

(2012) 05 BOM CK 0070

In the Bombay High Court

Case No : Criminal Writ Petition No. 648 OF 2011

Noshir Adi Soonawala, Ratan Naval Tata, Pratap Bhogilal and
Sudhir Thackersey

APPELLANT

Vs

State of Maharashtra and The Regional Provident Fund
Commissioner

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 309, 309(1), 309(2), 344, 344(1)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(A),
17, 2
Employees State Insurance Act, 1948 — Section 40
Factories Act, 1948 — Section 2(17), 7, 7(1)
Penal Code, 1860 (IPC) — Section 34, 405, 406

Citation : (2012) 05 BOM CK 0070

Hon'ble Judges : M.L. Tahaliyani, J

Bench : Single Bench

Advocate : Amit Desai with Mr. S.M. Puranik, for the Appellant; A.S. Sonare, Addl. P.P. for respondent No.1 and Mr. R.S. Sundaram, Advocate for respondent No.2, for the Respondent

Final Decision : Allowed

Judgement

M.L. Tahaliyani, J

1. The petitioners are original accused Nos.5,7,2 & 8 respectively in Regular Criminal Case No.R-198/1989 pending before the Judicial Magistrate First Class, Court No.1, Nagpur. The petitioners along with other accused are charge-sheeted for the offence punishable u/s 406 read with Section 34 of the Indian Penal Code. The allegations, as can be gathered from charge-sheet, are that the petitioners and other accused had failed to deposit the amount of Provident Fund and Family Pension to the extent of Rs.8,94,150/- in the bank and had retained the said amount with them for a period of two months and have thereby committed an offence punishable u/s 406 read with Section 34 of the Indian Penal Code. At this

stage, it will be convenient to reproduce the relevant portion of Section 405 of the Indian Penal Code:

405. Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust.

Explanation 1 to Section 405 of the Indian Penal Code is relevant for the purpose of present petition. Explanation 1 to Section 405 runs as under:-

Explanation (1) - A person, being an employer (of an establishment whether exempted u/s 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not) who deducts the employee's 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).

In view of the provisions of Explanation 1 to Section 405 of the Indian Penal Code, it is alleged that the amount of contribution was deemed to have been entrusted to the petitioners/accused and that by committing default in payment of such contribution to the fund, the accused are deemed to have committed an offence punishable u/s 406 read with Section 34 of the Indian Penal Code.

2. The prosecution is sought to be quashed as against the Nos.5-Noshir Soonawala, accused No.7-Ratan Naval Tata, accused No.2- Pratap Bhogilal and accused No.8-Sudhir Thackersey were the Directors of the Central India Spinning, Weaving and Manufacturing Company Limited, Nagpur situated at Ruikar Road, Nagpur and that they were not under obligation to comply Para 30 of the Employees' Provident Funds Scheme, 1952. The second ground on which the prosecution is sought to be quashed is the inordinate delay in disposal of criminal case against the petitioners.

3. It is submitted that it is the employer who was under no obligation to comply the provisions of Para 30 of the Employees' Provident Funds Scheme, 1952. Para 30 of the Employees' Provident Funds Scheme runs as under :-

30. Payment of contributions - (1) The employer shall, in the first instance, pay both the contribution payable by himself (in this Scheme referred to as the employer's contribution) and also, on behalf of the member employed by him directly or by or through a contractor, the contribution payable by such member

(in this Scheme referred to as the member's contribution).

(2) In respect of employees employed by or through a contractor, the contractor shall recover the contribution payable by such employee (in this Scheme referred to as the member's contribution) and shall pay to the principal employer the amount of member's contribution so deducted together with an equal amount of contribution (in this Scheme referred to as the employer's contribution) and also administrative charges.

(3) It shall be the true responsibility of the principal employer to pay both the contribution payable by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor and also administrative charges.

Explanation - For the purposes of this paragraph the expression "administrative charges" means such percentage of the pay (basis wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee, and in respect of which provident fund contribution are payable, as the Central Government may, in consultation with the Central Board and having regard to the resources of the Fund for meeting its normal administrative expenses, fix.

