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(1985) 01 PAT CK 0006

In the Patna High Court

Case No : Criminal Miscellaneous Case No''s. 1195, 1252, 1253, 1254 and 1258 to 1268 of 1977 and 26, 4435, 4794, 4795, 4857 and 4856 of 1979

Ram Kripal Prasad and Others — APPELLANT

Vs

The State of Bihar and Others — RESPONDENT

Date of Decision : 07-01-1985

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 1(2), 173, 173(2), 192, 197
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14

Citation : AIR 1986 Patna 254 : (1985) 33 BLJR 240 : (1985) 50 FLR 487 : (1985) PLJR 271

Hon'ble Judges : S.S. Sandhawalia, C.J;Nagendra Prasad Singh, J;Brishketu Saran Sinha, J

Bench : Full Bench

Advocate : Basudeva Prasad, Radha Mohan Prasad, Anil Kumar, Sunil Kumar, Shailendra Kumar Sinha and Sudhir Kumar Katriar, for the Appellant; Tarkeshwar Dayal and Rama Shankar Pradhan, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—The three primarily significant issues, which have come to the fore in this reference to the Full Bench, may well be formulated in the terms following : --

(i) Whether the failure of the employer to deposit the contributions in contravention of Paragraphs 38 and 76 of the Employees'' Provident Funds Scheme, 1952, read with Section 14 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, would be a continuing offence?

(ii) Whether the disputed issues of limitation under Sections 468 to 473 of the Code of Criminal Procedure can appropriately be raised directly in the High Court for the quashing of proceedings u/s 482 of the said Code?

(iii) Whether a petition of complaint for offences punishable u/s 14 of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952, must in

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terms plead each and every relevant fact and, in particular, the precise number of employees of the prosecuted establishment?

(iv) Whether in the event of its failure to do so, the proceedings would be vitiated on that score alone?

2. Equally at issue is the correctness of the view of the learned single Judge in United Sports Works v. State of Bihar (Criminal Misc. Case No. 102 of 1977 and analogous cases : decided on the 26th April, 1977). Inevitably some ancillary questions which arise would be dealt with in their related context.

3. Learned Counsel for the parties are agreed that the issues of fact and law are common and identical in this set of 21 criminal miscellaneous cases and this judgment would govern all of them. The representative matrix of facts may, therefore, be conveniently noticed from Kailash Talkies, Barauni, v. State of Bihar (Criminal Misc. Case No. 4435 of 1979).

4. The petitioner-firm and its partners and Manager seek the quashing at the very threshold of the complaint filed against them u/s 14A of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act), pending in the Court of the Judicial Magistrate, Second Class, Begusarai. Messrs Kailash Talkies is a cinema house, located at Barauni, and it is claimed that the number of persons employed therein has been below 20 and consequently, the petitioner is not an ''establishment'' within the meaning of the Act. It is averred that for the first time on the 16th of September, 1975, the Regional Provident Fund Commissioner, Bihar, issued a notice (Annexure ''1'') calling upon Petitioner No. 1 to pay the dues mentioned therein for the period October, 1969 to June, 1975, and to submit the requisite returns immediately. Thereafter, a similar notice (Annexure ''2'') and other similar notices under the Act were admittedly issued to the petitioners for different periods. Subsequently, the petitioners came to know that vide order dated the 26th June, 1976 (Annexure ''4''), Respondent No. 2 had assessed provident fund dues against the firm ex parte without expressly finding that the establishment employed 20 or more persons. Further, a criminal prosecution had also been launched against the petitioners, vide the petition of complaint (Annexure ''3'') dated the 18th February, 1977. Later, the Provident Fund Inspector submitted an inspection report of the checking of the accounts of the petitioner-firm up to October. 1977. vide Annexure ''5''.

