(1995) 03 MAD CK 0123

In the Madras High Court

Case No : Criminal OP. No''s. 17104 to 17108/92 and 5201 to 5210 of 1993

Rayala Corporation Pvt. Ltd. and 2 others APPELLANT

Vs

The Provident Fund Inspector, Madras RESPONDENT

Date of Decision : 21-03-1995

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (1995) 1 LW(Cri) 374

Hon'ble Judges : Rengasamy, J

Bench : Single Bench

Advocate : George Cheriyan, for B. RaviRaja, for the Appellant; V. Vibhishanan, for the Respondent

Judgement

Rengasamy, J.—These petitions have been filed u/s 482 Code of Criminal Procedure to quash CC. Nos. 7096 of 1990 to 7099 of 1990. 7086 of 1990 to 7095 of 1990 and 7100 of 1990 respectively on the file of XI Metropolitan Magistrate, Saidapet, Madras.

2. The Petitioners are the Company, its Managing Director and Director, For the nonpayment of the contribution of the employer''s share of Provident Fund, the deposit linked insurance contribution and administrative charges within the prescribed time, these Petitioners have been prosecuted for the noncompliance of Section 6 and 6(c) of the Provident Fund Act and paragraph 38 of the Employees Provident Fund Scheme. The petitions 17104/92 to 17108/92 and 5210/93 have been filed to quash the criminal cases CC. No. 1796 of 1990 to 1799/90 and 7100/90 initiated for the nonpayment of the employer''s share of the Provident Fund amount for the different periods in 1988-89. Petitions 17106/92, 5201 to 5204/93 are petitions to quash the proceedings viz. C.C. Nos. 7087/90 to 7090/90 for the non-payment of the deposit linked insurance contribution for the different months in 1988 and 89. Petitions 5205/93 to 5209/93 have been filed to quash CC. Nos. 7091/90 to 7095/90 for the non-payment of the administrative charges within the prescribed period for the period

from May 1988 to August 1989.

3. In these petitions for quashing the criminal cases, the grounds taken are that the contributions have been paid fully before the filing of the complaints before the Magistrate, that there are no guidelines under the Provident Fund Act as to who to be prosecuted and who to be subject to recovery of damages and as this is arbitrary, it is discriminatory and offending Article 14 of the Constitution of India, that their company had to mens rea for the delayed payment as they were unable to pay the contribution due to certain reasons beyond their control, that the circular dt. 18.10.1973 by the Government directs for the prosecution within 7 days from the date of receipt of the sanction but in this case, there is delay of 5 moths in filing the complaint, that as the contribution has been paid already before launching of the prosecution, the prosecution should have been withdrawn, that in the complaints, there is no specific reference as to who is the actual employer and the complaints are in the printed form which contain certain words not scored out, the complaints have been filed without application of mind and therefore the proceedings have to be quashed.

4. In Crl.OP. Nos. 5201/93 to 5209/93, one more additional ground is that the day-today business of the first Petitioner are entrusted with some person, who are managing and conducting the daily affairs and the Petitioners 2 and 3 are not in charge and responsible for the day-to-day business of the company, that under Art 122(4) of the Memorandum of the Company, the directors are empowered to appoint secretaries, officers, etc. and the directors have appointed the Factory Managers to be in charge and responsible for the day-today running of the factory and from 14.11.1983 onwards, General Manager was appointed for the company with administrative responsibility of the company and therefore, the Petitioners 2 and 3 cannot be prosecuted.

5. Even though the above grounds have been taken in the petitions, the learned Counsel appearing for the Petitioners did not urge all these points except one relating to the delay in filing the complaints after the sanction order. It was argued that the circular issued by the Head of the Department dt. 18.10.1973 reads that within 7 days of the receipt of the sanction order, the prosecution should be filed but in this case, even though the sanction order is dt. 21.5.1990, the complaint was filed on 26.10.90 and therefore, the prosecution is not sustainable. The circular referred to is only an administrative instruction to speed up the filing of the complaints. In the Employees Provident Fund Act, there is no direction that the complaint should be filed within 7 days after the receipt of the sanction order. Therefore, when there is no law for filing the complaint within 7 days, the administrative instruction cannot invalidate the legal proceedings initiated against the Petitioners. Hence this ground raised in the petitions has no substance.

