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**(1989) 01 CAL CK 0003**  
**In the Calcutta High Court**

Pranati Textiles and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

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**Date of Decision :** 24-01-1989

**Acts Referred:**

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 465

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14AC

**Citation :** (1989) CriLJ 1804 : 93 CWN 1003

**Hon'ble Judges :** Amulya Kumar Nandi, J;A.M. Bhattacharjee, J

**Bench :** Division Bench

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## Judgement

A.M. Bhattacharjee, J.—Having heard the learned Counsel for the parties, we are satisfied that these four revisional applications are to be allowed and the impugned orders of taking cognizance in the four criminal cases giving rise to these four revisional applications are to be quashed. These four revisional applications challenging the prosecutions launched under the provisions of Section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereafter, "Employees' Provident Funds Act" for short), involving common questions, have been heard together and are being disposed of by this common judgment.

2. The offences alleged in the relevant complaints are "failure to pay" the contributions and administrative charges payable under the provisions of the Employees' Provident Funds Act, 1952 and the Employees' Provident Funds Scheme framed thereunder. It has not been disputed by Mr. Nandi appearing for the accused-petitioners that the amounts payable were not paid within time prescribed; but he has alleged that all these amounts were duly paid long before the prosecutions have been initiated and in support of his contention, Mr. Nandi has drawn our attention to the copies of the relevant Chalan annexed with the revisional applications and has also produced the original Chalan before us in Court. Mr. Biswas appearing for the respondent 1 and Mrs. Milra appearing for the State have also not disputed such payments prior to the institution of the

relevant complaints. Mr. Nandi has accordingly urged that the amounts payable having already been paid before the prosecutions were initiated, those were not maintainable under the law and Mr. Nandi has mainly relied on a single Judge decision of this Court in *Hooghly Docking & Engineering Co. v. Inspector, Employees' Provident Fund* (1980) 1 CHN 280 in support of his contention.

3. We have not been able to agree to accept this contention if "failure to pay within the prescribed time" is an offence under the Act and the Scheme, and there has been such a failure to pay in time, any later payment, even though before any prosecution for the offence has been initiated cannot, by itself, in law stand in the way of the prosecution. It can be a mitigating circumstance, a relevant factor to be taken into consideration in determining the sentence, but not a one to forestall prosecution and conviction.

4. We have examined the single Judge decision in *Hooghly Docking & Engineering Co.* (1980 1 CHN 280) (*supra*) and have not been able to regard the same to be an authority for that broad a proposition that even though failure to pay within time prescribed is an offence, any delayed but pre-prosecution payments would debar a prosecution. The case in *Hooghly Docking & Engineering Co.* (*supra*) had peculiar facts of its own, where on its failure to pay the Provident Fund dues, the Company proposed in writing to the Regional Provident Funds Commissioner to clear up all the arrears in instalments so that all the pending prosecutions for non-payment of dues are dropped. It appears further that the Commissioner informed the Company by a letter that the Government had agreed to accept such payment as proposed, but that though the Company thereafter continued to pay the arrears in accordance with that agreed proposal, the criminal prosecutions were nevertheless proceeded with. The Company then moved this Court under Article 226 of the Constitution and the learned Judge, after taking into consideration, among others, that the Company "had been sustaining losses in its business", that its "available working fund was completely depleted" and that it was nevertheless going on paying the arrears regularly in accordance with the terms agreed, and that by the time the Rule came up for hearing before this Court, "the entire amount of arrears had been paid up and had been accepted by the Respondents" according to the terms agreed between the parties, thought that "it will not be in consonance to justice to permit the Respondents to continue the said criminal proceedings". With respect, we do not, as we need not, go into the question of the legality or otherwise of this decision rendered in the exercise of Writ Jurisdiction and on consideration of its own peculiar facts and circumstances. But we would like to make it clear, even at the case (cost?) of repetition, that we do not treat this decision as any authority for the proposition that an offence for failure to pay in time stands wiped off and the prosecution therefore cannot be instituted, if the amount payable is paid at any time before the initiation of the prosecutions. Such a view would encourage evasion of a law like the Employees' Provident Funds Act, avowedly enacted for the benefit and, protection of the weaker section of the community and would encourage the employers to indulge in not paying the dues in time, being thus

assured that any delayed payment at any time before the prosecution is actually launched, would nullify the prosecution. We do not think that we can subscribe to such a view which would set the rigours of these beneficial provisions almost at naught. As we observed during the course of arguments, to accept such a contention might amount to accept the allied contention that a person who has stolen or misappropriated any amount is not to be prosecuted, if he returns the stolen or the misappropriated amount at any time before the prosecution is initiated against him. As we have already indicated, such delayed payment might be a mitigating consideration, but not a factor to debar prosecution.