4. Employer has been defined in Section 2(e) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereafter referred to as "Act of 1952"). The definition of "employer" in the said section is as under :

Employer" means -

(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent.

5. Learned Counsel Mr. Amit Desai has submitted that none of the petitioners fall under the category of "employer" and that, therefore, they were not under obligation to comply Para 30 of the Employees' Provident Funds Scheme, 1952. The obligation was of the employer. It is submitted that the employer in relation to factory means occupier of the factory, including the agent of such occupier or owner. The learned Counsel Mr. R.S. Sundaram appearing on behalf of respondent No.2- Regional Provident Commissioner has submitted that the directors of the company fall under the category of "employer" and that the company as well as the directors, who are responsible for conduct of business of

the company, can be prosecuted for the offence punishable u/s 406 of the Indian Penal Code, if para 30 of the Employees' Provident Funds Scheme, 1952 is not complied with. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Srikanta Datta Narasimharaja Wodiyar Vs. Enforcement Officer, Mysore, , and has invited my attention to a portion of para No.10 of the said judgment, which runs as under :-

10. In para 3 of the complaint, it was specifically stated, "that accused Nos. 2 to 6 (appellants) are the persons in-charge of the said establishment and are responsible for conduct of its business. They are thus required to comply with all the provisions of the Act and the Schemes in respect of the said establishment. Necessary allegations bringing out the ingredient of offence have been made out in the complaint. Therefore, the learned Magistrate has rightly been taken cognizance of the offence alleged against the appellant.

6. Section 14A of the Act of 1952 runs as under:

14A. Offences by companies - (1) If the person committing an offence under this Act (, the Scheme or (, the (Pension) Scheme or the Insurance Scheme)) is a company, every person, who at the time the offence was committed was in charge 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, or (the (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.

Explanation - For the purposes of this section, -

(i) "company" means any body corporate and includes a firm and other association of individual; and

(ii) "director", in relation to a firm, means a partner in the firm.)

7. No doubt when the offence is allegedly committed by the Company, the provisions of Section 14A of the Act of 1952 will be attracted. However, Court cannot loose sight of the fact that the offence punishable u/s 406 of the Indian Penal Code, by deeming provision, takes the employer in its purview. There are

certain other offences under the Act of 1952, which are described in Section 14 under the head of penalties. As already stated, the offence punishable u/s 406 of the Indian Penal Code, by virtue of deeming provision in Explanation 1 to Section 405 of the Indian Penal Code, takes the employer in its purview. Therefore, it will be necessary to examine whether any of the petitioners fall under the category of employer. If one goes through the definition of "employer" u/s 2(e) of the Act of 1952, it can be seen that "employer in relation to factory means the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under Clause (f) of sub-section (1) of Section 7 of the Factories Act, 1948, the person so named.

8. Admittedly, the Central India Spinning, Weaving and Manufacturing Company Limited was a factory. Therefore, employer could be either owner or occupier of the factory. It could be agent of the owner or the occupier. It could be the Manager of the factory. In the present case, accused No.12 Mr. M.R. Barbat was Manager of M/s. V.P. Shenoy, who were occupiers of the factory. As such basically M/s. V.P. Shenoy were the occupiers and Mr. M.R. Barbat was working as their agent. Therefore, it could be M/s. V.P. Shenoy or Mr. M.R. Barbat, who could be said to be occupier of the factory and if there is an occupier of the factory, he is used to be treated to be employer for the purpose of Paras 15 and 30 of the Employees' Provident Funds Scheme, 1952. It is needless to state that there could not be two employers and once it is clear that M/s. V.P. Shenoy were the occupier or their agent Mr. M.R. Barbat was occupier, all others are excluded from the definition of "employer". As such the First Information Report itself lodged by the Provident Fund Inspector shows that the petitioners did not fall under the category of employer.

