

(1987) 03 RAJ CK 0048

In the Rajasthan High Court

Case No : Criminal Miscellaneous Case No. 81 of 1986

Sampat Mal Lodha

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-03-1987

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14(1), 14(2), 14A
Penal Code, 1860 (IPC) — Section 405

Citation : (1990) 68 CompCas 612 : (1987) RLW 318 : (1987) 2 WLN 1

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Advocate : S.M. Mehta and A.K. Rajvanshy, for the Appellant; R.R. Vyas and G.M. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

N.C. Sharma, J.—By this order, I shall be deciding Criminal Miscellaneous Application No. 87 of 1986 and also Criminal Miscellaneous Application No. 81 of 1986, both filed by Sampat Mal Lodha, u/s 482, Criminal Procedure Code, in one case to quash the cognizance taken by the Judicial Magistrate No. 2, Bhilwara, for the offence u/s 406, Indian Penal Code, against the petitioner in Criminal Case No. 177 of 1986 of this court and in another to quash the cognizance and the entire proceedings in Criminal Case No. 56 of 1984 of the court of the Judicial Magistrate, Bhilwara, as against the petitioner for the offence u/s 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "the Act").

2. The facts leading to these two applications are that Mewar Textile Mills Ltd. is a company incorporated under the Companies Act, 1956, and is located at Bhilwara. The petitioner, Sampat Mal Lodha, is said to be the managing director of the company. On November 21, 1984, S. C. Choudhary, Inspector, Provident Fund, filed a criminal complaint against the company and also the petitioner for

their having committed an offence u/s 14 of the Act alleging that the company was covered by the provisions under the Act and it had been allotted Code No. R-J/16 in accordance with Clause 6 of the Provident Funds Act and paragraphs 30 and 38 of the Employees' Provident Funds Scheme. It was asserted that the petitioner ought to have deposited the employees' share of the provident and family pension fund which had been deducted from their wages by the 15th of each month. The petitioner failed to deposit the amount of the said contributions to the provident fund for the period February, 1984, to April, 1984, amounting to Rs. 4,12,672 and, as such, he committed the offences under Sections 14 and 14A of the Act and paragraph 76 of the Employees' Provident Funds Scheme. It was further alleged that the petitioner was a responsible officer of the company and the offence had been committed with his consent, knowledge or inaction and, as such, he was liable to be prosecuted and punished in view of Section 14A of the Act. Requisite sanction had been obtained from the Provident Fund Commissioner on October 31, 1984. On this complaint, the Judicial Magistrate, Bhilwara, took cognizance of the said offence against the company as well as the petitioner and ordered the issue of summons in their names returnable on February 13, 1985. The petitioner has, therefore, invoked the inherent jurisdiction of this court by moving Criminal Miscellaneous Application No. 87 of 1986, praying that the order of the Judicial Magistrate, Bhilwara, whereby he has taken cognizance of the offence against the petitioner in Criminal Case No. 56 of 1984 of this court may be quashed.

3. The facts giving rise to Criminal Miscellaneous Application No. 81 of 1986 are that on November 4, 1985, the Inspector, Provident Funds, Udaipur, lodged as first information report at the police station, Pratapnagar, District Bhilwara, against the petitioner alleging therein that the petitioner was in the habit of deducting workers' share of provident fund and family pension fund from the wages but had not been remitting the same to the accounts of the employees' provident fund and thus he misappropriated the employees' share of provident fund and family pension contribution which had been deducted from the wages payable to the employees of the company. This report was with regard to misappropriation of a sum of Rs. 2,19,706 made during the period from February, 1984, to April, 1984. On the basis of this first information report, the Station House Officer of police station, Pratapnagar, registered a case against the petitioner for the offence u/s 406 of the Indian Penal Code and after necessary investigation, filed a charge-sheet against the petitioner in the court of the Judicial Magistrate No. 2, Bhilwara. On the basis of the report made u/s 173, Criminal Procedure Code, the Judicial Magistrate No. 2, Bhilwara, took cognizance u/s 190(1)(b) of the Criminal Procedure Code. It seems that the petitioner was reported by the police as not traceable and, therefore, the Magistrate took proceedings under Sections 82 and 83 of the Criminal Procedure Code and issued a standing warrant against the petitioner on November 17, 1986. The petitioner alleges that no prima facie case u/s 406 of the Indian Penal Code had been made out against him inasmuch as he was the managing director of the company at

