
(1979) 10 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc No. 2453 M of 1979

Provident Fund Inspector, Ludhiana

APPELLANT

Vs

Harminder Singh and another

RESPONDENT

Date of Decision : 10-10-1979

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(i)(a)

Citation : (1979) 10 P&H CK 0026

Hon'ble Judges : S.S. Sidhu, J;M.R. Sharma, J

Bench : Division Bench

Advocate : C.D. Dewan and Mr. S.P. Jain, for the Appellant; Bhagirath Dass and Mr. S.K. Hiraji, for the Respondent

Judgement

M.R. Sharma and S.S. Sidhu, JJ.—Four complaints were filed against the Respondents u/s 14 (i) (a) of the Employees Provident Funds Act, 1952, read with paragraph 76 of the Employees Provident Fund Scheme framed under the Act. The allegations levelled were that the Respondents failed to deposit with the Regional Provident Fund Commissioner the provident fund amounts which consisted of the contributions(sic) made by the employees as also the contributions which were to be made by the employer. Before the learned trial Magistrate, two objections were taken. It was submitted that least in two cases, which are now the subject matter of Criminal Miscellaneous Applications Nos. 2454 and 2455 of 1979(sic), Shri Harminder Singh Respondent was not the Managing Director of M/s Gondara Transport Co (Pvt) Limited, village Gondara, District Faridkot, at the material time, 2nd that complaint was barred by time. In one case out of which criminal Miscellaneous Application No. 2456 of 1979 arises, the contributions were to be made from December, 1972, to February, 1973, whereas the above-named Respondent assumed charge as Managing Director of that company on 1st March, 1973. In the case out of which Criminal Miscellaneous Application No. 2453 of 1979 has arisen, this Respondent was the Managing Director of the Company at the material time but the objection raised was that the complaint relating to this period was also barred by time. The

learned trial Magistrate upheld these objections and dismissed the complaints, vide his order dated December 21, 1978 Provident Fund Inspector, Ludhiana, has filed these four applications u/s 378(4) of the Code of Criminal Procedure, 1973, for special leave to appeal.

2. The learned Counsel for the Petitioners has strenuously argued that the Act in question is a social legislation and even if the Department puts forth no reason for seeking condonation of delay or for explaining the delay, the court should have suo motu condoned the delay. In support of his submission, the learned Counsel has placed reliance upon a judgment rendered by a Single Judge of the Patna High Court in Criminal Miscellaneous Application No. 1648 of 1973(sic) M/s Ganesh Cold Storage, etc. v. The State of Bihar and others, Cr. M. No. 1648 of 1977), decided on 10th September, 1977. The learned Judge in that case relied upon the last portion of Section 473 of the Code of Criminal Procedure, and thought it fit, in the circumstances of that case, that the delay in filing the complaint should have been condoned in the interest of justice.

3. We do appreciate that it is a social legislation and as far as possible, its provisions should be interpreted in a manner which best subserves the purpose of the legislation, but the law also casts a duty on those who are to administer this Act to do so quite vigilantly. When we questioned Mr. Dewan to tell us as to whether there was any reason on which delay should be condoned, he frankly conceded that he was unable to advance any ground like the inability of the persons concerned due to certain circumstances to initiate action against the Respondents. He merely submitted that the last words appearing in Section 473 of the Code of Criminal Procedure to the effect that "it is necessary to so do in the interest of justice" was the provision of law on which he relied and the learned Magistrate should have, in exercise of that power, condoned the delay.

4. After hearing the learned Counsel for the parties, we are unable to accept the position that in cases under this Act, delay should be mechanically condoned by the trial Magistrate in all the cases. He is to see the attending circumstances, including the conduct of the persons whose duty is to administer the Act, the situation in which the Respondent was placed and then to decide whether delay should be condoned or not. If it were to be held that delay should be mechanically condoned in each and every case, that would further add to the lethargy of the office of the Regional Provident Fund Commissioner. To be charged of a criminal offence is quite a serious matter and even if an employer commits a default under the provisions of this Act, he has a right to urge that the process of law should not be set in motion against him after a long delay when the matter had become stale.

5. Mr Bhagirath Dass, learned (counsel for the Respondents, has submitted before us that in case out of which Criminal Miscellaneous Application No. 5453 of 1979 arises, the Respondents were prepared to deposit the entire contribution in the office of the Regional Provident Fund Commissioner. He has further submitted that the Respondent Company had gone into liquidation and in this

situation it would not be proper for this Court to invoke the last portion of Section 473 of the Code of Criminal Procedure, and to condone the delay in the interest of justice. In the circumstances explained by Mr. Bhagirath Dass, we order that in case the contributions are deposited with the Regional Provident Fund Commissioner within two months from today, this petition shall stand dismissed. For the sake of clarity, we direct that the contributions shall be made for the months of February, March April and May, 1973, only. In case the Respondents do not deposit the amount with the Regional Provident Fund Commissioner within the period specified above, the application would be deemed to have been allowed and delay condoned. In that event, the learned trial Magistrate shall proceed in accordance with law to try them for the offence.

6. As far as the other three applications are concerned since Shri Harminder Singh was not the Managing Director of the Respondent-Company at the material time, we affirm the view taken by the learned trial Magistrate and upheld his discharge in these cases.

7. All the four applications stand disposed of accordingly.