(1991) 07 MAD CK 0078

In the Madras High Court

Case No : Criminal Original Petition No''s. 6204 to 6208 of 1991

Shanthi Vihar Hotels Limited and Others APPELLANT

Vs

Provident Fund Inspector, Madras VII Division, 20, R.H. Road, Madras-14 RESPONDENT

Date of Decision : 30-07-1991

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14A

Citation : (1991) LW(Cri) 470

Hon'ble Judges : Padmini Jesudurai, J

Bench : Single Bench

Advocate : J. Josephath, for the Appellant;

Judgement

Padmini Jesudurai, J.—The four accused who are facing trial in C.C. Nos. 2662/91 to 2666/91 before the XI Metropolitan Magistrate,

Saidapet on complaints filed by the Respondent herein, invoke the inherent powers of this Court u/s 482, Code of Criminal Procedure to quash the

above proceedings.

2. The prosecutions are for offences under Sections 14(1A) and 14-A of the Employees Provident Fund Act 1952, Section 6-C read with Section

14(1-B), 14-A and 14-AA of the Employees Provident Fund and Miscellaneous Provisions Act 1952 and Employees'' Deposit Linked Insurance

Scheme, 1976, Sections 14(2), 14-A and 14-AA of the above Act read with paragraphs 76(b) and (d) of the Schemes framed there under, for

failure to pay the employer''s share of the Provident Fund for the months of August, September and October 1990, failure to pay the Family

Pension Fund, Administrative charges, Insurance Fund dues and failure to file returns for the above period and also failure to file the initial return on

ownership for the first Petitioner Company.

3. Thiru J. Josephath, learned Counsel for the Petitioners would contend that though in the complaints, it is stated that the Petitioners 2 to 4 are in

charge of the first Petitioner establishment and are responsible to it for the conduct of the business and that it is. further stated that the offences

were committed by the establishment, with the consent and connivance of Petitioners 2 to 4 and were attributable to their neglect, yet details as to

how Petitioners 2 to 4 are responsible to the first Petitioner for the conduct of the business and details as to how the offences were committed by

the first Petitioner with the connivance, consent and negligence of the other Petitioners are lacking and the above allegations, merely borrowing the

wordings of the concerned provisions of law would not satisfy the legal requirement. The learned Counsel would further submit, that the averments

are bald and the facts constituting the above averments are not mentioned and as such no offence is made out against Petitioners 2 to 4 and

allowing the prosecutions to continue, would be an abuse of the process of the criminal court and as such, the complaints have to be quashed.

Reliance was placed upon a judgment of the Division Bench of the Calcutta High Court in K.N. Genda v. State 1982 LAB I.C. 1777 and a

judgment of a learned single Judge of the Karnataka High Court in Anantharamaiah Woolen Factory v. State 1981 LAB I.C. 538 .

3. The question that arises for consideration is whether the complaints disclose any offence against the Petitioners to warrant a trial.

4. No doubt, in both the above judgments, the High Courts have held that merely borrowing the language of the provision would not constitute the

ingredients of the offences and something more has to be stated. However, in neither of these judgments is the decision of the Supreme Court

which is directly on this subject referred to., In Delhi Municipality v. Purshotam Dass 1938 Cri. L.J. 172 , the Supreme Court while dealing with a

prosecution against the Managing Director and Directors of a Mill under the Prevention of Food Adulteration Act 1954, observed as follows:

The relevant allegations against the accused-Respondents are to be found in Para 5 of the complaint which may be extracted thus:

That accused Ram Kishan Bajaj is the chairman, accused R.P. Neyatia is the

Managing director and accused Nos. 7 to 12 are the Directors of the

Hindustan sugar Mills Ltd., and were ""in charge of and responsible to it for the conduct of its business at the time of commission of offence"".

4. Unlike the other case, para 5 of the complaint of this case gives complete details of the role played by the Respondents and the extent of their

liability. It is clearly mentioned that Ram Kishan Bajaj is the Chairman and R.P. Neyatia is the Managing Director and Respondents 7 to 11 are the

Directors of the Mill and are in charge of and responsible for the conduct of its business at the time Of the commission of the offence, whereas in

the other case the complaint has merely drawn a presumption without any averment.

