

(2003) 08 MAD CK 0036

In the Madras High Court

Case No : Criminal Original Petition No's. 20547 to 20559, 23882 and 24043 to 24064 of 2003 and Criminal M.P. No's. 5839 to 5851, 6815 to 6836 and 6760 of 2003

R. Dhandayuthapani

APPELLANT

Vs

C.R. Kaleel, Enforcement Officer, Employees Provident Funds

RESPONDENT

Date of Decision : 29-08-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) 118 CompCas 167 : (2004) 1 LLJ 491

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : N. Manokaran, for the Appellant; Vibishanan, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—All the above criminal original petitions are filed by the petitioner, who is A.4 in C.C. Nos. 97 to 119 and 121 to 133 of

2000 filed by the respondent on the file of the Court of Judicial Magistrate No. II, Udumalpet praying to quash the said proceedings as against

him.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner, it comes to be known that the

respondent herein has filed the said criminal complaints before the Court below as against the petitioner and three others for the offences

punishable under Sections 14(1A) r/w. 14A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as

the Act). The case of the complainant is that A2 to A.4 therein are in-charge of the A1 firm viz. M/s. Komminar Textiles (P) Limited,

Pethappampatti, Udumalpet Taluk, which is an `Establishment" within the meaning of the said Act; that under Sections 6 and 6A of the Act r/w.

paragraphs 30 and 38 of the Employees" Provident Funds Scheme, the accused are required to pay the Member"s and Employer"s contributions

to the Employees Provident Fund and Employees Pension Fund in respect of the employees of the said Establishment together with administrative

charges within fifteen days of the close of every month; that in spite of several requests, the accused failed to pay the contributions and thus

committed the offence. On such allegations, the respondent has filed various complaints for the alleged non-contribution of the fund for different

periods.

3. When all the matters are pending trial, the petitioner/A.4 has come forward to file the above criminal original petitions seeking to quash the same

thereby submitting that the complaints are not maintainable against him since he is neither a Director nor the Beneficiary of the A1 company; that he

resigned from the A.1 company on 27.2.1997; that the Company Law Board has issued Form No.32 on 27.2.1997 itself, which is a public

document as defined u/s 74 of the Evidence Act and per se admissible in the court of law and therefore the allegation that he is responsible for the

affairs of the A.1 company is false, frivolous and vexatious and hence the continuation of proceedings as against him would amount to abuse of

process of law.

4. The petitioner would further submit that the said document dated 27.2.1997 issued by the Company Law Board would show that he is in no

way connected with the A.1 company; that as held by the Honourable Supreme Court in SATHIS MEHARA vs. DELHI ADMINISTRATION

AND ANOTHER reported in 1996(3) Cri 85 (SC), the Court is within its powers to consider materials which the accused may produce even

before the commencement of trial for the purpose of deciding whether the accused could be discharged, when those documents are not disputed

by the parties to the document.

5. The petitioner would further submit that mere Directors of the company would not be covered by the definition of `Principal Employer" under

the Employees Provident Funds and Miscellaneous Provisions Act; that the company, which is the employer and its Directors, either singly or

collectively responsible; that in 2003(1) CTC 127 (SC)(KATTA SUJATHA vs. FERTILIZERS & CHEMICALS TRAVANCORE LTD. AND

ANOTHER) the Honourable Supreme Court has held that `mere averment that the accused is one of the Directors of the company is not sufficient

to array him as an accused and he should be in `overall in-charge" of affairs of or Administration of the company; that he is an Engineer by

profession and having office at Erode and he is only a name lender and he has no knowledge about the offence alleged to have been committed the

A1 company; that the complaints have been filed with wild imagination of the complainant; that it is necessary to disclose the evidence as to on

what basis such an assertion is made by the complainant; that the primary onus lies with the complainant in an offence u/s 14A of the Act to show

that the persons sought to be proceeded against were Directors in the A1 company and in the absence of any such averment in the complainant,

the petitioner cannot be proceeded with; that the proviso to Section 14A of the Act comes into play only at a much later stage, viz., after discharge

of initial onus by the complainant.

6. During arguments, the learned counsel for the petitioner would lay emphasis that the petitioner was arrayed as A.4 in all the cases, which are

filed in the year 2000 when he was ceased to be a Director of the A.1 company as early as on 27.2.1997; that the period of offence took place

subsequent to the date of retirement of the petitioner from the A.1 company; that as per the provisions of the Act, the "principal employer" is only

A.1 company and hence, under no stretch of imagination, the prosecution could be initiated against the petitioner.

7. In support of his contention that the petitioner was ceased to be the Director of A.1 company, the learned counsel for the petitioner would

submit Form No.32, dated 27.2.1997 issued by the Registrar of Companies, Tamil Nadu, Coimbatore, which shows that the petitioner was

ceased to be the Director of "Komminar Textiles Private Limited, Pethappampatti-638 205, Udumalpet, Coimbatore" as on 27.2.1997.