9. Apart from this, the Hon"ble Supreme Court while dealing with the similar situation in a case arising out of the Employees' State Insurance Act in the matter of Employees' State Insurance Corporation Vs. S.K. Agrawal reported at 1998 Cri.L.j. 4027 (1), has held that the directors either single or collectively cannot be said to be employer within the meaning of Section 405 of the Indian Penal Code. Section 2(17) of the Employees' State Insurance Act, 1948 defines "principal employer" as under:-

""principal employer" means -

(i) in a factory, the owner or occupier of the factory

and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under (the Factories Act, 1948, (63 of 1948) the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment;

10. The comparison of definition of "principal employer" in the Employees' State Insurance Act, 1948 and definition of "employer" in Employees Provident Funds Scheme, 1952 would show that both the definitions more or less similar and the purpose of definitions is also similar. Section 40 of the Employees' State Insurance Act, 1948 is more or less similar to the provisions of Para 30 of Employees' Provident Funds Scheme, 1952. As such provisions of Section 40 of the Employees' State Insurance Act, 1948 and Para 30 of the Employees' Provident Funds Scheme, 1952 are para materia.

11. The Single Judge of Calcutta High Court while dealing with the case in Robin Paul Vs. State of West Bengal and Others, , under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 had occasion to refer to the judgment of the Hon"ble Supreme Court in the matter Employees' State Insurance Corporation.vs. S.K. Agrawal. The Single Judge of Calcutta High Court had come to the conclusion that the definition of "employer" does not include directors and that launching of prosecution against the directors of the establishment/factory was bad in law. The revision petition of the directors was allowed and proceedings initiated against them under the Act were quashed.

12. After having gone through the definition of "employer" of the Act of 1952 and the obligation of employer under Para 30 of the Employees Provident Funds Scheme and after having gone through the judgment of the Hon"ble Supreme Court in the matter of Robin Paul Vs. State of West Bengal and Others, , and keeping in view the deeming provision of Explanation 1 to Section 405 of the Indian Penal Code, I have come to the conclusion that the petitioners will not fall under the definition of "employer" and therefore, they were not under obligation to comply Para 30 of the Employees' Provident Funds Scheme, 1952. It, therefore, follows that the deeming provision will not be applicable to them. Needless to say that they could not be said to have committed criminal breach of trust.

13. Before I consider the contention of the petitioners that they have been denied their fundamental right to speedy trial, let me state few more admitted facts, which may be relevant for the present proceedings. The company was incorporated in the year 1874 and was one of the early businesses of the House of Tata. The company was, inter alia, engaged in the business of manufacturing and selling of cloth and other textile goods. In the early 80s, the organized cotton textile industry had turned sick which culminated in the closure of most similarly placed mills in the state. The company had been facing severe financial difficulties and total working capital erosion. In view thereof, the State Bank of India was willing to provide additional funds only to the extent of "net wages" payable to the employees for the month of January and February 1986. Accordingly, the Company made payment of the net wages (i.e. the wages without contribution to statutory dues) to its employees for those months. In the

month of March 1986, the Income Tax Department froze the bank account of the company pursuant to a Garnishee Order on account of tax dues to be recovered from a third party to whom some payments were due from the company. The company filed a petition for voluntary winding up in the Hon'ble Bombay High Court in April 1986. On 12th May, 1986. After the vacation of the garnishee Order and release of above mentioned bank account by the Income Tax Department, 25 cheques for a total sum of Rs.25,89,469/- were drawn by the company on Central Bank of India in favour of Provident Fund and Employees State Insurance Authorities. However, after the presentation of the said cheques on 12th May, 1986, the Hon'ble Bombay High Court appointed the Official Liquidator of the company on 14th May, 1986. Despite having adequate funds, the Central Bank of India did not make payments against the aforesaid cheques and returned the same to the company on the ground that an Official Liquidator had been appointed by the Hon'ble Bombay High Court. In fact, during June 1986, the company's Solicitors Mulla & Mulla, having their office at Mulla House, DN Road, Fort, Mumbai 400 001, had put on record a letter to the Liquidator that the company had issued the above mentioned cheques prior to the appointment of the Liquidator towards settlement of the statutory dues. However, no action was taken thereon.

