

(2008) 08 CAL CK 0036
In the Calcutta High Court
Case No : C.R.R. No. 3337 of 2006

Prabal Kanto Dutta

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 28-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190(1), 200, 397, 401, 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 13, 14, 14(1A), 14(2), 14A

Citation : (2008) 4 CHN 923

Hon'ble Judges : Sankar Prasad Mitra, J

Bench : Single Bench

Advocate : S.C. Prasad, Sekhar Basu, Sabyasachi Banerjee, M. Mukherjee and S. Abedin, for the Appellant; Jharna Biswas, for the Respondent

Judgement

Sankar Prasad Mitra, J.—Heard the learned Advocates appearing for the respective parties.

2. The application u/s 397/401 read with Section 482 of the Code of Criminal Procedure filed by the petitioners is taken up for hearing in presence of the learned Advocates for both sides,

3. In this application the petitioners have sought for quashing of the proceedings being Complaint Case No. 113C of 2006 under Sections 14, 14A, 14(1A) and 14(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

4. This case was instituted by the complainant O.P. No. 2 against the petitioners for violation of the provisions contained in Sections 14, 14A, 14(1A) and 14(2) of the Act referred to above.

5. It appears from the impugned order dated 10.4.2006 that the learned Magistrate took cognizance of offence on the basis of a complaint filed by Rajib Bhattacharjee under Sections 14, 14A, 14(1A) and 14(2) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

6. It is submitted by the learned Advocate for the petitioners that in view of Section 14-AC, Court cannot take cognizance of any offence unless the complaint is filed by the authorized officer with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed u/s 13.

7. Learned Advocate for the petitioners drawing my attention to the complaint annexed to the application submits that nowhere in the complaint, the complainant has asserted that such complaint was filed with the previous sanction of the competent authority.

8. He, therefore submits that in such circumstances, the cognizance of offence taken by the learned Magistrate should be held to be bad in law and it should be set aside.

9. He further submits that the petitioners have already paid the dues for which prosecution was initiated against them.

10. In the circumstances, learned Advocate for the petitioners submits that necessary orders may be passed by this Court.

11. Learned Advocate Mr. S.C. Prosad appearing for the O.P. No. 2 submits that the complainant was duly authorised by the competent authority and he filed the case against the petitioners with previous sanction of the authority but, he did not get any chance to produce the documents when the learned Magistrate took cognizance of offence.

12. Mr. Prosad, therefore, submits that in the circumstances, necessary orders may be passed by this Court.

13. It is admittedly clear that the complaint was instituted by a person other than the police officer and in view of Section 190(1)(c) of the Code of Criminal Procedure, learned Magistrate took cognizance of offence since u/s 200 of the Code of Criminal Procedure he had no occasion to examine the complaint and the witnesses as the complaint was lodged by a public servant. Therefore, under the law, the learned Magistrate had no authority to scrutinize the question raised in this case because he could not examine the complaint being a public servant and side by side the complainant had no opportunity to produce any sanctioned order of the authority before the learned Magistrate at the time of taking cognizance of offence. Therefore, principle of natural justice was otherwise denied to both the parties although learned Magistrate had no occasion to do so.

14. In view of peculiar facts and circumstances of the case, I think that an opportunity should be given to the complainant to produce sanction order and the learned Magistrate should be directed to examine the complainant by allowing him to produce documents before taking cognizance of offence of the case.

15. Therefore, fact remains that at this stage that there is no sanction order before this Court to justify taking of cognizance of offence by the learned Magistrate at that point of time.

16. Therefore, I think that in absence of any sanction order, the learned Magistrate should not have taken cognizance of offence and therefore, I find merit in this application and it is allowed.

17. The impugned order dated 10.4.2006 taking cognizance of offence against the petitioners, is hereby set-aside but the learned Magistrate shall examine the complainant by allowing him to produce documents and after appreciating the evidence of the witnesses, if any, he shall pass necessary orders in accordance with law.

18. The complaint is directed to take effective steps in the Court below in accordance with law.

19. Office is directed to send the copy of this order to the concerned learned Judicial Magistrate for his information and taking necessary action.

20. The matter is thus disposed of.

21. Criminal Section is directed to supply certified copy of this order to the respective parties, if applied for.