8. The learned counsel for the petitioner would also cite the following judgments:

1. 2002 (1) CTC 227 (S.B.SHANKAR vs. M/s. AMMAN STEEL CORPORATION, TRICHIRAPALLI, REP.BY POWER OF

ATTORNEY HOLDER R.M.RAVICHANDRAN)

2. 2001 1 L.W.(CrI.) 603 (ASHOK MUTHANNA vs. WIPRO FINANCE LIMITED)

3. 1998 2 L.W.(CrI.)514 (S.MURUGANANDAM vs. STATE, BY INSPECTOR OF POLICE T.KALLIPATTI)

4. 2003 1 L.W.(CrI.)73 (A.R.SARAVANAN vs. STATE, THROUGH INSPECTOR OF POLICE, CRIME BRANCH CID, MADURAI

CITY K1 ANNA NAGAR POLICE STATION)

9. In the first judgment cited above reported in 2002(1) CTC 227 a learned single Judge of this Court having observed that "Form No.32 issued

by Registrar of Companies is public document and can be looked into even if it does not form part of complaint" and having factually found that the

accused therein, who is alleged to have issued a cheque to the complainant therein, which was dishonoured, was not a Director as on the date of

commencement of transaction and hence quashed the criminal proceedings initiated against the petitioner therein.

10. In the second judgment cited on the part of the learned counsel for the petitioner reported in 2001 1 L.W.(CrI.) 603 a learned single Judge of

this Court has observed:

In the present case, as noted above, the document Form No.32 would reveal that the second petitioner was not the director who was in-charge

of and responsible for the affairs of the company during the relevant period and as such, the proceedings as against the second petitioner are liable

to be quashed and accordingly quashed.

11. In the third judgment cited on the part of the learned counsel for the petitioner reported in 1998 2 L.W. (CrI.) 514 the prosecution has

impleaded the second accused, who already retired from the firm after giving due notice to the Registrar of Firms and public advertisement, etc.,

also as an accused on allegation that the firm has committed theft of electrical energy and the learned single Judge of this Court having observed

that the prosecution authorities ought to have verified the fact of retirement of A.2 from the firm and the "failure to verify is a callous attitude inviting

reprimand, as it is nothing but harassment and humiliation, may be to satisfy sadistic pleasure of persons concerned with launching of prosecution"

has ultimately quashed the proceedings launched against A.2 therein.

12. In the last judgment cited above by the learned counsel for the petitioner, a learned single Judge of this Court in a matter wherein charges have

been framed against the accused therein for the offences under Sections 39(1), 44(1)(c) of Indian Electricity Act and Sec. 484 r/w. 34 IPC., for

the alleged commission of electricity theft by a cinema theatre, has held:

Petitioner was not at all in administration of the theatre at the relevant period and hence charges against petitioner are groundless.

13. In consideration of all the facts and circumstances of the case and the judgments extracted supra, there is no doubt that the Form No.32 issued

by the Registrar of Companies is a public document and therefore it is admissible in evidence as per Section 74 of the Evidence Act. In the cases

on hand, heavy reliance is placed on the part of the petitioner on Form No.32 issued by the Registrar of Companies, Tamil Nadu, which is

produced before this Court and it clearly shows that the petitioner was ceased to be the Director of the A1 company as early as on 27.2.1997.

Therefore, the respondent, before filing the complaints before the Court below, should have verified as to whether the petitioner is the Director of

the company, so as to lay the charge against him also. When an authenticated document like Form No.32 issued by the Registrar of Companies

shows that the petitioner was not the Director of the Company from 27.2.1997, the respondent ought to have taken note of the same and acted in

accordance with law.

14. One more aspect to which the attention of this Court is drawn is that the alleged non-contribution starts from 15.12.1996, in which event, since

the punishment prescribed for contravention of the provisions of Section 6 of the Act is a maximum of three years imprisonment, as per Section

468 Cr.P.C., the respondent should have filed the complaint within that period of three years. But, it is glaringly seen that the respondent has filed

the complaints before the Court below only during the year 2000. Therefore, even on the ground of limitation also, the cases registered by the

respondent would become liable to be quashed.

15. Further, to rope in any person for contravention of the acts alleged to have been done by the firm, the said person must be a "person in

charge" in the true sense of the term i.e. he should be in "overall control" of day-to-day business of the company or firm and as held by the

Honourable Supreme Court in the case reported in 2003 (1) CTC 127, the person may be party to the policy being followed by company and yet

not be in charge of the business of the company or may be in charge of but not in overall charge or may be in charge of only some part of business.

Applying the said norms fixed by the Honourable Apex Court, the petitioner/A.4, who is an Engineer by profession and having office at Erode,

cannot be said to be in "overall charge" of the A1 firm, which is situated at Pethappampatti, Udumalpet, Coimbatore and therefore, on this ground

also, the proceedings initiated against the petitioner become only liable to be quashed.

16. For all the reasons assigned supra, since continuation of the above proceedings against the petitioner is nothing but an abuse of process of law,

this Court is of the view that it is a fit case wherein this Court could exercise its inherent jurisdiction u/s 482 of the Code of Criminal Procedure.

In result,

(i) all the above criminal original petitions succeed and they are allowed.

(ii) The proceedings in C.C.Nos. 97 to 119 and 121 to 133 of 2000 pending on the file of the Court of Judicial Magistrate No.II, Udumalpet are

quashed insofar as the petitioner is concerned.

Consequently, Crl.M.P.Nos. 5839 to 5851, 6815 to 6836 and 6760 of 2003 are closed.