5. On the petitioners'' own showing, they filed returns from time to time, up to June, 1976, though it is their stand that this was done under compulsion. Thereafter, vide Annexure ''6'' the Provident Fund Inspector issued a letter to the firm requesting them to comply with the inspection report within a fortnight, and, subsequently, the Accounts Officer of the Employees'' Provident Fund, Bihar, issued a letter dated the 11th July, 1978 (Annexure ''7''). On the 15th of September, 1978, Respondent No. 2 directed the verification of the provident fund records from January, 1969 to June, 1975, and, on the 7th of May, 1976,

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the petitioner-firm made payment of the provident fund contributions from the period 1st July, 1975 to 31st May, 1976, from time to time, allegedly under compulsion and threats. It is also the case that certificate proceedings for the recovery of Rs. 9,747.70 Paise, as dues under the Act were started by Respondent No. 2 (vide Annexures ''9'' and ''9/1''). Later, on the 30th October, 1978, the management of Petitioner No. 1 informed Respondent No. 2 that the concerned dues had been paid and requested for the dropping of the certificate proceedings. Subsequently, because of the demands having been satisfied. Respondent No. 2 informed the Collector of Patna that the recovery proceedings need not be proceeded further (vide Annexure ''11''). Later, proceedings for imposing penal damages u/s 14B were, however, initiated by the respondents against the petitioners. In Paragraph 10 of the petition it is admitted that some of the employees of the management went on acting and corresponding with the authorities on the wrong assumption that the Act and the Employees'' Provident Funds Scheme, 1952 (hereinafter referred to as the Scheme), applied to the petitioners, and, it is the stand that this was done in ignorance of the legal position and without instruction from Petitioners Nos. 2 to 5.

6. In the criminal proceedings the petitioners preferred an application under Sections 245 and 258 of the Code of Criminal Procedure, (hereinafter referred to as the Code) before the trial Court praying that the case was not maintainable and the accused petitioners be discharged. However, the said application was rejected. It is the firm stand that the petition of complaint does not disclose any offence at all and consequently the criminal proceedings should be quashed.

7. In the counter-affidavit filed by the Provident Fund Commissioner most of the factual allegations raised by the petitioners have been categorically controverted. It is pointed out that Messrs Kailash Talkies comes under the schedule head of ''cinema'' and is clearly within the purview of the Act. In specific terms, it is averred that from the 19th of September, 1969, the management had employed 21 persons and that it was totally false that the number of such employees was below 20. It is their case that there had been proper physical verification by the Inspector of the Department, who, in fact, found more than 20 persons there on the day of inspection and it was thereafter that he submitted his inspection report. It repeatedly reiterated that the establishment employed 21 persons and the petitioners'' assertion that in fact only 15 or 16 persons were on the roll was false. Consequently, it is the firm case that the establishment is clearly covered by the Act. It is averred that repeated notices were issued to the petitioners and it was only after patent non-compliance therewith that the prosecution was launched for being in gross default of the payment of dues under the Act as also for non-submission of returns. It is denied that any pressure was put on the petitioners for the filing of returns under the Act, which had been filed from time to time voluntarily up to June, 1976. There had never been any complaint preferred by the petitioners with regard to any such threat or compulsion. It is equally the case that the certificate proceedings were rightly started against the petitioners for realisation of the dues recoverable from them and the notice for

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levy of penal damages u/s 14B was issued in accordance with law. It is denied that the prosecution has been launched with any mala fide motive, and, indeed, the case is that this was ultimately resorted to because of the petitioners'' recalcitrance to comply with the statutory provisions.

8. At the very outset it must be noticed that on behalf of the petitioners the star argument originally advanced was that a failure of the employer to deposit the contribution in contravention of Paragraphs 38 and 76 of the Scheme, read with Section 14 of the Act, was not at all a continuing offence. Consequently, the bar of limitation prescribed by Section 468 of the Code was sought to be invoked, because the petitions of complaint were filed in Court after considerable delay from the date of the commission of the said offence. This submission was pressed before us with vehemence, on principle and by reliance on a catena of authorities in State of Bihar Vs. Deokaran Nenshi and Another, , State of Uttar Pradesh Vs. Batuk Deo Pati Tripathi and Another, , The Provident Fund Inspector Vs. N.S. Dayananda, , and S. V. Lachwani v. Kanchanlal C. Parikh, 1978 Lab IC 868.

9. On behalf of the respondents, reliance was equally sought to be placed on State of Bihar v. Deokaran Nanshi (supra) and on observations in The State Vs. Kunja Behari Chandra and Others, , and, directly on the Division Bench judgment of the Madras High Court in Premier Studs and Chaplets Co. v. The State, 56 FLJ 611, and Akharbhai Nazarali Vs. Md. Hussain Bhai, .