the relevant time and he cannot be held responsible for any offence of not depositing the employees' contributions to the provident fund account inasmuch as, by a resolution dated November 29, 1982, the company had appointed Mr. S.N. Bhattacharya, general manager of the company, as occupier for the purposes of the Factories Act, 1948, and his appointment as such was notified to the Chief Inspector of Factories. By a resolution at item No. 14 passed on the same date, Mr. S.N. Bhattacharya was authorised, inter alia, to make payment of provident fund contributions, family pension fund contributions and employees' state insurance dues, etc. It has also been pleaded by the petitioner that the company was an "industry" within the meaning of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961, and it was declared as a relief undertaking by the State Government u/s 3 of the said Rajasthan Act of 1961 and Shri I.S. Kawadia, I.A.S., nominee of the Government of Rajasthan, has been appointed managing director of the company since February, 1985. It has been stated that on account of Section 4(b) of the said Act of 1961, no legal proceeding can be initiated against the company during the period it remains a relief undertaking.

4. I have heard Mr. Sagar Mal Mehta and Mr. R.R. Vyas appearing respectively for the petitioner and the Regional Provident Funds Commissioner, Jaipur. It was vehemently contended by Mr. Sagar Mal Mehta for the petitioner, that in view of the resolutions at items Nos. 11 and 14 of the minutes of the meeting of the company dated November 29, 1982, it was S.N. Bhattacharya who had been appointed as occupier for the purposes of the Factories Act, 1948, and was also authorised to make the correct and timely payment of the provident fund contribution, family pension fund contribution and other contributions and thus Mr. S.N. Bhattacharya alone was employer within the meaning given to that expression by Section 2(e)(i) of the Act and, therefore, it was only S.N. Bhattacharya who could be prosecuted for the offence u/s 14 of the Act if any such offence had been committed. It was contended that the responsibility squarely lay on Mr. Bhattacharya to deposit the employees' contributions to the provident fund and family pension fund and not upon the petitioner. It was alleged that the petitioner was not an employer of the establishment within the meaning given in Section 2(e)(i) of the Act and he could not, therefore, be prosecuted by the Inspector of Provident Funds for the offence u/s 14 of the Act. Lastly, it was contended that the Judicial Magistrate was barred from taking cognizance against the petitioner for the offence u/s 14 of the Act.

5. With regard to the taking of cognizance by the Judicial Magistrate, Bhilwara, on the report of the police u/s 406, Indian Penal Code, it was contended that the petitioner not being an employer within the Explanations 1 and 2 to Section 405 of the Indian Penal Code, there was no prima facie case against the petitioner which could justify the taking of cognizance by him against the petitioner.

6. In support of his contention, learned counsel for the petitioner has relied upon certain decisions which may be referred to. The first decision relied upon by him

is in the case of *Anantharamaiah Woollen Factory v. State* [1980] 57 FJR 407. It is a single judge decision of the Karnataka High Court. As many as 10 complaints for failure to pay administrative charges punishable u/s 14(1B) and 14A of the Act and five complaints for failure to pay contributions had been filed by the Provident Fund Inspector against all the partners of the petitioner firm. The partners of the firm were father and sons who were arrayed as accused Nos. 2 to 5 and were said to be in charge of the affairs of the establishment and responsible for the conduct of the business. However, as required under para 36A of the Employees' Provident Funds Scheme, a declaration had been submitted showing Anantharamaiah as the manager who had ultimate control over the affairs of the factory and establishment as had been contended by the petitioners. It was further argued before the High Court that so far as accused Nos. 3, 4 and 5 were concerned, they could not be prosecuted. In all the complaints which had been filed by the Provident Fund Inspector, it was pleaded that the offences alleged had been committed by all the partners of the firm, i.e., accused Nos. 2 to 5, and the establishment with their consent and connivance or attributable to the neglect of all. The learned judge stated that there is a specific bar against the court taking cognizance and proceeding with trial of such offences u/s 14A of the Act, except on a report in writing of the facts constituting such offence, made with the previous sanction of the Provident Fund Commissioner or such other officer as may be authorised by the Central Government. Therefore, it was not enough to make a bald allegation in the complaint borrowing the language of the section to attract the provisions of Section 14A(2). He was of the view that the facts essential to constitute the offence attracting the provisions of Section 14A(2) had to be stated and in the absence of necessary allegations of facts attracting the provisions of Section 14A(2), it cannot be said that the prosecution launched and cognizance taken by the Magistrate as against the sons, i.e., accused Nos. 3, 4 and 5 was proper. It was held that accused No. 2 was the managing partner of the establishment and who was admittedly in ultimate control of the affairs and business of the establishment. It may be mentioned that in this Karnataka case, as required under para 36A of the Employees' Provident Funds Scheme, a declaration in Form No. 5 had been submitted showing Anantharamaiah as the manager and the person in ultimate control of the affairs of the factory and establishment and this fact was not disputed. In that context, it was held that the Provident Fund Inspector should have in the complaint not only made a bare allegation repeating Section 14A(2), but he should have made an assertion that the offences had been committed with the consent or connivance or is attributable to the neglect on the part of any director, secretary or manager or other officer of the company. On that basis, the process issued against accused Nos. 3, 4 and 5 were set aside.