6. So far as the contention that the Petitioners 2 and 3 are not looking after the day-to-day affairs of the company and the General Manager was appointed by the directors to administer the day-to-day affairs of the company, Section 14-A

of the Employees Provident Fund Act reads that if a person committing the offence is a company, every person, who at the time of the offence was committed, was in charge and was responsible to the company for the conduct of the company, as well as the company, should be deemed to be guilty of the offence and shall be liable to be proceeded against the punished accordingly. Therefore, there should be averment in the complaint that the accused mentioned in the complaint are the persons who are in charge of the day-to-day affairs of the company. In this case, the first accused is the company, the second accused is the Managing Director and the third accused is the Director. In paragraph 3 of the complaint, it is mentioned that the accused 1 to 3 are the persons in charge and responsible for the conduct of the business of the establishment. When such an allegation is found in the complaint that these accused are in charge of the day-today affairs of the company under the proviso to Section 14A of the Employees'' Provident Fund and Miscellaneous Provisions Act, the accused have right to prove that the offence was committed without their knowledge or that they exercised all due diligence to prevent the commission of such offence. At this stage, there cannot be evidence for this purpose and it can be only at the time of the trial. Therefore, this contention deserves to be rejected.

7. The other contentions namely payment of the contribution before the lodging of the complaint will not set right in the contravention of the provisions of the Act. Under Employees'' Provident Fund Scheme, paragraphs 38 and 8, 15 days time is prescribed for the payment of the Employers'' contribution of the provident fund, deposit linked insurance and the administrative charges. The Petitioners have not disputed the allegation of non-payment of these contributions within the time specified. Therefore, the non-payment within the time is a contravention of the provisions for which the Respondent/complainant is entitled to take legal action. The reason that the complainant has paid the provident fund amount before the lodging of the complaint, cannot invalidate the legal actions. Therefore, this ground taken in the petitions has no force.

8. The other contentions that the provision is arbitrary and unguided and discriminatory offending Article 14 of the Constitution and that the Petitioners had no mens rea for the delayed payment, have no substance in view of the fact that the section is clear as to who has to make the contribution and the effect of non-payments leading to the contravention of the provisions irrespective of the mens rea or intention to commit the offence. Therefore, these contentions have to be ignored.

9. Other contentions found in the petitions are that the mere delay will not amount to default and that no special reference is in the complaint as to the employer and there was non-application of the mind while riling the complaint. When the contribution was not paid within the time prescribed, certainly, it will amount to default because the time limit is prescribed to enable the employer to make himself ready for payment and thereafter to pay the amount within the last

date. The contention that there is no reference in the complaint as to the employer has no substance because the first accused company and its directors are the employees. Simply because certain sentences have not been scored out in the complaint which is in the printed form, it cannot be stated that the prosecution is not valid for the non application of the mind. Therefore, these grounds, though raised in the petitions but not argued, have no merit at all.

10. The main argument raised by the learned Counsel for the Petitioners is with regard to the provision under which these Petitioners are to be prosecuted. According to the learned Counsel for the Petitioners, for the non-payment of the contribution of provident fund amount, and the administrative charges, the Petitioners have been prosecuted u/s 14(1A) and 14(1B) of the Act whereas for the non-payment of the deposit linked insurance, they have been prosecuted under Sections 14(1B) and 14(1A), that Sections 14(1A) and 14(1B) of the Act are mandatory provisions for imposing compulsory imprisonment for certain violations of the Act but in these cases, the above provisions should not have been invoked because paragraph 76 of the Employees'' Provident Fund Scheme, which is a penal provision, contemplates only maximum of one year imprisonment or fine upto Rs. 4,000- or with both and the Respondent complainant ought to have prosecuted the Petitioners only under paragraph 76 of the Employees'' Provident Fund Scheme and as the complaint under the above mentioned sections of the Act is illegal, the complaints have to be quashed. According to the learned Counsel for the Petitioners, Section 6 of the Provident Fund Act directs the payment of the contribution of the employer''s share towards the provident fund and the period for payment is fixed only under the scheme, that u/s 14(1A) of the Act, the compulsory imprisonment is impossible only when Section 6 of the Act was not complied with, but in these cases as the contributions have been made though belatedly Section 6 of the Act cannot be said to have been contravened, because only when the contribution was not made by the employer, it will amount to contravention and hence Section 6 of the Act Act is not attracted. For the deposit linked insurance premium, Section 6(c) is the relevant Section directing the employer to pay the premium for the employees'' deposit linked insurance scheme. According to the learned Counsel, the insurance premium also has been paid by the Petitioners before the filing of these complaints and u/s 6(c) of the Act, that if he fails to pay deposit linked insurance scheme premium, he shall be dealt with under this Sub-section and as the insurance premium has been paid already even before the date of these complaints, Section 14(1B) also is not attracted.

