
(2009) 11 JH CK 0034
In the Jharkhand High Court

Satyanarayan Kauntia and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 12-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Criminal Procedure Code, 1973 (CrPC) — Section 468, 473

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 13, 14, 14A, 14AA, 7B

Citation : (2010) CriLJ 1964 : (2010) 126 FLR 218 : (2010) 5 RCR(Criminal) 259

Hon'ble Judges : R.R. Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—As the issue involved in all these 35 writ applications is the same and similar and the parties are also same, all these matters were heard together and are being disposed of by this common order. Through these writ applications, the petitioners have invoked extraordinary jurisdiction of this Court as enshrined under Article 226 of the Constitution of India for quashing the entire criminal proceedings of all the complaint cases mentioned above including the order dated 26.3.2009 whereby and whereunder cognizance of the offences u/s 14(2), 14A and 14AA of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the Act) has been taken by learned Chief Judicial Magistrate, Jamshedpur against the petitioners in all the complaint cases whereof allegations are the same but the period of alleged contravention is different.

2. It is the case of the petitioners that officers of the Provident Fund Department visited the premises of the firm, namely, M/s. Textile Centre (petitioner No. 10) and M/s. Dulhin, (petitioner No. 11) both partnership firm to which other petitioners are the partners. Since partners of both the firms were common, therefore, officers of Provident Fund Department took both the firms as one firm where number of employees were found to be 21 and as such the provisions of

the Act is applicable to the said firms. Thereafter Assessing Officer, vide its order dated 13.4.1999 found the firm to be liable to make payment of certain liabilities under the Act which was sought to be reviewed in a review application filed u/s 7B of the Act which got dismissed on 29.5.1999. Thereupon petitioner No. 10, M/s. Textile Centre challenged the said order before this Court, vide

3. C.W.J.C. No. 3286 of 2000 which was disposed of by giving liberty to the petitioner to file appeal before the Provident Fund Tribunal, New Delhi. Accordingly, appeal was preferred before the Provident Fund Tribunal which was dismissed. That order was challenged before the Honble Delhi High Court which also got dismissed. Further case is that while the matter was pending before the Provident Fund Tribunal, Assistant Provident Fund Commissioner assessed the amount as Rs. 624611/-to be paid for the period from 19.9.1996 to February, 2003. When the petitioners lost everywhere, the said amount was deposited in the year 2006. Thereafter the petitioners were asked to submit statements in statutory form for the period from September, 1996 to March, 2003 which could not be submitted under misconception that the petitioners are not required to submit those forms as the contributions had already been made. Thereupon, respondent No. 3, Inspector (Enforcement Officer) appointed u/s 13 of the Act lodged as many as 35 complaint cases in a printed form wherein certain allegations were also incorporated but those are not concerned with the petitioners. Only some of them are related to the petitioners and those allegations are that the petitioners failed to submit to the Regional Provident Fund Commissioner consolidated statement in Form 12-A or extract thereof in Form 24 for the quarter starting from September, 1996 to November, 1999 within time as stipulated under the provision of Employees Provident Fund Scheme, 1952 on account of alleged default for 27 quarter starting from September, 1996 November, 1996 to March, 2003 May, 2003 for which complaint cases were filed separately. That apart eight complaint cases were filed alleging therein that petitioners failed to submit annual return (contribution card) for the period 1996-97, 1997-98, 1998-99, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004 in form No. 3-A and form No. 6-A as required under paragraph No. 43 of the scheme within the prescribed period. Thus, it was alleged that the accused persons have committed offences u/s 14(2) and 14A of the Act read with paragraph 76(b) of the scheme. That apart, one of the paragraphs in each of the complaint petition is related to matter concerning by previous conviction but columns meant for incorporation of certain information relating to previous conviction is blank suggesting that no such previous conviction is the so far petitioners are concerned, still the court apart from the offences under Sections 14(2) and 14A of the Act has taken cognizance u/s 14AA of the Act relating to previous conviction of a person.

4. Being aggrieved with the order taking cognizance in each of those cases, the petitioners have preferred the aforesaid applications.

5. Mr. Manish Kumar, learned Counsel appearing for the petitioners submits that

admittedly prosecution has been launched in the year 2009 for non-submission of the consolidated statements at the end of each quarter in statutory form relating to the period from September, 1999 to May, 2003 and also for non-submission of the annual return from 1996-97 to 2003-2004 in Form 3-A and 6-A during the stipulated period which is punishable for one year u/s 14(2) of the Act read with Clause 76(b) of the Employees Provident Fund Scheme, but prosecution has been launched in the year 2009 much after one year when the period of limitation expires, still the court took cognizance of the offences without condoning the delay in terms of Section 473 presumably for the reason that the said offence is a continuing offence. But admittedly it is not a case of non-deposit of the statutory dues, rather the case is of non-submission of the return/ consolidated statements in statutory form which would never be a continuing offence in view of the ratio laid down in a case of State of Bihar Vs. Deokaran Nenshi and Another, laying down the principle for ascertainment of an offence being continuing or non-continuing offence.