7. Reliance was next placed upon the decision of the Punjab and Haryana High Court in the case of *S. Gurdial Singh v. Employees' State Insurance Corporation* [1973] 43 FJR 237. In the above cited case, S. Gurdial Singh was the chairman of the Hindustan Embroidery Mills (Pvt.) Ltd. His son, Iqbal Singh, was the

managing director and two other sons were directors of the company. The company owed a sum of Rs. 73,879 to the Regional Director on account of contributions under the Employees' State Insurance Act, 1948. Since this amount was not paid, proceedings for the recovery of the amount as arrears of land revenue were taken against the petitioners. It was contended, on behalf of the petitioners, that they were not the principal employer of the factory as defined in Section 2(17) of the Factories Act, 1948. S. Gurdial Singh had another son, Inder Singh, who was also the director of the company and was stated to be the occupier of the factory. The learned single judge held that the petitioners were not covered by the definition of "principal employer" or "occupier". The owner of the factory was the company, namely, the Hindustan Embroidery Mills Pvt, Ltd. Inder Singh, son of S. Gurdial Singh, was appointed as the manager of the company for the purposes of the Factories Act and he was, therefore, the occupier of the factory for all purposes. It was held that the petitioner could not be said to be the person who had ultimate control over the affairs of the factory. That control vested in the company and it was not shown that the affairs of the factory had been entrusted to any of the petitioners. The liability for the payment of contributions was that of the principal employer u/s 40 of the Employees' State Insurance Act, 1948, and, therefore, no recovery could be made from them. It is clear that the decision in S. Gurdial Singh [1973] 43 FJR 237 (P & H) related to some recovery proceedings under the Employees' State Insurance Act, 1948, and in that connection, the question had come for determination whether S. Gurdial Singh and his son, Iqbal Singh, and two other sons were "principal employers" within the meaning assigned to that expression in Section 2(17) of the Employees' State Insurance Act, 1948.

8. Learned counsel for the petitioner next referred to a decision of the Division Bench of the Bombay High Court in Suresh Tulsidas Kilachand v. Collector of Bombay [1984] 64 FJR 399. In that case also, there were recovery proceedings initiated by the Collector of Bombay u/s 5 of the Revenue Recovery Act, 1890, read with Section 267 of the Maha-rashtra Land Revenue Code, 1966, with regard to a sum of money being the employer's special contribution under the Employees' State Insurance Act, 1948. The dues were against Digvijay Spinning and Weaving Company Ltd., which was a company registered under the Indian Companies Act, 1913. All the petitioners were directors in the company. The question arose as to whether a director of the company becomes a principal employer as contemplated in Section 2(17) of the Act. Their Lordships held that the provisions of Section 100 of the Employees' State Insurance Act, 1948, made it clear that the Legislature had contemplated that in the case of a factory, a company can be an occupier. It also contemplated that a firm consisting of partners could be an occupier. The word "occupier" was interpreted as referring to the person who had ultimate control over the affairs of the factory, and not "affairs of the company". It was stated that even under the Companies Act, so far as affairs of the company are concerned, the ultimate control of the company will not lie with any particular director as all the directors act collectively and

they function collectively as a board of directors. Whether a person has ultimate control over the affairs of the factory was a question of fact and will have to be decided by evidence and it can never be assumed that a director of the company has ultimate control over the affairs of a factory owned by the company merely by virtue of being a director. The Division Bench followed the decision of the Punjab and Haryana High Court in *Employees' State Insurance Corporation v. S. Gurdial Singh* [1975] 45 FJR 308, just referred to above.