14. By an Ordinance dated 3rd October, 1986 followed by an Act dated 26th December, 1986 (hereafter referred to as the "Takeover Act"), the Government of Maharashtra took over the management of the company's undertaking viz. Empress Mills at Nagpur on 3rd October, 1986. The Takeover Act provided for the payment of Rs.610 lakhs by the Government of Maharashtra to the proprietors (of the Mills) towards the compensation for the takeover. It was also stipulated that the first claim on the compensation would be of the arrears of PF, ESIC, dues of the company. As per the scheme of the Takeover Act, the amount of compensation payable to the proprietors was required to be paid by the State Government to the Commissioner of Payments appointed through the Takeover Act. Persons having any claim against the company were required to prefer a claim to the Commissioner of Payments within 30 days of the takeover date. The Takeover Act also provided for the order of priority for the payments to be made by the Claims Commissioner to claimants out of the funds available with him. The Takeover Act specifically provided for the payment of, as first priority, arrears relating to contributions towards Provident Fund and Employees' State Insurance payable by the Company. The Commissioner of Payments was thus required to make payment of such arrears including the arrears of Provident Fund for the months of January and February 1986. The Company, thus, was legitimately expecting the Commissioner of Payments to make the payment of arrears of Provident Fund etc. for the months of January and February 1986, pursuant to the provisions of Takeover Act after the undertaking of the company was taken over on 3rd October, 1986 as explained above. However, the Commissioner of Payments failed to release the said payments. Despite the statutory obligation upon the Commissioner of Payments to make payment of such dues, Tata Sons

Ltd. (upon receiving the particulars of employee related dues), ultimately paid the entire amount of employees' and employer's contribution of Provident Fund and Family Pension amount to Rs.18,16,243/- and other employee related dues on behalf of the Company on 30th December, 1987 in the interest of then employees of the company.

15. It appears that the issue of payment of employees' contribution and employer's contribution towards Provident Fund and Family Pension Fund payable by the Company was taken to the Regional Provident Fund Commissioner, Maharashtra & Goa at Mumbai. Vide its order dated 8th August, 1988, the Regional Provident Fund Commissioner considered all the facts and reassessed the dues from 1st January, 1986 to 18th March, 1986 amounting to Rs.23,97,139/- payable by the company towards the Employees' Provident Fund, Family Pension Fund and ESIC Fund. The Regional Provident Fund Commissioner took a note of the fact that a sum of Rs.18,16,243/- was already paid by Tata Sons Ltd. on behalf of the Company. As such, the Company was directed to pay a further balance of Rs.5,80,896/- within 10 days of receipt of the said order representing the Provident Fund dues for the 18 days of March 1986. The said amount of Rs.5,80,896/- was also paid by Tata Sons Ltd., on behalf of the Company on 23rd August, 1988 in the interest of the employees' of the Company.

16. As such since the employees' share of provident fund, family pension and fund contribution amount to Rs.8,94,150/- was not paid within stipulated time, the Inspector working in the office of Regional Provident Fund Commissioner lodged a complaint at Ganeshpeth Police Station. On the said complaint, offence u/s 406 read with Section 34 of the Indian Penal Code was registered by the police. The amount was admittedly later on paid within a very short time. However, since the technical offence appeared to have been committed, the investigation continued and after completion of investigation charge-sheet was filed in the Court of Judicial Magistrate First Class, Nagpur on 10th August 1989. The petitioners and other accused were absent. Therefore, the Court had issued summons to the petitioners and other accused. As already stated, the petitioners in the present writ petition are original accused Nos. 5, 7, 2 & 8. Accused No.1- Nowroji Hormusji Tata, accused No.3-Homi Nadirshah Wazifdar, accused No.4-Minocher Kaikobad Tata and accused No.6-Jamshed Jahagir Bhabha have expired.

17. The first summons were issued on 10th August, 1989 and case was adjourned to 20th September, 1989. Fresh summons were issued on 20th September, 1989 and the case was adjourned to 20th November, 1989. On 20th November, 1989 also, the Court had directed issuance of fresh summons and adjourned the matter on 15th March, 1990. The case is pending till today and there is no progress in the matter at all of any nature. The copy of last roznama available in the present proceedings is dated 9th August, 2011, which runs as under:

The accused are absent. Issue proclamation against accused. C.F.F.R./

proclamation on 9/11/2011.

