(1985) 09 DEL CK 0025

In the Delhi High Court

Case No : Criminal Appeal No. 11 of 1978

Regional Provident Fund Inspector and Others APPELLANT

Vs

C.K. Kajiriwal and Others RESPONDENT

Date of Decision : 13-09-1985

Acts Referred:

Citation : (1986) 10 DRJ 253 : (1985) 51 FLR 641 : (1986) 1 RCR(Criminal) 51 : (1985) RLR 577

Hon'ble Judges : R.N. Aggarwal, J;M. Sharief-ud-din, J

Bench : Division Bench

Advocate : R.C. Chawla, for the Appellant;

Judgement

R.N. Aggarwal, J.

(1) The respondents herein C.K. Kajiriwal and I.P. Pahuja, Director and General Manager, respectively, of Ajudhia Textile Mills were prosecuted for offences punishable u/s 14A of the Employees Provident Fund Act read with para 76 of the Employees Provident Fund Scheme. The charge against the accused was that they had failed to deposit the provident fund contribution far the month of January 1971 amounting to Rs. 11,102.25.

(2) The defense of Kajriwal was that he was riot responsible for depositing the provident fund and that he was only responsible for expansion of the company for its modernisation. Kajriwal admitted that he was a director of Ajudhia Textile Mill Ltd. in the year 1971. Shril.P.Pahuja admitted that he was the manager of Ajudhia Textile Mill Ltd., in 1971. Pahuja stated that it was the Factory Manager Mr. B.N. Wali who was the person in charge and responsible for the conduct of the business of the company/establishment and that it was he who was responsible for depositing the provident fund, employees state insurance, etc. and that in form 5-A prescribed under the Employees Provident Fund Scheme 1952 Mr. Wali was named as the person in charge of and responsible for the conduct of the business of the company.

(3) During the trial form 5-A submitted by the Company was not produced. The learned Magistrate in view of the non-production of form 5-A held that the respondents were not proved to be responsible for payment of provident fund and. accordingly, gave them benefit of doubt and acquitted them. Against the aforesaid acquittal the Provident Fund Inspector has come in appeal.

(4) Section 14A of the Employees'' Provident Fund Act, 1952 reads as under :

"14-Aof the Employees'' Provident Fund Act, 1952 reads as under : "14-A Offences By COMPANIES-(1) If the person committing an offence under this Act, the Scheme or the Family Pension Scheme is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly : Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act, the Scheme or the Family Pension Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager) secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilt of that offence and shall be liable to be proceeded against and punished accordingly."

Explanation. -For the purposes of this section,- (i) "company" means anybody corporate .and includes a firm and other association of individuals ; and (ii) director, in relation to a firm means a partner in the firm."

(5) From a reading of Section 14A, it is clear that when an offence is committed by a company under the Employees'' Provident Fund Act, the Scheme or the family Pension Scheme, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company is to be deemed to be guilty of the offence and is liable to be proceeded with and punished. The proviso to Sub-section (1) is an exception and it saves the person mentioned in Sub-section (1) from punishment in case he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. Sub-section (2) makes a director or manager, or secretary or any other officer of the company liable to punishment in case it is proved that the offence has been committed with his consent or connivance or is attributable to any neglect on the part of any director or manager or secretary or other officer of the company

(6) The officer of the company envisaged in Sub-section (1) is the one who is in direct management of the affairs of the company. Whenever any offence has

been committed by the company under the Employees'' Provident Fund Act, the scheme or the Family Pension Scheme, such officer is to be deemed to be guilty of the offence, since he is the officer in charge of the management and thus directly responsible for the remittance of the contributions to the fund. Burden then shifts on that officer to prove that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of the offence. The officers covered by Sub-section (2) cannot be deemed to be guilty of the offence committed by the company unless the prosecution proves further that the offence was committed with the connivance of the officers mentioned in Sub-section (2)

(7) Now coming to the case in hand, it is not the prosecution case that the offence was committed with the content or connivance of the respondents. Therefore, the case against them would not fall under Subsection (2) and they cannot be punished under the said Sub-section. The prosecution to succeed under Sub-section (1) has to prove that the respondents were in direct management of the affairs of the company. The mere proof that the respondent No. 2 is the director of the company and respondent No. 3 General Manager of the company would not satisfy the requirements of Section 14A (1)

(8) Paragraph 36-A of the Employees'' Provident Fund Scheme 1952 requires an employer to furnish to the Regional Commissioner, in form 5-A, particulars of all the branches and departments, owners, occupiers, directors, partners, manager or any other person or persons who have the ultimate control over the affairs of the factory or establishment and also to send intimation of any change in such particulars within 15 days of such change by registered post and in such other manner as may be specified by the Regional Commissioner.

(9) From the record, it seems, that the company had filed form 5-A naming the person who was the in-charge of and responsible for the conduct of the business of the company. The complainant has not produced form 5-A to prove that the respondents or any one of them were named as in charge of and responsible to the company for the conduct of the business of the company. The person named in form 5-A as the officer-in charge for the management of the affairs of the company could be proceeded with for the offence committed under the Act or the Scheme.

(10) The complainant having failed to prove that the respondents or any one of them were the officers/officer-in-charge of the management of the affairs of the company, the complaint has been rightly dismissed.

(11) We maintain the order of acquittal and dismiss the appeal.