6. Learned Counsel also referred to a case of Transport Corporation of India Limited and Ors. v. R.M. Gandhi Ors. 1991 LAB.I.C. 2017 holding therein that failure to submit statement in Form 12-A and contribution cards in Form 3-A and 6-A is not a continuing offence.

7. Learned Counsel further submits that learned Magistrate has also taken cognizance of the offences u/s 14AA besides other offences as aforesaid without there being any statement in the complaint that the petitioners had earlier been convicted and as such, learned Magistrate without applying the mind has taken cognizance for the said offence u/s 14AA which is fit to be quashed.

8. Thus, the entire prosecution being barred by limitation including the order taking cognizance is fit to be set aside.

9. Mr. R.K. Singh, G.P.IV , learned Counsel appearing for the State submits that if the Court does find that cognizance taken u/s 14AA of the Act is bad, only then the question of order taking cognizance being hit u/s 468 of the Code of Criminal Procedure does arise but so long as order taking cognizance u/s 14AA of the Act remains intact, question of order taking cognizance being bad does not arise as the punishment prescribed is more than three years.

10. However, learned Counsel appearing for the respondent No. 2 submits that when the petitioners did not file return as required under the Act read with the scheme, in spite of repeated request, prosecution was launched upon which cognizance of the offences has been taken and thus, the petitioners have contravened the provisions of the Act and also the scheme and thereby made themselves liable to be prosecuted and, therefore, the impugned order never warrants to be interfered with.

11. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that on account of non-submission of the monthly consolidated statement in Form 12-A or extract thereof in Form-24 for every quarter starting

from September, 1999 to May, 2003 and also on account of non-submission of the annual return in Form 3-A and 6-A during the stipulated period starting from the year 1996-97 to 2003-2004 different complaint cases were filed in a printed format only with the change of dates indicating therein the quarter for which consolidated statements were not filed within the stipulated period. That apart, complaint petition in its one of the paragraphs does contain columns relating to case number and the period of sentence imposed on being convicted but those column are blank meaning thereby that the petitioners had not earlier been convicted, still the court took cognizance of the offence u/s 14AA of the Act, prescribing enhanced punishment in certain cases after previous conviction, though there was absolutely no statement in the complaint that petitioners had earlier been convicted for the similar type of offences and, hence, order under which cognizance has been taken u/s 14AA of the Act is quite bad.

12. Further it does appear that the complainant in his complaint has made statement that the offences alleged are continuing offence and hence, there would be no application of the provision as contained u/s 468 of the Code of Criminal Procedure and perhaps under that assumption the court, taking the offences alleged to be a continuing offence, has taken cognizance of the offences u/s 14(2) and 14A of the Act whereas offences alleged will never be falling in the category of continuing offence in view of the ratio laid down by the Honble Supreme Court in a case of *State of Bihar v. Deokaran Nenshi and Anr.* (supra). In that case issue what was raised before the Honble Supreme Court was as to whether non- submission of the annual return within the time stipulated under the Mines Act would be a continuing offence. While discussing the question as to when an offence could be said to be a continuing offence, the Court made following observation:

A continuing offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involved a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act of omission which constitutes an offence once and for all and an act or omission which continues and, therefore, constitutes a fresh offence every times or occasion on which it continues. In the case of a continuing offence, there is thus the ingredient of continuance of the offence which is absent in the case of an offence which takes place when an act or omission is committed once and for all.

13. On the aforesaid premise, the Honble Court in the aforesaid case did hold that non-submission of the return within the time stipulated under the Mines Act is an offence which he is committed once and for all and as such, it is a non-continuing offence.

14. Thus, distinction between the two kinds of offence is between the act or

omission which constitute an offence once and for all and act or omission which continues.

15. In that view of the matter, non-payment of the employers contribution to the Provident Fund can easily be assumed as continuing offence but the offence related to non-submission of the consolidated statement and annual return in the statutory form within the period as stipulated under the Act or the scheme can not be a continuing offence for the reason that if one fails to submit those statements within the stipulated period, one can be said to have committed offence once and for all.

16. Similar proposition of law has been laid down by the Bombay High Court in a case of Transport Corporation of India Limited and Ors. v. R.M. Gandhi and Ors. (supra) wherein it has been held that failure to submit statement in Form 12-A and contribution card in Form 3-A and 6-A will not constitute continuing offence.

17. Thus, there is absolutely no hesitation in holding that failure to submit consolidated statement in Form 12-A and annual return in Form 3-A and 6-A punishable u/s 14(2) and 14A of the Act is not a continuing offence.

18. I have already noted that the offence alleged relates to the period from September, 1999 to May, 2003 whereas prosecution report was filed on 26.3.2009 much after the one year of the commission of the offence and as such, it is barred by limitation u/s 468(2) of the Code of Criminal Procedure as punishment for the offences alleged has been prescribed under the Act as one year.

19. Thus, offences on being found to be barred by limitation, the entire prosecution of Complaint cases mentioned above including the order dated 26.3.2009 passed by the learned Chief Judicial Magistrate, Jamshedpur in those cases under which cognizance of the offences has been taken u/s 14(2), 14A and 14AA of the Act against the petitioners is hereby quashed.

20. In the result, all these applications are allowed.