18. The learned Counsel Mr. Amit Desai appearing on behalf of the petitioners has submitted that the roznama clearly indicates that the delay in the trial has not been caused by the petitioners or other accused and that they were not contributing factors to the delay in holding the trial. Mr. Amit Desai has submitted that the petitioners came to know about pendency of criminal case against them only when one of the police officers from Colaba Police Station on 5th November, 2011 had visited the residence of petitioner No.1 in his absence with a non-bailable warrant. Mr. Amit Desai has relied upon the judgment of the Hon"ble Supreme Court in the matter of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., . In the recent judgment of Hon"ble Supreme Court in the matter of Vakil Prasad Singh Vs. State of Bihar, , it has been reiterated that speedy trial in all criminal prosecution is an inalienable right under Article 21 of the Constitution. The Hon"ble Supreme Court at Para 15 has said as under :-

15. It is, therefore, well settled that the right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in Court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice .In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

19. Whether right to speedy trial has been denied or not will depend upon facts of each case and no straight jacket formula could be laid down in this regard. The Hon"ble Supreme Court in the case of State through C.B.I. Vs. Dr. Narayan Waman Nerukar and another, reported at AIR 2002 SC 2977, has said at Para 9 as under :-

9. While considering the question of delay the Court has a duty to see whether the prolongation was on account of any delaying tactics adopted by the accused and other relevant aspects which contributed to the delay. Number of witnesses examined volume of documents likely to be exhibited, nature and complexity of the offence which is under investigation or adjudication are some of the relevant factors. There can be no empirical formula of universal application in such matters. Each case has to be judged in its own background and special features if any. No generalization is possible and should be done. It has also to be borne

in mind that the Criminal Courts exercise available powers such as those under Ss. 309, 311 and 258 of the Cr.P.C. to effectuate right to speedy trial.

20. In the case of Abdul Rehman Antulay etc. etc. Vs. R.S. Nayak and another, the Hon"ble Supreme Court at para 40 in the judgment cited supra has said as under :-

40. As a matter of fact ,right to speedy trial is embedded in the statutory law of this country, Sub-sections 1 and 2 of Section 309 Cr.P.C. (corresponding to Sub-sections 1 and 1A of Section 344 of CrPC, 1898) exemplify this rule. They say:

309. Power to postpone or adjourn proceedings;(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particularly, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reason to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement or, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody.

Provided that no magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reason to be recorded in writing.

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

The provisions must be read with Section 482 of the Code which saves the inherent powers of the High Court. The latter provision recognizes the power of the High Court to pass appropriate orders "to prevent abuse of process of any court or otherwise to secure the ends of justice". In several cases, the High Courts and this Court have directed dropping or discontinuance of proceedings where such proceedings constituted an abuse of process of court or where the ends of justice demanded such a course of action. We may refer to some of these cases now.

In the same judgment, the Hon"ble Supreme Court has further said at Para 41 as under :

It is, thus, clear that even apart from Article 21, courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further

proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders.

21. In the present proceedings, which are sought to be quashed, as stated earlier, summons to the petitioners and other accused were issued on 10th August, 1989. The summons were not served till 15th March, 1990. The Court had, therefore, issuedailable warrants of Rs.500/- each against the petitioners and other accused. Thereafter the matter was adjourned for twenty six times and on each and every date of said twenty six dates, the learned Magistrate had directed issuance ofailable warrants of Rs.500/- each against all the accused including the petitioners. It is on 4th April, 2005 the learned Magistrate had directed issuance of non-ailable warrants against all the accused including the petitioners. What is pertinent to note is that till 4th April, 2005 the learned Magistrate had neither received report in respect of service of any of the summons nor had he received report in respect of execution of theailable warrants issued by him. In the first place, it is difficult to understand as to how the learned Magistrate could issueailable warrants against the accused without there being any report of service of summons or unless he records his opinion that the accused were intentionally evading service of summons. Similarly how the learned Magistrate could issue non-ailable warrants on 4th April, 2005 without there being any report in respect of twenty twoailable warrants issued earlier by the same Magistrate. What is shocking to note is that thereafter on each and every dates the learned Magistrate went on issuing of nonailable warrants against the petitioners and this process continued till 9th March, 2011. As such non-ailable warrants have been issued against the accused including the petitioners for not less than 18 to 19 times during the period between 4th April, 2005 to 9th March, 2011.

