
(1994) 05 CAL CK 0008

In the Calcutta High Court

Case No : Criminal Revision No's. 1249 to 1262 of 1993

Sanyal Lahiri and Co. Ltd. and Others

APPELLANT

Vs

C.B. Paul and Others

RESPONDENT

Date of Decision : 13-05-1994

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Criminal Procedure Code, 1973 (CrPC) — Section 482

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A), 14A(1), 6

Citation : (1995) CriLJ 3945

Hon'ble Judges : Basudeva Panigrahi, J

Bench : Single Bench

Advocate : Amal Kumar Chatterjee, Milon Mukherjee, for the Appellant; Anil Kumar Gupta, for Opposite Party No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Basudeva Panigrahi, J.—These batch of applications filed u/s 482 of the Code of Criminal Procedure, 1973, between the same parties, having been involved, common questions of fact and law. were heard together and are disposed of under a common order.

2. The petitioner No. 1 which is a Private Limited Company having its registered office at 237 D, Manicktala Main Road, P. S. Narkeldanga, Calcutta 54 and the other petitioners as its Directors have filed these applications to quash the batch of complaint cases Nos. C/125/90, C/126/90, C/127/90, C/128/90, C/129/90, C/130/90, C/185/90, C/186/90, C/187/90, C/188/90, C/1028/89, C/1029/89, C/1030/89, C/1031/89, now pending before the Learned Additional Chief Judicial Magistrate, South 24-Parganas at Sealdah lodged by the opposite party No. 1 Provident Fund Inspector, West Bengal, 44, Park Street, Calcutta-16 u/s 14(1A), 14A(1) of the Employees' Provident Fund Act of 1952 read with para 76-B of the Employees' Provident Fund Scheme, 1952.

3. The opposite party No. 1 in the said complaint levelled accusation against the petitioners that they being the employers had failed to pay contributions for different periods in contraventions of the provisions of Section 6 of the Act, 1952. Thus, they are liable for punishment for their deliberate failure in complying with the provisions of the Act. Immediately, after receipt of the complaints the learned Additional Chief Judicial Magistrate seems to have issued notices against these petitioners.

4. These petitioners, on the contrary, have taken the plea that their part of contributions payable towards the Employees' share could not be cleared off in due time because of acute financial stringency of the Company. There was never any deliberate attempt on behalf of the petitioners to avoid payment of their share. But the company having already paid its share of contributions towards Employees' Provident Fund, these batch of cases should be quashed.

5. At the time of hearing, no dispute has been raised at the bar that the company had defaulted in clearing its contributions towards the Employees' Provident Fund in time and, further, it appears from the submission of the petitioners that after the institution of batch of cases, the company has already cleared off its shares of contributions. But now the sole question falls within the narrow compass for consideration is whether subsequent payment of ! contributions would absolve the petitioners from their criminal liability.

6. The learned Counsel for the petitioners Mr. Milan Mukherjee, argued with much vehemence, that the intention of the petitioners' company should be taken into consideration since it has already paid the amount. Therefore, there was a no deliberate latch or remiss for avoiding payment of the said amount. In an application u/s 482 of the Code of Criminal Procedure, the validity of those contentions need not be examined in detail. If those contentions are raised before the lower Court it may be well to examine the same in proper perspective. Any finding on this submission will be premature and, therefore, it is needless to discuss this submission at length.

7. The pivotal issue arises in this case as to a proceeding initiated at the instance of the opposite party No. 1 could be quashed by invoking the power u/s 482 of the Code. In this regard the apex Court in its decision State of Haryana and others Vs. Ch. Bhajan Lal and others, has exhaustively considered after having referred to a number of decisions and held that the limitation in exercising the powers under Article 226 of the Constitution or u/s 482, Cr. P. C. to quash the proceedings at the stage of F.I.R. is only with a view to prevent abuse of process of any Court or otherwise to secure the ends of justice. In an another decision the Supreme Court Janata Dal Vs. H.S. Chowdhary and Others, held in the following manner:-

"This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a

case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the case in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of Haryana and others Vs. Ch. Bhajan Lal and others, to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings."

8. Therefore, the Court should refrain from interfering with when the complaint discloses the commission of an offence. In the instant case there is no, manner of doubt that the company, on their own showing admitted not have deposited their share towards their contributions for Provident Fund in time. Therefore, the opposite party No. 1 was well within his powers to lodge complaints against the petitioners.

9. The learned counsel for the petitioners further advanced another contention inviting my attention that assuming for a moment that the petitioner No. 1 defaulted in contributing its share of Provident Fund, how other directors could be responsible to face the criminal prosecution. I am afraid if any further discussion made at present regarding the inclusion of other Directors, it may prejudice either parties. In my opinion these issues are premature and those can be solved at an appropriate stage by the Court below.

10. Another interesting point has been raised by the petitioners that in view of subsequent payment by the company which may amount of their admission, this Court instead of sending those proceedings can also dispose of the same. I fail to understand how the learned counsel for the petitioners wants the High Court to exercise the power of a trial Court. Therefore, in the above background, I am not in a position to agree with the contention of the learned Advocate for the petitioners that the proceedings should be disposed of at High Court level.

11. The learned counsel for the petitioners, however, indicated that though the prosecution had been lodged since 1990, but no remarkable progress has been made as yet and in case, again these cases are remitted these petitioners would be unnecessarily and unreasonably harassed. While making such submission he greatly emphasized on Article 21 of the Constitution of India. It is inevitably true that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. The concept of speedy trial is incorporated into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. But there are, several factors which would contribute to the cause of delay, such as, interference by the higher Courts at the instance of the accused, pendency of earlier back-log of cases, non-co-operation of prosecution and likewise. However, these prosecution cases having been filed for different periods are not so much old compared to other pending cases. A

direction to the learned Additional Chief Judicial Magistrate for speedy disposal of these cases can appropriately remedy the grievance of the petitioners.

12. The learned counsel for the opposite party argued with strong intensity of conviction that similar contention raised by the other accused facing prosecution has filed revision in this Court and in a single Bench decision it is held that such complaints are tenable under law. He invited a reference to the Bench decision dated 10th April, 1990 in Criminal Revision Nos. 1725 to 1734 of 1989 decided by Sri Monoj Kumar Mukherjee (as His Lordship then was) held that such criminal prosecutions at the behest of Provident Fund Commissioner is tenable. Agreeing with the ratio of that decision, I found there is no merit for quashing of the criminal proceeding.

13. The learned counsel for the petitioners, Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others, and strenuously urged that at least the lower Court be asked to take a lenient view in favour of the petitioner since payment has been already made. On a careful reading of the decision it is found that the apex Court held that judgment shall not be taken as a precedent in other cases but would govern only for that case.

14. From the facts and circumstances of the case, I found that these petitions are benefit of merits and accordingly dismissed. At the same time, I direct the Additional Chief Judicial Magistrate to dispose of the case as early as possible.