11. u/s 14(1A) of the Act, the violation of Paragraph 38 of the Scheme relating to the non-payment of the administrative charges, also, attracts punishment under this Sub-section. The learned Counsel for the Petitioners would admit that Section 14(1A) of the Act is invoked against the Petitioners for the non-payment of the administrative charges also within the time, because it is governed by the Paragraph 38 of the Scheme which is referred to in Section 14(1A) specifically, for the administrative charges, but the Petitioners were permitted to pay the

administrative charges on instalments and therefore for the non-payment of the administrative changes also within the Section 14(1A) cannot be invoked in these cases. Whether the Petitioners were permitted to pay the administrative charges on installments or not, cannot be decided in these petitions because the Respondent/complainant disputes the right of payment on instalments by the Petitioners. Therefore, for the reason that the Petitioners say that they had the right to pay on instalments, it cannot be concluded at this stage that the Petitioners, who contravened Paragraph 38 of the Scheme cannot be dealt with u/s 14(1A). Necessarily, for the non-payment of the administrative charges, the Petitioners have to face the trial.

12. According to the learned Counsel for the Respondent Paragraph 76 of the Scheme governs only certain specific categories not governed under the provisions of the Employee''s Provident Fund and Miscellaneous Provisions Act and Section 6 and 6(c) are the relevant provisions for the payment of the contribution of the employer''s share of the Provident Fund and the deposit linked insurance premium and for non-payment of those contributions, they have to be dealt with only u/s 14(1A) and 14(1B). According to the learned Counsel Paragraph 76 of the scheme cannot be made applicable. The prosecution under the above sections is correct. Section 14(1A) refers to the contravention of Section 5 and also Paragraph 38 of the Scheme for the non-payment of the employer''s share of the Provident Fund and also the administrative charges. Section 14(1B) is intended to deal with the person who contravened Section 6 for non-payment of the deposit linked insurance premium, when the law is that these contributions should be paid within the prescribed time, the non-payment of these contributions will certainly amount to contravention of these provisions. As the Petitioners have paid these contributions only just before the filing of these complaints, they cannot contend that they have not contravened the provisions of Section 6 and 6(c) of the Provident Fund Act.

Further, when the non-payment of the contribution within the time prescribed is admitted and the Petitioners contend that they are liable to be dealt with only under Paragraphs 76 of the Scheme, it is a matter to be considered by the trial court, as to which is the penal section to be invoked against the Petitioners for imposing the punishment. When the Petitioners contend that they cannot be dealt with under Sections 14(1A) and 14(1B) but only under Paragraph 76 of the Scheme, for the purpose of punishment that cannot be a ground to quash the complaints initiated against them. But the learned Counsel for the Petitioners argued that as the prosecution itself is under the wrong provision of law, they are entitled to seek the quashing of the proceedings itself. In the petitions for the non-payment of the employer''s share of the provident Fund, Section 6, 14(1A) and 14(A) are quoted. Section 6 related to the payment of the contribution amount and Section 14A refers to the status of the accused namely the company. Section 14(1A) alone is penal Section for the punishment of the accused. Similarly, in the other petitions for the non-payment of the insurance premium, Section 6(c) refers to the employer''s liability to pay the contribution and Section 14A is in respect of the status of the accused as it is a company. Section 14(1B) is the penal Section. As admitted, the Petitioners/accused have not paid the contributions within the time prescribed under the Act, for which they have to be dealt with, the only question is whether, they should be punished u/s 14(1A) and 14(1B) or Paragraph 76 of the Scheme. Even if the wrong penal Section is quoted in the complaints, it is not going to affect the prosecution case because the nature of violation, the status of the accused etc. are all given in the complaints. When facts relating to the contravention are mentioned in the complaints, even if the punishment Section is wrongly mentioned, the trial court is always entitled to invoke the correct provision of law when the accused persons are found guilty. Therefore, on the assumption that wrong provision is given in the complaint for the punishment of the accused, these complaints cannot be quashed. The Petitioners have to face the trial according to law.

13. In the result, as all the contentions raised by the Petitioners are rejected, these petitions deserve to be dismissed, and accordingly, they are dismissed. The observations made by me above, will not in any way prejudice the defence of the Petitioners to be taken before the trial court.