(1988) 08 DEL CK 0046

In the Delhi High Court

Case No : Criminal A. No. 4 of 1980

Regional P.F. Commissioner APPELLANT

Vs

Sardari Lal RESPONDENT

Date of Decision : 16-08-1988

Acts Referred:

Citation : (1994) 3 LLJ 1018

Hon'ble Judges : M.K. Chawla, J;Charanjit Talwar, J

Bench : Division Bench

Advocate : R.C. Chawla, for the Appellant; D.N. Vohra, for the Respondent

Final Decision : Dismissed

Judgement

Charanjit Talwar, J.—This is an appeal by the Regional Provident Fund Commissioner challenging judgment dated 30th April, 1979, of the Addl. Sessions Judge, whereby the conviction imposed by a Magistrate on Sardari Lal Jain (respondent herein) for the offence under Paragraph 76(a) of the Employees, Provident Fund Scheme read with Section 14(2) and Section 14A of Employees'' Provident Fund Act (hereinafter called the Act) was set aside.

2. Mr. Vohra, learned counsel for the respondent at the outset has taken two preliminary objections (1) to the maintainability of the application u/s 378(4) of the Code of Criminal Procedure which has been filed by the Regional Provident Fund Commissioner, and (2) that the applications barred by limitation. -

3. First we will take up the point of limitation. We may note that Mr. Vohra in support of his submission that the application is filed beyond the limitation of six months has cited Kaushalya Rani Vs. Gopal Singh, , wherein it was held that Section 5 of the Limitation Act did not apply to the provisions of Section 474 of the Code of Criminal Procedure [equivalent to Section 378(4) of the Code of 1973] as the provision was a special law within the meaning of Section 29(2) of the Limitation Act. The said judgment has been distinguished by the Supreme Court in Mangu Ram Vs. Municipal Corporation of Delhi, their Lordships have held

that after the amendment of 1963 in the Limitation Act, Section 5 has been ; specifically made applicable by Section 29(2) of the Act, and Therefore the provision can be applied for the purpose of extending the period of limitation prescribed by a special or local law. Thus, there is no force i in the objection raised by Mr. Vohra that the time spent by the complainant in obtaining the certified copy of the impugned-judgment is not to be excluded. We hold that the application u/s 378(4) i of the Code was filed within the time.

4. The other contention of Mr. Vohra that the applications had not been filed by the complainant has, however, great force. Mr. Chawla, learned counsel for the applicant/appellant submits that the application having been filed by the Regional Provident Fund Commissioner is to be held to have been filed by the complainant. Mr. Vohra, however, has drawn our attention to sub-section (3) of Section 14 of the Employees'' Provident Fund Act, 1952 which according to him lays down that the Inspector appointed u/s 13 is persona designata for the purpose or filing the complaint. The plea is that the present application challenging the acquittal could have only been filed by the complainant so as to come within the purview of Section ; 378(4) of the Code of Criminal Procedure. Mr. Vohra submits that u/s 4(3) of the Act, the Regional Provident Fund Commissioner cannot be deemed to be an Inspector appointed u/s 13. That provision reads:

"(3) No Court shall take cognizance of any offence punishable under this Act, the Scheme or the Family Pension Scheme except on a report in writing of the facts Constituting such offence made with the previous sanction of such authority as may be specified in this behalf by the appropriate Government, by an Inspector appointed u/s 13."

5. Sub-section (4) of section 378 of the Code it is submitted, provides that only a complainant is entitled to file an application for leave to appeal to the High Court. That sub-section reads:

"(4) If such an order of acquittal is passed in any case instituted upon a complaint and the High Court, on an application made by the complainant, in this behalf, grants special leave to appeal on the order of acquittal, the complainant may make such an appeal to the High Court".

6. It has been admitted that the complaint was filed by Shri K. Raja Sekhara Rao, Provident Fund Inspector, who signed the same as the complainant. It is further admitted that the present application has been filed by the Regional Provident Fund Commissioner. The title of the application is

"Regional Provident Fund Commissioner, 11/10, Pusa Road, New Dehi.

vs. Shri Sardari Lal Jain, Prop. Jain and Co."

The power of attorney executed in favor of Mr. R.C. Chawla is by Shri R.K. Rastogi, who was at the relevant time the Regional Provident Fund Commissioner. Thus, on the face of it, the application has not been filed by an

Inspector appointed u/s 13 of the Act.

6. Mr. Chawla''s contention that the Regional Provident Fund Commissioner being the authority competent to grant sanction to the Inspector ipso facto becomes a complainant cannot be accepted as the sanctioning authority cannot be termed as a complainant particularly as Sub-section3) of Section 14 has designated the Inspector concerned as the officer on whose report in writing, cognizance of the offence could have been taken. At this stage we may note that the said provision was amended by the Amendment of 1973. The provision under discussion has been substituted by Section 14AC of the Act.

7. The present application not having been filed by the complainant is thus not maintainable. We hold that the application is not competent. The application is, Therefore, dismissed. Consequently the appeal is also dismissed.