9. Mr. S.M. Mehta also referred to two decisions of this court. The first decision is in the case of *M.C. Golecha v. State of Rajasthan* [1985] RLR 218. In that case, the leave reserve manager filed a complaint in the court of the Chief Judicial Magistrate alleging that the factory, Dharti Dhan (P.) Ltd., Udaipur, was a factory as defined in Section 2(12) of the Employees' State Insurance Act, 1948, and the accused persons, M. C. Golecha and B. K. Surana, were the managing director and manager, respectively, of the factory and as such were the principal employer of the factory as defined in Section 2(17) of the Act. They were prosecuted for an offence punishable u/s 85(e) and (g) of the Act. There was one more prosecution against M. C. Golecha and B. K. Surana. They filed two revisions before the High Court. The contention advanced before the learned single judge was that they were not covered by the definition of the expression "principal employer" contained in Section 2(17) of the Employees' State Insurance Act, 1948. Relying upon the decision of the Punjab and Haryana High Court in *S. Gurdial Singh* [1973] 43 FJR 237, and that of the Bombay High Court in *Suresh Tulsidas* [1984] 64 FJR 399, his Lordship G.K. Sharma J. held that the managing director or the director is not "principal employer" as defined in Section 2(17) and Section 40 of the aforesaid Act.

10. Lastly, Mr. Mehta referred to yet another single judge decision of this court in *S.B. Criminal Miscellaneous Petition No. 203 of 1985, Ghan-shyam v. E.S.I. Corporation*. In that case, the question involved was whether the petitioner was "principal employer". His Lordship Mr. Justice G.M. Lodha relied upon the decision in *M.C. Golecha* [1985] RLR 218, and that of the Punjab and Haryana High Court and of the Bombay High Court, already referred to above, and held that Ghanshyam was not "principal employer".

11. I am of the view that the precise question involved is as to which person can be said to commit an offence in such cases. Offence has been committed by a juristic person, i.e., company, which can be proceeded against and held guilty and convicted where the offence has been committed by the company. Section 14A of the Act affords ample guidance and we have not to look elsewhere. Lord Denning in *H.L. Bolton (Engineering) Co. Ltd. v. T.J. Graham and Sons Ltd.* [1957] 1 QB 159, 172 observed as under :

"A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do

the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company, and control what it does. The state of mind of these managers is the state of mind of the company and is treated by the law as such."

12. Similarly, Viscount Haldane L.C. in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* [1915] AC 705 at page 713 (HL) made the following observations :

"My Lords, a corporation is an abstraction. It has no mind of its own any more than it has a body of its own ; its active and directive will must consequently be sought in the person of somebody who, for some purposes, may be called an agent, but who is really the directing mind and will of the corporation, the very ego and centre of the personality of the corporation. That person may be under the direction of the shareholders in general meeting ; that person may be the board of directors itself, or it may be, and in some companies it is so, that that person has an authority co-ordinate with the board of directors given to him under the articles of association, and is appointed by the general meeting of the company and can only be removed by the general meeting of the company."

13. Viscount Dilhorne in *Tesco Supermarkets Ltd. v. Nattrass* [1972] AC 153 (HL), after quoting Denning L. J., in *H. L. Bolton (Engineering) Co. Ltd. v. T. J. Graham and Sons Ltd.* and Viscount Haldane L. C. in *Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.*, observed that one has in relation to a company to determine who is or who are, for it may be more than one, in actual control of the operations of the company and the answer to be given to that question may vary from company to company depending on its organisation.