22. The learned Magistrate issued proclamation against the petitioners and other accused on 9th March, 2011. The learned Magistrate had not recorded any reason as to why he was issuing proclamation against the accused and the petitioners. As such the roznama was being written mechanically for more than twenty two years. It is after about twenty two years of launching of prosecution that one of the police officers had visited one of the accused at Colaba to execute a non-ailable warrant. It is absolutely clear from the roznama that the negligence was on the part of the Magistrate. The petitioners had not in any manner contributed to the delay. The petitioners were not aware of the prosecution launched by the police at the instance of the Provident Fund Commissioner's office. It is submitted before me that since the amount was paid by Tata Sons within a very short time, it was never expected that the police would file a prosecution against the petitioners and other accused. The petitioners did not know at all till November, 2011 that there was a criminal case against them in the Court of Judicial Magistrate First Class, Nagpur.

23. The reading of roznama gives an impression that the Magistrate had not applied his mind at any stage of trial and he mechanically issuedailable

warrants and non-bailable warrants. He has gone to the extent of issuing proclamation against all the accused including the four deceased accused.

24. In fact, had the learned Magistrate been diligent enough, he could have secured attendance of the accused within a period of a month from the date launching the prosecution and the case would have been over within a period of next one month. Considering the nature of allegations and the evidence, which was sought to be adduced, the whole proceedings could not have consumed more than three to four hearings. The case which could have been closed within three to four days, had not commenced for a period of 22 years. This, according to me, is sufficient ground to quash the proceedings. Why the petitioners should be asked to face a prosecution for an offence, which is technical offence and particularly when the amount alleged to be misappropriated had been deposited within a short time. The default in payments of amount of Provident Fund and Family Pension was also due to the circumstances prevailing then.

25. In brief, I have come to the conclusion that the petitioners do not fall under the category of "employer" and, therefore, could not have been prosecuted for the offence punishable u/s 406 read with Section 34 of the Indian Penal Code. Even if it is assumed for the sake of arguments that they fall under the category of "employer", a valuable right of speedy trial has been denied to them. The respondent i.e. State Government and the Provident Fund Commissioner have not been able to explain as to why such a prosecution should be allowed to continue after lapse of period of twenty two years. The reply of the Provident Fund Commissioner is mainly based on facts. The affidavit of the Provident Fund Commissioner does not in any manner give reply to the contentions of the petitioners in respect of their fundamental rights of speedy trial. The learned Counsel Mr. Sundaram appearing on behalf of the Provident Fund Commissioner was not able to satisfy the Court that the case was fit for continuation of prosecution despite the delay of twenty two years. It is possible there might be cases in which despite inordinate delay, it would not be in the interest of justice to quash the proceedings only on the ground of delay. However, as stated earlier, there cannot be any straight jacket formula and each case has to be examined on its own facts. In the present case, the facts of the case clearly shows that the offence was purely of technical nature and the amount involved was also not very huge. The amount was later on paid within a very short time. The petitioners or other accused had not in any manner contributed for the delay. The orders passed by the learned Magistrate were without application of mind. The learned Magistrate could not have issued bailable warrants without examining the report of the police in respect of service of summons or without recording reasons for issuing bailable warrants particularly when the summons were not served. Similarly, the learned Magistrate could not have issued non-bailable warrants unless there was police report of bailable warrants adverse to the accused and the petitioners. It is also not known as to whether all the summons, bailable warrants and non-bailable warrants were returned to the learned Magistrate by the police if they were not executed.

In the circumstances, I have come to the conclusion that on merits as well as on the grounds of denial of speedy trial, the proceedings as against the petitioners are necessary to be quashed. Hence, I pass the following order.

The petition is allowed.

The proceedings against the petitioners in Regular Criminal Case No.R-198/89 pending in the Court of Judicial Magistrate First Class, Court No.1, Nagpur stand quashed.

The bailable warrants, non-bailable warrants and proclamation issued against the petitioners stand recalled.

The Criminal Writ Petition accordingly stands disposed of.