5. In the instant case, a clear averment has been made regarding the active role played by the Respondents and the extent of their liability. In this

view of the matter, it cannot be said that para 5 of the complaint is vague and does not implicate Respondents 1 to 11. As to what would be the

evidence against the Respondents is not a matter to be ""considered at this stage and would have to be proved at the trial. We have already held

that for the purpose of quashing the proceedings, only the allegations set forth in the complaint have to be seen and nothing further.

6. From a perusal of the various clauses of the complaint, including para 5, it is quite clear that a prima facie case for summoning the accused has

been made out and the High Court was absolutely wrong in holding that the allegations made in para 5 are vague. The High Court failed to

consider that the allegations were quite clear and explicit so as to be sufficient for taking cognizance of the offence against the accused.

7. Further details would have to be given in the shape of evidence when the trial proceeds and in view of the clear allegations made in para 5 of the

complaint, we are not in a position to agree with the High Court that it is a fit case in which, it should have exercised its discretion u/s 482 of the

Code of Criminal Procedure 1973 in ""order to quash the proceedings against the accused-Respondents"".

Dealing with the situation in the above manner, the Supreme Court allowed the appeal, set aside the judgment of the High Court and restored the

order of the Metropolitan Magistrate issuing summons to the accused and placing them on trial.

5. In view of this clear pronouncement of the Supreme Court, the two decisions referred to by the learned Counsel for the Petitioners is not good

law. In the instant cases, in each one of the complaints, it is stated that the Petitioners 2 to 4 are in charge of the said establishment and are

responsible to it for the conduct of its business and that they are thus required to comply with all the provisions of the said Act and schemes in

respect of the said establishment. It is also stated that the offences were committed by the establishment with the consent and connivance of the

Petitioners and were attributable to their neglect and the Petitioner had thus committed the various offences. When the complaints were worded in

practically identical terms, the Supreme Court had upheld the complaint, stating that the rest was for evidence.

6. Learned Counsel for the Petitioners admits that no returns u/s 5-A of the Employees'' Provident Funds Scheme 1952, Employees Family

Pension Scheme 1971 and the Employees Deposit Linked Insurance Scheme 1976, framed under the Employees'' Provident Funds and

Miscellaneous Provision Act, 1952 had been filed by the first Petitioner establishment. Learned Counsel would however contend that it is for the

Respondent to find out the particulars of the owners and particulars of the persons who are in charge of and responsible for the conduct of the

business of the establishment and that the Petitioners need not help the Respondent to find out the above particulars.

7. I am unable to appreciate the stand of the Petitioners. Form 5-A contains question 11, which requires full particulars of the persons who are in

charge of and responsible for the conduct of the business of the establishment. It also requires that any change in the information given in form 5-A

should be intimated in writing to the Regional Commissioner or by Registered post within 15 days of such change. The Petitioners had not filed the

return in Form 5-A but would instead contend that they are not here to help the Respondent to find out these particulars and Respondent on his

own should find out.. Almost under similar circumstances, when a prosecution under the Water (Prevention and Control of Pollution) Act, 1974

was sought to be quashed on the ground that the proper persons in the industrial Unit had not been made accused the Supreme Court

Bhagirathsinh Judeja Vs. State of Gujarat, , held that the failure to make the proper persons as accused, besides the Industrial Unit, had been brought about by the Industrial Unit, itself, in not furnishing the information called for by the complainant and in wilfully failing to furnish the requisite

information and that the office bearers of the Industrial Unit, could not seek the court''s assistance to derive advantage from the lapses committed

by their own Industrial Unit. Since in that case, the proper persons had not been made accused, the Supreme Court indicated that the complaint

itself could suitably be amended and the legal infirmity was of such a nature, which could be easily cured. In the instant case, as already held there

is no legal infirmity at all. The complaint is in order, with the necessary averments against all the Petitioners and it will only by during trial, that

further details are required to be given.

8. I see no illegality in the complaints and these petitions are accordingly dismissed.