10. Fortunately, however, all controversy on this specific point has been now set at rest by the unequivocal view expressed in Bhagirath Kanoria and Others Vs. State of M. P., . Therein, this very issue had arisen directly for consideration, and, after distinguishing the State of Bihar Vs. Deokaran Nenshi and Another, , and confining the same to cases of failure to furnish returns only, it was concluded as follows : --

"For these reasons, we are of the opinion that, the offence of which the appellants are charged, namely, non-payment of the employer''s contribution to the provident fund before the due date, is a continuing offence, and, therefore, the period of limitation prescribed by Section 468 of the Code cannot have any application. The offence, which is alleged against the appellants, will be governed by Section 472 of the Code, according to which, a fresh period of limitation begins to run at every moment of the time during which the offence continues."

11. In view of the aforesaid authoritative enunciation, it is now wholly unnecessary and indeed wasteful to examine the rival submissions of principle or to individually advert to the authorities aforesaid, which were cited at the Bar. It is plain that the High Court judgments taking a contrary view to what has been categorically laid above in Bhagirath Kanoria and Others Vs. State of M. P., are not any longer good law. The submission on behalf of the petitioners on this score must fail as no question of limitation can possibly arise in the context of a continuing offence in view of Section 472 of the Code.

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12. Inevitably, the answer to the first question posed at the very outset is rendered in the affirmative and it is held that the failure of the employers to deposit the contributions in contravention of paragraphs 38 and 76 of the Scheme, read with Section 14 of the Act, would be a continuing offence.

13. However, undeterred by the ratio of Bhagirath Kanoria and Others Vs. State of M. P., , Mr. Basudeva Prasad, learned counsel for the petitioners, still strenuously pressed the issue of limitation with regard to the offence of non-submission of returns on the prescribed dates. Relying on State of Bihar Vs. Deokaran Nenshi and Another, and its limited affirmance and confinement to the cases of failure to furnish returns in Bhagirath Kanoria''s case (supra) it was contended that at least so far as this offence was concerned, it was not a continuing one and consequently the delay in launching the prosecution was fatal Because of the alleged bar of limitation in this set of cases it was claimed that the same can be raised directly in the High Court for quashing of the whole proceedings at the very threshold.

14. However, the learned counsel for the respondents frontally assailed the stand of the writ petitioners that a criminal proceeding should be quashed at the very threshold on the ground of limitation under Chapter XXXVI of the Code. The longer submission herein was that the issue of limitation when raised would not pose an inflexible or blanket legal bar against the continuance of the proceeding nor does it remotely denude or affect the inherent jurisdiction of the trial Court. Indeed the question of limitation is a matter for consideration, computation and adjudication by it atone. Consequently it was submitted that in view of the provisions of Sections 467 to 473 of the Code the question of limitation must be squarely raised and urged at the very threshold either at the stage of taking cognizance by the Court, or, in the alternative, as a preliminary question thereafter when the accused makes his appearance. The justiciability of this issue has necessarily to be within the parameters of the provisions of Chapter XXXVI of the Code.

15. There appears to be patent merit in the lucid and forthright stand taken on behalf of the respondents. Viewed in the retrospect against the backdrop of its legislative history, it has to be borne in mind that prior to the enforcement of the present Code in 1974 there was no concept of limitation qua criminal offences under the earlier Code. The Joint Select Committee of the Parliament in this context had observed as under in its report:

"These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present, there is no period of limitation for criminal prosecution and a Court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a good ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission."

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It was in pursuance of the aforesaid particular object that Chapter XXXVI was inserted in the Code to effectuate the same. The larger purpose of Sections 467 to 473 contained therein would plainly indicate that the question of limitation is not only justiciable but has to be adjudicated within the parameters of those sections by the Court taking cognizance of the offence. The broad scheme of the Chapter is that Section 468 prescribes the period of limitation for taking cognizance of offences punishable with imprisonment for less than three years and classified according to the quantum of sentence imposable in each category. Section 469 then spells out the point of commencement of the period of limitation in the three categories specified in the earlier section whilst the succeeding Sections 470 and 471 in detail provide for the exclusion of time in certain cases and of the date on which the Court is closed. With regard to continuing offences, Section 472 spells out the rule that a fresh period of limitation shall begin to run at every moment of the time during which the offence continues. But the material provision that follows is that of Section 473 pertaining to the extension of the period of limitation in certain cases and even overriding the bar of limitation. This calls for notice in extenso :

"473. Extension of period of limitation in certain cases.-- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice."

