(1977) 02 AHC CK 0046

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No''s. 2029. 2030 and 2031 of 1976

P.K. Ghosh and Co. and Others — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 01-02-1977

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 177, 482
Employees Provident Fund and Family Pension Act, 1952 — Section 14, 14A

Citation : (1977) ACR 185

Hon'ble Judges : D.M. Chandrashekhar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.M. Chandrashekhar, J.—The applicants in these applications u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) are common and the question arising for decision herein is also common. Hence I shall dispose of these applications by a common order.

2. The Regional Provident Fund Inspector Uttar Pradesh, (hereinafter referred to as complainant) filed before the Chief Judicial Magistrate, Kanpur, three complaints against the applicants. The alleged offence arc under Para 76(c) of the Employees Provident Funds Scheme, 1952, (hereinafter called the Scheme) read with Sections 14(c) and 14-A(a) of the Employees'' Provident Funds and Family Pension Funds Act, 1952 (hereinafter referred to as the Act). The allegation against the applicants is that they failed to submit before the Regional Provident Funds Commissioner (hereinafter referred to as the Commissioner) within the prescribed time returns of contributions payable by them under the Act for the months of October, November and December 1973.

3. The applicants herein raised an objection before the learned Chief Judicial Magistrate, Kanpur, that he had no territorial jurisdiction to entertain the complaint which, should have been filed in the Court of the Chief Judicial Magistrate, Allahabad, within whose territorial jurisdiction they were residing and

carrying on business. The learned Chief Judicial Magistrate overruled that objection and held that he had territorial jurisdiction to entertain the complaints and try the applicants.

4. Section 177 of the Code provides that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

Sub-para (2) of Para 38 of the Scheme reads :

The employer shall forward to the Commissioner, within twenty five days of the close of the month, a monthly consolidated statement, in such from as the Commissioner may specify, showing recoveries made from the wages of each employee and the amount contributed by the employer in respect of each such employee.

The relevant portion of Para 76 of the Scheme provides that if any person fails or refuses to submit any return or statement required by this Scheme, he shall be punishable with imprisonment which may extend to sis months or with fine which may extend to one thousand rupees, or with both.

5. The learned Chief Standing Counsel for the Central Government, who appeared for the Commissioner, sought to defend the impugned order and submitted that since the applicants had to submit the monthly returns to the office of the Commissioner which is situate in Kanpur, at least a part of cause of action for the offence had arisen in Kanpur and that hence the Chief Judicial Magistrate at Kanpur had jurisdiction to entertain the complaints and to try the cases.

6. In support of his above contention, the learned Chief Standing Counsel relied on the decision of the Calcutta High Court in B.P. Ghosh v. Regional Provident Funds Commissioner 1975 LLJ 448 There also an employer was prosecuted before the Chief Presidency Magistrate, Calcutta, for offences similar to those in the present case. He had raised a similar objection as in the present cases on the ground that the place where he carried on business was outside the territorial jurisdiction of the Presidency Magistrate .Repelling that contention, the Calcutta High Court observed :

Inasmuch as the Funds constituted under Sect ion 2(h) of the Act was located where the office of the Commissioner is situate and failure to submit the return must be said to have taken place in the office of the Commissioner.

7. With great respect to the Calcutta High Court, 1 am unable to agree with the above view. In Para 38(2) of the Scheme, all that an employer is required to do is to forward to the Commissioner a monthly statement. It will be enough compliance with the requirement of this sub-para if he forwards his monthly statement through post to the office of the Commissioner. This provision does not require that an employer should come to the office of the Commissioner and submit such statement personally. Hence, the failure to forward the statement

cannot be said to take place in the office of the Commissioner. It is, in my opinion, more reasonable to construe such failure to take place where the employer resides or carries on business and from where he can forward such statement to the Commissioner. In my view no part of the offence can be said to have taken place at Kanpur merely because the office of the Commissioner is situate there.

8. In the result, I allow these applications and direct the learned Chief Judicial Magistrate at Kanpur to transmit these complaints to the Court of the Chief Judicial Magistrate, Allahabad, who shall entertain them and proceed with them according to law.

