or created thereby and there was thus no violation of the provisions of Article 20 of the Constitution in the present case. In order to substantiate his argument, he adverted to the provisions of Section 5(3) of the Prevention of Corruption Act, 1947 by way of analogy. Section 5(3) of this Act is reproduced hereunder :--

S. 5(3) In any trial of an offence punishable under sub-section (2) of the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefor shall not be invalid by reason only that it is based solely on such presumption.

7. This provision of law came up for consideration before the Supreme Court in *Sajjan Singh Vs. The State of Punjab*, . What was questioned here was the presumption prescribed by Section 5(3) of the Prevention of Corruption Act, 1947, under which the burden upon the prosecution to prove the guilt of the accused stood discharged if certain facts as mentioned therein, were proved, in which event the burden shifted upon the accused that in spite of his assets being disproportionate to his known sources of income he was not guilty of the offence. A contention was raised that these provisions could apply only to property acquired by the accused after the date of the Act but not prior thereto. This was repelled with the observation that a statute cannot be said to be retrospective "because a part of the requisites for its actions is drawn from a time antecedent to its passing" (Maxwell on Interpretation of Statutes, 11th Edition, P. 211) and it was accordingly held that taking into consideration the property in the possession of the accused acquired before the date of the Act did not in any manner give it retrospective effect.

8. Further, in repelling the argument that section 5(3) had the effect of creating a new offence and that the taking into consideration of property acquired before the date of the Act was a breach of the provisions of Article 20 of the Constitution, it was observed that section 5(3) merely prescribed a rule of evidence for the purpose of proving the offence of criminal misconduct as defined in section 5(1) for which an accused person was already under trial.

9. A similar view had been expressed in the earlier case of *C.S.D. Swamy Vs. The State*, .

10. On a parity of reasoning observations of the Supreme Court in *Sajjan Singh's* case (*supra*) thus provide a complete answer to the contentions raised by the counsel for the petitioner based upon the provisions of Article 20 of the Constitution. No violation thereof can be said to arise merely upon the shifting of the onus on to the accused in terms of the explanation added to section 405 of the Indian Penal Code by the Amendment Act, referred to above. Further no new

offence can be said to have been created by this explanation and there is thus no legal bar to the prosecution of the petitioner under sections 406 and 409 of the Indian Penal Code in respect of the defaults in making contributions under the Act pertaining to the periods prior to the coming into force thereof, that is November 1, 1973.

11. Finally, turning to the plea of double jeopardy, the answer to this is provided by the judgment of Calcutta High Court in Hari Nath Poddar Vs. The State, . This was a case, where a similar plea of double jeopardy had been raised in respect of the conviction of the petitioner under the Employees. Provident Fund Act and his prosecution u/s 406 of the Indian Penal Code. It was observed that the ingredients of the offences u/s 14(1) of the Act were not the same as those of an offence u/s 406, of the Indian Penal Code, in that u/s 14 (1A) of the Act, the offence consists in the default in making the payment of the contribution ; while u/s 406 of Indian Penal Code in misappropriating the money entrusted to the employer in violation of a direction of law, that is, the money deducted from the wages of the employees as contribution to the provident fund along with the contribution of the employer made under the Act. It was accordingly held that as the ingredients of the offence u/s 14(1) of the Act and Section 406 of the Indian Penal Code were not the same, there was no violation of Article 20 of the Constitution of India. The principle of double jeopardy is thus not applicable here.

12. For the reasons set out above, there is clearly no warrant for granting to the petitioner the relief claimed. The writ is accordingly hereby dismissed with costs. Counsel's fee Rs. 300/-.