
(2010) 03 DEL CK 0412

In the Delhi High Court

Case No : Criminal M.C. No. 1290 of 2007 and Criminal M.A. No. 4515 of 2007

Shri Anil Narendra, Managing Director, Vir Arjun Newspaper
Pvt. Ltd.

APPELLANT

Vs

The State (Govt. of N.C.T. of Delhi) and Sh. Shivji Prasad,
Enforcement Officer

RESPONDENT

Date of Decision : 09-03-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 397(3), 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14AC
Penal Code, 1860 (IPC) — Section 405, 406, 409

Citation : (2010) 03 DEL CK 0412

Hon'ble Judges : Vidya Bhushan Gupta, J

Bench : Single Bench

Advocate : V.P. Chaudhary, S.K. Anand and Sushma Chaudhary, for the
Appellant; Arvind Kumar Gupta, APP and Arun Yadav, for the Respondent

Judgement

V.B. Gupta, J.—Present petition has been filed u/s 482 of the code of Criminal Procedure, 1973 (for short as "Code") against order dated 9th February, 2007, passed by Additional Sessions Judge, Delhi, vide which he dismissed the Crl. Revision Petition filed u/s 397 of the Code upholding orders dated 27th November, 2006 and 19th December, 2006, passed by the Magistrate.

2. Brief facts of this case are that, M/s Veer Arjun Newspapers (P) Ltd. is a company which is covered under the Employees' Provident Funds & Miscellaneous Provision Act-1952 (for short as Act). Petitioner, who is Managing Director of the company is employer within the provisions of this Act. Petitioner had deducted employees' share of Provident Fund contribution, Family Pension contribution, from the wages/salary paid to the employees for the period January, 1993 to June, 1997 amounting to Rs. 3,00,000/- but these payments have not been remitted to the Provident Fund Department, as required under para 38 (1) of the Employees' Provident Fund Scheme, 1952 within 15 days of the close of the every month and have misappropriated the same and converted

to their own use. Thus, petitioner is liable to be charged for the offence of criminal misappropriation and criminal breach of trust. As such a complaint for offences punishable u/s 406 and 409 IPC was filed by the Enforcement Officer with the police, who filed the charge sheet.

3. Trial court passed order dated 27th November, 2006, for framing of charge u/s 406 IPC. Accordingly, charges were framed.

4. Petitioner filed revision petition against the order of Magistrate. That, Revision petition was dismissed by Additional Sessions Judge, vide its order dated 9th February, 2007.

5. It is contended by learned Counsel for the petitioner that present complaint is not maintainable in as much as no previous sanction as required u/s 14AC of the Act had been taken before filing the complaint. There is no mention in the complaint about such sanction nor any document indicating the grant of such sanction had been brought on record by the complainant. In view of the provisions of Section 14AC of the Act, previous sanction is necessary, even if prosecution is sought to be launched u/s 406 IPC.

6. Other contention is that no show cause notice was served upon the petitioner, nor any opportunity was given to the petitioner to deposit the money. The Establishment Code number was also not issued to the company to enable the petitioner or the company to deposit the P. F. contribution, as per the provisions of law.

7. In support of its contentions, learned Counsel for petitioner cited following judgments;

(i) Jasoda Glass and Silicate and Others Vs. Regional Provident Fund Commissioner and Others, ;

(ii) Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others, ;

(iii) Choudhary Colour Company and Ors. v. State of Bihar and Ors. 1998 (79) FLR 279;

(iv) State of Maharashtra Vs. Pankaj A. Gupta, ;

(v) M.R. Joseph Vs. John Menezes, ;

(vi) Zandu Pharmaceutical Works Ltd. and Others Vs. Md. Sharaful Haque and Others, ;

(vii) Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another, and;

(viii) Yeshwantrao Dattaji Chowgule and Ors. v. State. II 1993 (1) Crimes 534;

8. On the other hand, it is argued by learned Counsel for the respondents that

for the purpose of prosecution u/s 406 IPC, no prior sanction from any authority is required.

9. Secondly, it is contended that second revision is barred u/s 397(3) of the Code.

10. Section 397(3) of the Code read as under:

If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.

11. Bare reading of this provision would show that if an application u/s 397 of the Code has been made by any person either to the High Court or to the Session Judge, no further application by the same person shall be entertained by either of them.

12. In *Deepti alias Arati Rai Vs. Akhil Rai and Others*, , the Court observed;

It should have also applied its mind to the aspect that second revision application, after dismissal of the first one by Sessions Court is not maintainable and that inherent power u/s 482 of the Code cannot be utilised for exercising powers which are expressly barred by the Code. As we find that the order passed by the High Court is not legal and just it will have to be set aside.