16. Now the particular provisions on which the issue would turn in the present case are Sections 468 and 473 and a new dimension and approach given thereto by the final Court in Bhagirath Kanoria and Others Vs. State of M. P., . It would be manifest from the aforementioned scheme of Chapter XXXVI that the issue of limitation, because of the varying periods provided therefore in Section 469, would first turn on the nature of the offence disclosed from the allegations of the prosecutor. It has to be borne in mind that if the offence disclosed be punishable with imprisonment exceeding three years no question of limitation would arise. Equally if the offence be a continuing one, the issue of limitation is rendered irrelevant by virtue of Section 472. Further depending on the quantum of sentence the period of limitation may itself vary from six months to one year and three years. Again as to the terminus a quo for determining the period of limitation, the provisions of Section 469 have to be applied and equally Sections 470 and 471 are attracted for determining the terminus ad quem

17. Apart from the above, it is evident from the aforequoted provisions of Section 473 that though a prosecution may be prima facie barred by limitation, the said section expressly provides for an explanation of such delay. It begins with a non obstante clause and in terms it provides for condonation of the delay if properly explained to the satisfaction of the Court. Therefore, that is a matter which has to be raised and gone into. What, however, is more significant is that even though it is established that the prosecution is beyond the period of

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limitation and further that the delay therein has not been satisfactorily explained yet the Court is given the power to override the bar of limitation if the interests of justice necessitate the same. It were these patent considerations which have impelled the final Court to make the undermentioned observation in Bhagirath Kanoria and Others Vs. State of M. P., :

"Before we close, we consider it necessary to draw attention to the provisions of Section 473 of the Code which we have extracted above. That section is in the nature of an overriding provision according to which notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice. The hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any, such period is applicable, because the interest of justice so requires. We believe that in cases of this nature, Courts which are confronted with provisions which lay down a rule of limitation, governing prosecution, will give due weight and consideration to the provisions contained in Section 473 of the Code."

It is plain that even though in the aforesaid case the question had been raised in the trial Court itself and was thereafter sought to be reagitated in revision before the High Court, their Lordships disapproved of hair-splitting arguments in the context Consequently viewed in the background of statutory provisions and the precedent of the final court, it seems manifest that the issue of limitation is not a blanket bar to the prosecution which may warrant it being raised initially in the High Court itself for quashing the proceedings at the threshold. Indeed it is a question which needs to be raised and determined at the earlier stage before the trial Court This is so because even after the raising of the issue of limitation, computation and its determination that the same is beyond the prescribed period, the delay may still be properly explained and consequently condoned and above all dehors such explanation it may still be overriden in the "paramount interests of justice.

18. In fairness to learned counsel for the writ petitioners, an argument of somewhat superficial plausibility raised on their behalf must be noticed. Relying apparently on the authoritative observation in R.P. Kapur Vs. The State of Punjab, that lack of sanction being a legal bar can provide a ground for quashing criminal proceedings, learned counsel had sought to contend that limitation was also an identical bar entitling the petitioners to claim the quashing of proceedings before the High Court in the first instance.

19. The aforesaid submission though it may bring some credit to the ingenuity of counsel is nevertheless fallacious in the light of what has been considered and held in the earlier pan of this judgment. It is plain that lack of sanction where it is provided as the pre-requisite for taking cognizance would present an inflexible

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and blanket legal bar to the prosecution till the same is obtained. Either the requisite sanction is forthcoming or it is not, no issue of computation, condoning or overriding the same can at all arise. The concept of limitation on the other hand under Chapter XXXVI of the Code presents no such blanket bar at all. As pointed out above, the issue of limitation is first a matter to be raised and then to be computed and thereafter determined by the Court on the basis of a proper explanation of delay or overriding the default if necessary in the interests of justice. Whilst the lack of sanction, as for example, u/s 197 of the Code cannot be condoned, the expiry of limitation can be both explained and condoned by the Court. Equally whilst absence of sanction cannot be overridden or ignored by the Court, Section 473 empowers it that despite the expiry of limitation if the paramount interests of justice so require the prosecution would continue and that is a matter first in the judicial discretion of the Court taking cognizance. Therefore, in the limited field of quashing a proceeding the total absence of sanction is on an entirely different footing from the question of limitation under Chapter XXXVI of the Code.