5. But we are afraid that the impugned prosecutions would fail for want of a valid sanction u/s 14AC of the Employees' Provident Funds Act. Under Sub-section (1) of Section 14AC, no Court shall take cognizance of any offence punishable under this Act or the Schemes thereunder "except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government". As already noted, the offences as alleged in the complaints are "failure to pay" and not "failure to pay in time". The sanctions filed along with the complaints are also sanctions for prosecutions on the ground that the employers "have failed to pay" contributions and administrative charges of certain amounts noted in the sanction. Though the sanctions note that the amounts were payable within certain prescribed time, the offences alleged, for which sanctions have been accorded, are failure to pay altogether and not failure to pay in time or for payments beyond time.

6. It is true that under the Act and the Schemes, failure to pay in time is an offence; but we have our doubts as to whether a sanction to prosecute for "failure to pay", and not for "failure to pay in time", can sustain a prosecution for failure to pay in time. As has already been indicated hereinbefore, and as has not been disputed by the respondents before us, the petitioners have already paid jail that was payable before the prosecutions were launched and even before the sanctions were accorded and, therefore, the offences were obviously "failure to pay in time" and not failure to pay altogether, for which sanctions have been accorded. The sanctions, therefore, cannot sustain the prosecutions.

7. Where a sanction to prosecute is made a condition precedent to any prosecution, as in S. 14AC of the Act, such a sanction puts in peril the liberty of the person sought to be prosecuted. As pointed by the Federal Court in AIR 1945 16 (Federal Court) such a sanction cannot be an automatic formality and the provisions relating thereto are to be observed with complete strictness. As has been ruled by the Supreme Court in *Jaswant Singh Vs. The State of Punjab*, "it should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution". Such a sanction, therefore, cannot be a matter of easy insouciance, but must be a matter of anxious advertence and, to borrow from the decision of the Supreme Court in

H.N. Rishbud and Inder Singh Vs. The State of Delhi, such a sanction regulates the competency of the Court and bars its jurisdiction except in compliance thereof. To borrow from the decision of the Privy Council in AIR 1948 82 (Privy Council) relied on by the Supreme Court in Jaswant Singh (supra), the sanction to prosecute is an important matter as it constitutes a condition precedent to the institution of the prosecution; but the authority is not bound to sanction prosecution merely because the material placed before it "discloses a prima facie case against the person sought to be prosecuted". Notwithstanding such a prima facie, or even a fool-proof case, the authorities "can refuse sanction on any ground which commends itself to them" and makes them think that a prosecution, notwithstanding disclosure of an offence under the law, is nevertheless no longer expedient. Looked at from this point of view, as pointed out by the Privy Council in Gokulchand Dwarkadas (supra), "it is plain that the Government cannot adequately discharge the obligation of deciding whether to give or withhold sanction without the knowledge of the facts of the case". There is nothing in the sanctions or the complaints to show that the attention of the authority concerned was duly drawn to the fact that all the contributions and other charges payable were already fully paid and it is, therefore, anybody's guess as to whether the sanctioning authority would have still thought these prosecutions to be expedient and granted sanctions, if it could apply its mind to the facts of such payments being already made. All the dues having already been paid before the sanctions were granted for prosecutions for "failure to pay", and there being nothing to suggest that the sanctioning authority could advert to the facts of these payments already made, the sanctions, in our view, may be assailed as to have suffered from infirmity resulting from non-application of mind to pertinent and relevant facts.

8. We are not, as we cannot, be unmindful of the provisions of Section 465, Cri. P.C., 1973 whereunder, as it now stands, "no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on account of...any error or irregularity in any sanction for the prosecution, unless in the opinion of the Court a failure of justice as in fact been occasioned thereby". But as we have already indicated, it is not a case of any error or irregularity in the sanctions, but a case where though the sanctions only authorise prosecutions for "failure to pay", the petitioners are sought to be prosecuted, not for failure to pay, but for payment beyond the time prescribed, for which there is no sanction at all. It is not so much a case of any error or irregularity in the sanction, but a case of want of any sanction for prosecution for the offence of delayed payment, thus affecting, according to the ratio in H.N. Rishbud and Inder Singh Vs. The State of Delhi, the competency and the jurisdiction of the Court to take cognizance. To quote again from the Supreme Court in Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh, , "it is well-settled that any case instituted without a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio".

9. The provisions of Section 465(2), Cr. P.C. need not obviously detain us, which

requires that in determining whether any error or irregularity in any sanctions has occasioned a failure of justice, the Court shall have regard to the fact whether objection could and should have been raised at an earlier stage. As already indicated, this is, in our view, not a case of mere error or irregularity in a sanction, but of want of a proper sanction. And then again, objections by the accused-petitioners have been taken at quite an early stage after taking of cognizance by the Magistrate.

10. The revisional applications are accordingly allowed and the impugned orders of the Court below taking cognizance of the alleged offences under the Employees' Provident Funds Act, 1952 and the Schemes made thereunder, are quashed. The accused-petitioners are discharged from their bail bonds, if any. The records, along with a copy of our judgment, to go down at once.

Amulya Kumar Nandi, J.

11. I agree.