13. In *M/s Zandu Pharmaceutical Works Ltd. (Supra)*, the court also observed;

Exercise of power u/s 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real

and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of process of the Court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of Court or quashing of these proceedings would otherwise served the ends of justice. When no offence is disclosed by the complaint, the Court may examine the question of fact. When a complaint is sought to be quashed it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

14. Thus, it is well settled that exercise of power u/s 482 of the Code is to be exercised rarely and when apparently there is any inherent defect in the order of the trial court.

15. In the present case, as far as sanction for prosecution u/s 406 IPC is concerned, no prior sanction from any authority is required.

16. Now question to be seen is as to whether under the Act any sanction is required and if yes, whether the same is there or not.

17. In this regard, the first appellate Court held;

The learned trial court in its order had further held that there is a copy of observation given by Sh. Ranbir Singh, Regional Commissioner of Provident Fund Department, which shows that official who filed this complaint does have permission from the department to prosecute this case, on the basis of alleged facts and narrated in the complaint, the learned trial court had considered the same to be a sanction. Learned trial court had even otherwise held that even an Enforcement Officer is competent to file the complaint. The question whether the observation given by Shri Ranbir Singh, Regional Commissioner will amount to a sanction or not or whether it is a prior sanction or not, or as to its effect cannot be determined at the stage of framing of charge but can be decided only after evidence is being led.

18. Relevant portion of the observation/note of Regional Commissioner of Provident Fund Department read as under:

The establishment had failed to pay PF dues from Sept. 83. After a brief closure of business, again the business was restarted from Jan 93. The owners however had been claiming infancy had independent existence on the plea of reconstitution of the establishment with slight change in the name of publication. The main activity however remained the same. The department had been insisting to pay the PF dues in respect of employees of two other firms which have recently been opened in A/C No. DL-1 11. The establishment had not complied with the direction of the department. The dues of the concern for Jan

93 to June 97 work out to be as below:

Employer Share Employee Share Balance. Dues 6,49,105/- (Approx.) 5,81,635/-
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Paid 75,340/- 2,81,635/- - 5,73,765/- 3,00,000/- 8,73,765 (Appx.)

The establishment is defaulter of Rs. 8,73,7365/- out of Rs. 3 lacs of the employees share deducted from the wages of the employees. It is seen that in terms of Explanation-I added to Section 405 of I PC, the office therefore deputed EOs who visited the establishment on 02.08.1997 and directed the establishment to pay the PF dues under Code No. DL/1 11. The establishment did not comply. Again the EOs visited the establishment on 11.08.1997. The squad of EOs have therefore filed an FIR for criminal breach of trust and misappropriation of PF dues which is punishable u/s 406/409 of IPC with Indra Prastha Police Station on 11.08.1997 for non payment of employees share deducted from wages.

Sd/-

Ranbir Singh

Regional Provident Fund Commissioner

Delhi.

19. As rightly held by the first appellate court that whether the observation given by Mr. Ranbir Singh, Regional Provident Fund Commissioner will amount to a sanction or not or whether it is prior sanction or not, or as to its effect cannot be determined at the stage of framing of charge but can only be decided after evidence is being led.

20. So under these circumstances, it is a matter to be decided only after recording of the evidence.

21. Even otherwise from the facts of the present case, prima facie, it is clear that there are sufficient grounds for framing of charges against the petitioner as case of respondent is that petitioner being employer had deducted employees' share of Provident Fund Contribution and family pension contribution from the wages/ salaries paid to the employees for the period January, 1993 to June, 1997 and these payments were not remitted to the fund as required under para 38 (1) of the Employees' Provident Fund Scheme-1952, within 15 days of the close of every month.

22. As per petitioner's own case he deposited Rs. 3 lacs in respect of Provident Fund Contribution of the employees in the year 1997 only, that is, well beyond the prescribed period.

23. The other plea taken up by the petitioner is that since Establishment Code was not issued to the petitioner as such he could not deposit the contribution within the prescribed period.

24. It is the defence of the petitioner and it is a matter of evidence to be decided by the trial court as to on which date Establishment Code was allotted to the petitioner.

25. Apparently, as provisions of the Act have not been complied with by the petitioner, so under these circumstances there is no ambiguity or illegality in the impugned order.

26. The present petition is not maintainable and same is hereby dismissed. Crl. M. A. No. 4515/2007

27. Dismissed being infructuous.

28. Trial court record be sent back.