14. In my view, Sub-section (1) of Section 14 and Sub-section (2) of Section 14 classify the officers of the company into two different categories and fix the degree of their responsibility for the offence. The officer of the company envisaged under Sub-section (1) is the person who was, at the time the offence was committed, in charge of and was responsible to the company for the conduct of the business of the company under the Act or the Scheme. Such officer will not be deemed to have been guilty of the offence committed by the company unless the prosecution establishes that the offence was committed with his consent or connivance, attributable to any neglect on the part of the director, manager, secretary or other officer of the company and in that condition, the director, manager, secretary or other officer shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The person who was in charge of or responsible to the company for the conduct of the business of the company as well as the company can escape the liability to punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to avoid the commission of such an offence. If the prosecution proves that the director concerned was in charge of the conduct of the company, then the onus is on the person concerned to prove that the offence was committed without his knowledge or that he exercised all due

diligence to prevent the commission of the offence. To prosecute a director of the company for an offence u/s 14A, the prosecution has to prove that the director concerned was in charge of and was responsible to the company for the conduct of the business of the company. Where the complainant does not suggest that the director was in charge of and was responsible to the company for the conduct of the business of the company, there is no case against the director to answer and the prosecution must be quashed. But, apart from that, the director or manager of the company can also be proceeded against or held guilty, if the prosecution proves that the offence had been committed with the consent or connivance or is attributable to any neglect on the part of the director or manager, as the case may be.

15. I may refer to a decision of their Lordships of the Supreme Court in the case of State v. I.K. Nangia [1980] Cri. LR 58. In that case, two questions came up for consideration. The first was, in a case where the manufacturer of an article of food was a company, which had nominated a person under Sub-section (2) of Section 17 of the Prevention of Food Adulteration Act, 1954, as the person responsible as sales manager at one of its branches, whether he could be prosecuted for an offence punishable u/s 16(1)(a) read with Section 7(1) of the said Act when the article of food sold at the branch was found to be adulterated. The second question was whether after the introduction of new Section 17 by Act 34 of 1976 in the said Act of 1954, when an offence is committed by a company, which has nominated a person responsible under-section 17(2), it is not permissible to prosecute any other officer of the company not being nominated under Sub-section (2), unless there is an allegation that the offence had been committed with the consent or with the connivance of, or was attributable to any neglect on the part of, such officer. The facts in that case were that the Delhi Administration filed a complaint against Ahmed Omer Bhoy Ahmed Mills, Bombay, manufacturer of well known "Postman" brand of refined groundnut oil, their distributors, Gainda Mull Hem Raj, New Delhi, a partnership firm and its managing partner, Mehar Chand Jain, Amar Provision and General Store, Netaji Nagar Market, New Delhi, and its owner, Amrik Lal, the retailer, Y.A. Khan, Manager, Quality Control of the Mills, appointed by the manufacturers as the person responsible u/s 17(2) of the Act and the two sales managers, Delhi Branch of Ahmed Omer Bhoy, manufacturers, I.K. Nangia and Y. P. Bhasin. A sample of the adulterated groundnut oil was taken from Amar Provision and General Store, which was supplied to it by Gainda Mull Hem Raj, New Delhi. It was alleged that the adulterated article was supplied to Gainda Mull Hem Raj by Ahmed Omer Bhoy Ahmed Mills, Bombay, who was the manufacturer. The Metropolitan Magistrate, Delhi, found that there was a prima facie case against Ahmed Omer Bhoy, the manufacturers of the "Postman brand refined groundnut oil," their distributors at Delhi, Gainda Mull Hem Raj and Amar Provision Store, the retailer, as well as against Y.A. Khan, the Quality Control Manager. He declined to issue processes against the I.K. Nangia and Y.P. Bhasin, who were two sales managers of Ahmed Omer Bhoy Mills at Delhi observing that though

