
(1995) 04 GUJ CK 0044

In the Gujarat High Court

Case No : Criminal R.A. No's. 154 to 177 of 1995

Regional Provident Fund Commissioner

APPELLANT

Vs

Continental Textile Mills Ltd. and Others

RESPONDENT

Date of Decision : 28-04-1995

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14(1A), 14(1B)

Citation : (1996) 2 GLR 693 : (1998) 3 LLJ 1016

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Advocate : J.D. Ajmera, for the Appellant; J.A. Shelat, Assistant Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

K.J. Vaidya, J.—This group of 24 Criminal Revision Applications for the enhancement of sentence at the instance of Regional Provident Fund Commissioner Ahmedabad is directed against the impugned judgments and orders of conviction and sentence dated October 12, 1993, rendered in as many criminal cases by Mr. A. J. Brahmbhatt, learned Metropolitan Magistrate, Court No. 16, Ahmedabad wherein "The Continental Textile Mills Pvt. Limited, Ahmedabad, and others" on coming to be tried for the alleged offences punishable under Sections 14 14(1-A) and 14(1-B) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 ("P. F. Act" for short) on their pleading guilty, came to be convicted for the same and each one of them sentenced to pay a fine of Rs. 150/- only and in default to undergo S.I. for 15 days.

2. Mr. J. D. Ajmera the learned Counsel appearing for the petitioner supported by learned A.P.P. Mr. J. A. Shelat while challenging the impugned judgment and order of conviction and sentence has made the following submissions :

(1) That the impugned order sentencing the respondent-Mills and three others

for the alleged offence under Sec. 14 of the P. F. Act to pay a meagre fine of Rs. 150/- only is on the face of it grossly inadequate and manifestly unjust.

(2) That so far as the other two offences under Sections 14(1-A) and 14(1-B) of the said Act are concerned, despite the fact that for the said offences, the statutory minimum sentence is prescribed, the learned Magistrate contravening the said provisions has inflicted meagre fine of Rs. 150/- only ! This once again is manifestly perverse and illegal inasmuch as there are no good, adequate and special reasons for departing from imposing less than the said statutory minimum sentence.

(3) That on October 12, 1993, though all these matters were not listed on the Board for hearing, and yet quite surprisingly, the learned Advocate Mr. P.N. Patel, appearing for the accused requested the learned Magistrate to get it placed on the Board on the ground that the accused wanted to plead guilty. This request was immediately granted and on the very day and at the back of the complainant, on one of the accused pleading guilty on behalf of all, they came to be convicted and sentenced as stated above.

2.1 On the basis of these submissions, Messrs. Ajmera and Shelat submitted that first of all it is simply unthinkable as to what was that impelling necessity which prevailed over in the first instance, the learned Advocate Mr. P.N. Patel, appearing for the accused, and thereafter, in the second instance, upon the Magistrate to hastily yield to the apparently improper request to go out of the way, without even informing the complainant by disposing of the cases on pretended plea of guilty, sentencing each one of the accused to pay a fine of Rs. 150/-only. Messrs.Ajmera and Shelat further submitted that the way in which all these cases came to be disposed of clearly smacks of the illicit plea-bargaining and therefore, they deserve to be at once, remanded.

3. On going through the record, the impugned judgment and order of conviction and sentence and the submissions made by the learned Advocates, there is indeed no doubt whatsoever that the impugned order of conviction and sentence suffers from the apparent vice of plea-bargaining. When for the alleged offences under Sections 14(1-A) and 14(1-B) of the P.F. Act, the statutory minimum is provided for, the learned Magistrate had indeed no business, power to contravene the said provisions even if accused pleaded guilty ! In fact, the ground submitted by the accused praying for mercy in the matter of imposing sentence, cannot be said to be adequate and special. The said ground are : (i) that the accused have not committed the offence deliberately ; (ii) that the financial condition of the mill was bad ; (iii) that the said mill is closed from February 2, 1994 ; (iv) that the outstanding amount in question has been duly paid up and therefore, very object of filing the complaint has lost the ground and (v) that the accused are the paid servants of the mill and that they were passing through the critical financial condition. On the basis of these circumstances, it was finally submitted that they may be released with small amount of fine. Under the circumstances, prima facie this Court has no hesitation in holding that both -

the learned Advocate for the accused and thereafter the learned Magistrate, for the reasons best known to them, have misconducted themselves in disposing of all these matters in quite an unfair manner, as stated above. In this view of the matter, there is no alternative left with this Court but to declare the impugned order of sentence as the outcome of the illicit plea-bargaining. This being highly illegal, improper and unjust, the impugned judgments and orders deserve to be quashed and set aside and the matter be remanded to the trial Court.

4. This Court is indeed quite conscious of the fact that all these matters are at the admission stage, and therefore, ordinarily, if the Court feels that there is substance in points raised on behalf of the petitioner's case, then "Rule" is required to be issued to the other side. However, having regard to the special facts of the case, what is ordinarily, done in the other matter at the admission stage, the same is not required to be done in all these cases in view of the decision of this Court (Coram : K.J. Vaidya, J.) rendered in case of State of Gujarat Vs. Tha. Somaji Jamaji, , in Criminal Appeal Nos. 607, 608, 609 of 1993 decided on April 19, 1994. In this case, it is held that when the facts and circumstances glaringly demonstrate the case of plea-bargaining and perversity of the learned Magistrate and as a result where the remand is the only foregone, inescapable and irreversible conclusion which even after issuance of notice to other side cannot be prevented, there is no need to issue notice to the other side.

5. In the result, these Criminal Revision Applications are partly allowed. The impugned order of fine being ex-fade illegal, is quashed and set aside. The cases are remanded to the learned Magistrate to be decided on merits according to law. The learned Chief Metropolitan Magistrate is directed not to place these matters before the same/concerned learned Magistrate who earlier decided the same. The complainant - P. F. Inspector or his successor in the office shall remain present before the learned Magistrate on May 15, 1995 and take appropriate date and summons to be served upon the. parties and in the event of difficulty, he may also be provided with assistance of police officer of the concerned area. Taking into consideration the fact that the alleged offences are of the year 1991, the learned Magistrate is directed to hear and decide the same as expeditiously as possible, preferably on or before December 31, 1995 in the light of the directions given by this Court in a decision rendered in the case of State of Gujarat v. Dr. C.K. Patel reported in (1992 I LLJ 825).

6. The Registry is directed to (i) place a copy of this judgment and order before the concerned Hon"ble Judge for appropriate action order ; and (ii) to keep the same in the confidential file of the learned Magistrate and (iii) forward the same to the Chairman, Bar Council ofGujarat, Ahmedabad for information and action.