20. Equally somewhat hypertechnical pleas were also sought to be raised on behalf of the petitioners. It was contended that cognizance having once been taken by the trial Court it would not be open to the accused to raise the issue of limitation thereafter nor was it permissible for the Court to determine the same. Neither principle nor precedent warrants any such specious assumption. It is well settled and has been reiterated in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, that an accused person has no locus standi in the matter tilt process has been issued against him. His right to raise the issue of limitation thus can arise only after he puts in appearance subsequent to process issued after taking cognizance. I see no bar to the accused person, raising the issue of limitation and indeed as observed earlier the same should be done at the earliest and if raised ought to be adjudicated upon as a preliminary issue.

21. As a corollary to the above submission it was also attempted to be argued that cognizance having originally been taken by the Chief Judicial Magistrate and thereafter the case having been transferred for trial to another Magistrate, the issue of limitation cannot be raised in such a transferee Court. This again has only to be noticed and rejected. It is well settled by virtue of Section 192 that a competent transferee Court exercises all the powers of the Court transferring the same. No hair-splitting distinction can either be drawn or allowed in this context.

22. To conclude on this aspect, the answer to question No. (ii) posed at the outset is rendered in the negative and it is held that the disputed issue of limitation under Sections 468 to 473 of the Code of Criminal Procedure cannot be appropriately raised directly in the High Court for the quashing of proceedings u/s 482 of the Code.

23. Now, I may advert to the remaining question No. (iii) framed at the outset with regard to the point, whether the petition of complaint herein must plead each and every relevant fact and in particular the precise number of employees

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of the prosecuted establishment and the consequences in the event of a failure to do so.

24. In elaborating his somewhat vehement stand that the complaint herein did not disclose an offence, Mr. Basudeva Prasad, learned Counsel for the petitioners, had first placed reliance on Section 2(d) of the Code defining a ''Complaint'', and, in particular on Section 14AC of the Act, which provides for a report in writing of the facts constituting such an offence for the cognizance thereof. It was argued that the complaint did not disclose and plead the necessary facts constituting the offence, and, in particular, that the prosecuted establishment employed 20 or more persons therein. Placing particular reliance on United ''Sports Works v. State of Bihar (Cri. Misc. Case No. 102 of 1977, DA 26-4-1977) (Pat) (supra), it was submitted that the absence of the averments with regard to 20 or more employees in each establishment was fatal to the prosecution and the same could not be allowed to be established by evidence, and, therefore, the proceeding should be quashed at the very threshold.

25. The aforesaid contention must be examined on larger principle as also on the anvil of the relevant statutory provisions. It is, therefore, apt to quote Section 2(d) of the Code and the relevant parts of Sections 1 and 14AC of the Act:

"(d) ''Complaint'' means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but it does not include a police report."

"1. Short Title, Extent and Application --

(1) This Act may be called the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) Subject to the provisions contained in Section 16, it applies --

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed, and,

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf :

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty."

"MAC. Cognizance and trial of offences --

(1) No Court shall take cognizance of any offence punishable under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme, except on a report in writing of the facts constituting such offence made with the previous

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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."

26. Before adverting in some detail to the aforesaid provisions, one must keep in mind the broader perspective that the administration of criminal law is more a matter of substance than of form and should not be allowed to be befogged by hair-splitting technicalities. What has to be largely seen herein is whether on reading the complaint as a whole the same would with relative clarity disclose facts which would constitute an offence under its prescribed definition. The petition of complaint is to be looked at in its totality and not each paragraph thereof as if it were in a watertight compartment. It is now well settled beyond cavil that a complaint or a first information report in a criminal case is not to be an encyclopedia of all the facts. In particular with regard complaints the final Court in Bhimappa Basappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda and Others, , has observed as under: --

"The word ''complaint'' has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with the necessary facts for the Magistrate to take action. Section 190(1)(a) makes it necessary that the alleged facts must disclose the commission of an offence."

27. In the light of the above and equally with reference to Section 14AC of the Act it seems to follow that neither the statute nor precedent requires that the petition of complaint must in detail plead any and every minuscule fact relevant to the offence or the evidence by which it has to be established. Therefore, the complainant is not required to plead the language of the section or its number or to spell out every outline of the facts and evidence that is likely to be adduced. Equally in this context one cannot lose sight of the fact that we are called upon to construe a beneficent social legislation under the Act, which should merit a liberal and substantial approach and not a constricted and technical one. It was, perhaps, this consideration which had impelled their Lordships in Bhagirath Kanoria and Others Vs. State of M. P., , to frown upon hair-splitting technicalities in this sphere.