they had effected sale, they were not concerned with the manufacture of the article. The High Court did not interfere in the revision and the Delhi Administration came to the Supreme Court in appeal by special leave. The Supreme Court allowed the appeal and directed issue of summons to the sales managers, I.K. Nangia and Y.P. Bhasin, of Ahmed Oomer Bhoy, manufacturer at Delhi. In that connection, Section 17 of the Prevention of Food Adulteration Act, 1954, as amended by Act No. 34 of 1976, came up for consideration. The scheme of Section 17 was that where an offence was committed by a company, the person, if any, who had been nominated under Sub-section (2) to be in charge of and responsible to the company for the conduct of the business of the company, or (ii) where no person had been so nominated, 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 and the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Sub-section (2) of Section 17 contained a provision for nomination by the company whereunder the company could authorise any of its directors or managers in its managerial employment to exercise all the powers and take all steps as may be necessary to prevent the commission of the offence. Then there was Sub-section (4) which is more or less on the same lines as Sub-section (2) of Section 14A of the Act. His Lordship Sen J. stated that "on the plain meaning of the section, when an offence has been committed by a company, where there is no nomination u/s 17(2), 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, is deemed to be guilty of the offence and is liable to be proceeded against and punished. Notwithstanding the nomination of a person u/s 17(2), any director, manager, secretary or other officer of the company can also be vicariously made liable if 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 such person"". It was also observed that the duties of the sales manager are separate from the corporate liability of the manufacturer. In the case of a company prosecution, the company along with its agent, that is, the person nominated u/s 17(2) as well as the sales manager, can both be prosecuted. Notwithstanding the nomination of a person responsible u/s 17(2), there can also be prosecution of any director, manager or secretary or other officer of the company u/s 17(2), but in such a case it is necessary for the prosecution to prove that offence has been committed with the consent or connivance or is attributable to any neglect on the part of such person. This decision of their Lordships of the Supreme Court settles the controversy in the instant case. In para 7 of the complaint, the Provident Fund Inspector, Udaipur, has alleged that not only the petitioner was in charge of and responsible to the company for the conduct of the business of the company, but the offence had also been committed with the consent and neglect on his part. Even if it be that by certain resolutions alleged by the petitioner, Shri S. N. Bhattacharya, was made in charge of and responsible to the company so far as deposit of contributions to the employees' provident fund were concerned, but there is still

vicarious liability on the director of the company if it is proved by the prosecution that the offence had been committed with the consent or connivance of or is attributable to any neglect on the part of the director. As already stated, there is an allegation to that effect in the complaint by the inspector.

16. I may refer to a decision of the Supreme Court in *Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others*, It has been held in that case that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he has only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction. The scope of the enquiry u/s 202 is extremely limited: It is true that in coming to a decision as to whether process should be issued, the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant, but there appears to be a very thin line of demarcation between a probability of conviction of the accused and establishment of a prima facie case against him. Once the Magistrate has exercised his discretion, it is not for the High Court or even for the Supreme Court, to substitute its own discretion for that of the Magistrate to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates in an order u/s 204. Explanations 1 and 2 to Section 405, Indian Penal Code, have only enlarged the concept of entrustment and they make it clear that the person, being an employer, who deducts the employees' contribution from the wages payable to the employees for crediting to the provident fund shall be deemed to have been entrusted with the amount and that if he makes default in payment of such contribution into the fund in violation of the Act, he shall be deemed to have misappropriated the amount. These Explanations only enlarged the scope of Section 405 of the Indian Penal Code.

17. In this view of the matter, it cannot be said that the Magistrate has wrongly taken cognizance against the petitioner both with regard to the offence u/s 14 of the Act as also u/s 406 of the Indian Penal Code.

18. Learned counsel for the petitioner urged that the petitioner, as a matter of fact, did not try to avoid service of warrant issued against him and it was just a chance that he was out of station in connection with his business activities at Bombay, Jaipur, Kota and Chota Udaipur and also at Calcutta. In such circumstances, it was submitted that the order of the Judicial Magistrate, Bhilwara, about issuing a standing warrant of arrest against the petitioner on February 17, may be quashed. All that is needful is that the petitioner should put in appearance before the concerned Magistrate.

19. It would be in the interest of justice that the petitioner is directed to appear

before the concerned Judicial Magistrate at Bhilwara on May 4, 1987, positively. Till then it is ordered that the petitioner will not be arrested by the police in execution of the standing warrant issued by the Magistrate. In case the petitioner fails to appear before the concerned Magistrate in the above two cases on May 4, 1987, the police shall forthwith proceed to execute the standing warrant. In case the petitioner appears before the Judicial Magistrate concerned, the Magistrate will proceed to pass appropriate orders on the bail application, if any, which he may move.

20. With these observations, both these miscellaneous applications u/s 482, Code of Criminal Procedure, are dismissed.