27A. In the aforesaid background one may now proceed to look at the complaint (Annexure ''3'') with particular reference to Paragraphs 2 and 3 (hereunder quoted in extenso for easy reference), on which the learned Counsel for the petitioner had focused himself :

"2. Thatt, M/s. Kailash Talkies, Barauni, Begusarai is an establishment within the meaning of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952. It is hereinafter referred to as "The said establishment". The Employees'' Provident Funds and the Miscellaneous Provisions Act, 1952, the Employees'' Provident Funds Scheme, 1952, and the Employees'' Family Pension Scheme,

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1971, are applicable to the said establishment. It has been allotted Code No. BR/2076. It is situated at Barauni, District Begusarai.

"3. That accused Nos. 2 to 5 are the persons in charge of the said establishment and are responsible to it for the conduct of its business. They are thus required to comply with all the provisions of the said Act and the Scheme and the Family Pension Scheme in respect the said establishment."

28. Now turning to the petition of complaint as a whole, it is manifest that therein it has been expressly averred that the petitioner-firm is an establishment within the definition under the Act and consequently the statutory provisions are applicable to the same. In particular, it has been stated that it has been allotted a code number administratively labelling each establishment covered by the Act, it then specifies the accused persons who are in charge of the said establishment and are responsible for the conduct of its business, consequently enjoined by law to comply with the statutory provisions in respect thereto. The relevant paragraphs 30 and 38 of the Employees'' Provident Funds Scheme, 1952, which require the employer to make contributions by the provident fund within 15 days of the close of that month, are referred to and it is pointed out that the accused persons, in spite of several requests, have failed to pay the contributions for the relevant months, which are specified. It is then averred that the accused persons, who are in charge of the establishment and were responsible for the conduct of its business, have committed the offences under the relevant statutory provisions. What is of particular significance is the averment in Paragraph 14 that sanction for the prosecution has been granted by the Regional Provident Fund Commissioner, Bihar by his order dated the 3rd of September, 1976, and the original copy thereof is annexed as an integral part of the complaint. The other requisite formal pleadings have equally been made by the complainant Provident Fund Inspector, duly appointed u/s 13 of the Act

29. It seems manifest from the above that viewed as a whole the aforesaid petition of complaint clearly and expressly discloses the facts constituting the offences under the Act. The hypertechnical argument that because the complainant does not expressly plead that the petitioner''s establishment employs 20 on more persons has only to be noticed and rejected. The rule of incorporation by express reference to another matter or provision is too well known to call for elaboration. Therefore, when the complainant avers that M/s. Kailash Talkies is an establishment within the meaning of the Act and the same is applicable to it and that a code number has been allotted thereto would by patent reference incorporate the applicable part of the definition of ''establishment'' to which the Act applies. In the eye of law it would in terms be an express pleading that M/s. Kailash Talkies is an establishment employing 20 or more persons as specified in Clause (b) of Sub-section (2) of Section 1 of the Act. In terms it must be deemed to read as the undermentioned averment in the complaint:

"That M/s. Kailash Talkies is an establishment employing 20 or more persons and

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is of the class of establishments which the Central Government has by notification in the official gazette specified in this behalf.

30. As I said earlier, it is not necessary and is indeed wasteful to plead the very words of the statute and if express reference is made to it then its contents must be deemed to be incorporated in the complaint, and, therefore, would more than amply specify the requirement that the said establishment satisfies statutory pre-condition of the applicability of the Act thereto, including the employment of 20 or more persons.

31. At this very stage one must also notice the fears that were expressed by the learned counsel for the petitioners and indeed somewhat eloquently projected, that unless any and every minuscule factor constituting the offence is expressly pleaded in the complaint there would be grave danger of prosecution being launched indiscriminately at the whimsicality of the ministerial officers of the department resting on stereotyped allegations. Apart from the fact that this submission seems to rest on the untenable basis of an assumption that the departmental officers would act unfairly, it equally loses sight of the statutory safeguards provided by the Act in this context. Section 14AC on which so much emphasis was placed by the learned counsel for the petitioners himself, provides that no court shall take cognizance of an offence under the Act 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 by notification. It is thus manifest that prior sanction for prosecution is the sine qua non for even taking cognizance of offences under the Act. Indeed the report in writing of the Inspector with regard to the facts constituting the offence and the previous sanction are integrally connected herein. It is thus plain that prosecutions under the Act cannot be indiscriminately ordered by Inspectors appointed u/s 13 and it can be so done only after a full and detailed consideration of the matter at the highest level The Provident Fund Commissioner has first to be satisfied that the allegations and facts disclose an offence under the Act and thereafter whether it is expedient to order prosecution before he authorises the filing of a petition of complaint for prosecution. The sanction is in the shape of a speaking order which after referring to the requisites and the requirements of Section 14AC authorises the prosecution with reference to the periods for which default is made and specifying the names of persons who are to be prosecuted. Consequently all apprehensions of any indiscriminate prosecutions as a modus of harassment by the Inspectors or departmental staff at the lower level are wholly ill-founded. It is indeed plain that all the necessary facts, which would constitute the offence, have first to pass the crucible of sanction by the Provident Fund Commissioner before they emerge in the petition of complaint for prosecution in open Court and to be established by evidence in the course of the trial.

32. It was then sought to be contended that the complaint petitions herein were usually, if not invariably, preferred in stereotyped printed forms which were

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alleged to be filled in by ministerial inspectors without any application of mind. The stand taken was that mere use of the printed forms etc., was indicative of the fact that the petitions of complaint were preferred without individual attention to the issue whether the facts pleaded constituted an offence or not

33. The contention aforesaid is plainly untenable because firstly it cannot be said generally that the law either forbids or frowns on forms in the criminal realm. This is manifest even from Section 173(2) of the Code which prescribes that the report of the police officer on completion of investigation shall be forwarded to a Magistrate in the form prescribed by the State Government. The Code otherwise provides a wide variety of forms to be used in the criminal process. Specifically herein even though the petition of complaint may be on a printed form it is obvious that the material and substantive parts thereof have to be specified and filled in with a proper application of mind to the broad facts in hand. There is no such thing as a mechanical prosecution or filling up all the material columns thereof as if by an automation. It was not denied that before launching a prosecution repeated notices are given to pay up the dues and submit the returns and only on persistent failure to do so, a prosecution is ordered. It must also be borne in mind that herein one is not dealing with variegated circumstances of ordinary and conventional crime but instead with the infraction of statutory prescriptions which have been made penal to give them the sanction and force of criminal law. It seems to follow that if the prescribed requirements are identical with regard to each establishment the infraction thereof which would constitute the statutory offence would be somewhat similar in nature and the allegations in the consequential prosecution have inevitably to follow a particular conforming pattern, or form. In fact the use of a form may well focus the attention of the authorities below on the material ingredients of the offence with regard to which the facts have to he pointedly specified and pleaded and later established in the course of the trial. I am unable to see how the use of a form by itself would he something of an anathema to the law which would vitiate the prosecution.

34. Now the Sheet-anchor of the petitioner''s stand was its reliance on the judgment in United Sports Works (Cri. Misc. Case No. 102 of 1977, D/-26-4-1977) (Pat) (supra). This undoubtedly supports their case but with the greatest respect the same would not stand the scrutiny of a critical analysis. In the said case also the primary ground of challenge was that the complaint in terms did not specify the number of employees of the establishment or alleged that it was more than 20 and, therefore, the same failed to make the material allegation of fact for maintaining the prosecution. The learned single Judge after referring to the facts and quoting a substantial part of the petition of complaint (in all running to seven typed pages) observed somewhat curiously that the whole of the petition of complaint did not mention any fact at all. It is not easy to subscribe to this line of reasoning and to brush away a host of pleaded facts as if they were non-existent It was then observed that an establishment within the meaning of an AAct is only a legal concept hut not a fact. It is not easy to see

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how the existence of a factory or an establishment (satisfying the prescribed requirements of Section 1 of the Act) is not a fact at all but merely the statement of legal concept. It may be noticed that even a legal concept may connote or rest itself squarely on certain foundational facts and is not invariably something which is entirely ethereal. The concept of incorporation by reference to a matter is well-known. If instead of pleading every factual requirement for an establishment it is stated that the same comes squarely within the ambit of Sec. 1 of the Act then it is in terms nothing more or less than pleading facts required by the statute. By reference and incorporation the factual matrix actually is and, in my opinion, can be stated briefly and tersely to the effect that the establishment satisfies the requirements of the statute including the pre-condition of employment of 20 or more persons. In my view, it would be only hypertechnical to insist on each and every petty factual requirement for the applicability of the Act to the establishment to be specifically pleaded in terms. As has been said earlier, the petition of complaint is not to be an encyclopaedia of every conceivable factor relevant to the prosecution. With great deference 1 am unable to agree that it is mandatory for the petition of complaint to specify in terms the number of employees of the establishment in each case on the date of complaint which, in fact, may be a fluid one. Once a specific allegation is made in the complaint that the establishment is within the meaning of the Act which is applicable thereto then it would be open and permissible for the prosecution to establish the requisite requirements by evidence and it would be equally open for the accused to rebut and show that he does not come within the ambit of the Act at the threshold. I am unable to subscribe to the view that the mere non-specification of the precise number of employees in the establishment would be fatal despite the categoric averment that the said establishment was within the meaning of the Act and the scheme applicable thereto and that it had been allotted a code number and further averments that the persons in charge of the establishment were liable to furnish returns and pay contributions and despite having been repeatedly pressed to do so had failed to perform the statutory duty. With the deepest deference it seems to me that the observations in United Sports Works (supra) rest on a hairsplitting technicality rather on the terra firma of substantial justice betwixt the prosecution and the accused. With the greatest respect this case does not lay down the law correctly and is hereby overruled.

35. In fairness to Mr. Basudeva Prasad, reference must also be made to Anantharamaiah Woollen Factory v. The State 1981 Lab IC 538 (Kant) which was sought to be relied upon. That case is, however, plainly distinguishable. What primarily fell for consideration therein was the scope of the expression "employer" as defined in Section 2(e) of the Act and further whether every partner of a firm necessarily and inflexibly came within its ambit. That indeed is not even, remotely the question here. It is significant to recall that therein the complaint far from being quashed was allowed to continue substantially against the establishment itself and the managing partner thereof who was admittedly in the ultimate control of the affairs and business of the said establishment. The

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general observations in the case also do not in any way advance the stance of the petitioners. Equally Shankar Brothers v. The State 1978 BBCJ 337 is of no aid to the petitioners. Plainly enough, that was not a case of any prosecution at all or the filing of a petition of complaint. It was directed merely against a notice asking the petitioner to pay the amounts of money determined as employer''s contributions and the limited relief granted was that since there was no final determination of the question of fact as to whether the petitioners'' establishment is one employing 20 or more persons the same was set aside with liberty to respondent No. 2 to proceed in accordance with law by granting fresh opportunity to the petitioners to present their case that they do not regularly employ 20 or more persons. Obviously the said case is wholly distinguishable.

36. The argument ab inconventiae in the context of the stand that the number of employees of an establishment must be specifically pleaded must also be noticed. It may not always be possible for the complainant to ascertain with mathematical precision how many workers or employees are on the roll of a particular establishment on a particular date. It is perhaps for this reason that Sub-section (5) of Section 1 prescribes that an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any tune falls below twenty. If there is specific averment that the establishment is one within the meaning of the Act and it is applicable then it has to be assumed that for the material period the number of persons employed satisfies the statutory requirement. To insist that the said number must be specified with precision on a particular date may well be asking for an impossibility and in any case may raise grave difficulties for the actual applicability of the provisions. An interpretation which may lead to overly technical consequences has thus to be avoided on sound canons of construction.

37. To sum up on this aspect, the answer to question No. (iii) formulated at the outset has to be rendered in the negative and it is held that a petition of complaint for offences u/s 14 of the Act need not in terms plead each and every minuscule relevant fact nor the precise number of employees of the prosecuted establishment. In any event, the failure to do so does not vitiate the proceedings on such technical ground alone.

38. Since all the three primal questions and their corollaries, which were raised on behalf of the petitioners, have been answered against them, these criminal miscellaneous cases must therefore, fail and arc hereby dismissed.

39. In view of the grave delay that has already occurred in the trial thereof because of the pendency of the present proceedings, the court below shall expeditiously proceed to dispose of the same.

Nagendra Prasad Singh, J.

40. I agree.

Brishketu Saran Sinha, J.

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41. I agree.

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