(2004) 02 MP CK 0025

In the Madhya Pradesh High Court

Case No : M. Cr. C. No. 4548 of 2003

Shrikant Bangur and Others — APPELLANT

Vs

Shree Synthetics Shramik Union — RESPONDENT

Date of Decision : 12-02-2004

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14AC

Citation : (2004) 101 FLR 547 : (2004) 2 LLJ 968

Hon'ble Judges : A.K. Awasthy, J

Bench : Single Bench

Advocate : S.C. Bagadia, for the Appellant; S.H. Moyal, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Awasthy, J.—Applicant has filed the petition u/s 482 of Cr.P.C. for the quashment of the criminal complaint filed u/s 405/406 of the I.P.C. by the respondent registered as Case No. 250/2003 by Judicial Magistrate Class I Ujjain.

2. The case of the complainant is that complainant Jitendra Kumar is General Secretary of the Synthetic Workers Union which is representative Union duly registered under the Trade Unions Act having its registered office at Laxmi Bai Marg, Ujjain and he is authorised u/s 21 of M.P. Industrial Relations Act, 1960 to file the complaint on behalf of the Union. That Shree Synthetics Limited is a company registered under the Companies Act and it is carrying on business of manufacturing of Nylon and Polyester yarn in its factory situated at Navlakhi Maksi Road, Ujjain. That applicant/accused No. 1 is the Senior Executive President of the Company and the accused Nos. 2 and 4 are the Vice President and the Secretary of the Company and accused No. 3 is the Vice President the Manager of the Company. The allegation of the complainant is that Shree Synthetics Limited Company has deducted the contribution of the employees'' provident fund in the year 2000-2001, 2001-2002 and 2002-2003 total Rs. 1,72,80,485 but the provident fund of the employees was not deposited by the applicant accused in the office of the Commissioner, Provident Fund, Ujjain as

required under the rules that the applicant along with the President, Vice President and Secretary (accused Nos. 1 to 4) was bound under the law to deposit the amount of Rs. 1,72,80,485 and they have misappropriated the amount and thus, committed the breach of trust and as such, they should be punished for the offence punishable u/s 406 of the I.P.C.

3. The complaint was filed before the Judicial Magistrate Class I on May 10, 2003 and after recording the statement of the complainant and perusing the documents, the case was registered on May 13, 2003 against the applicant and the other co-accused and the bailable warrant of Rs. 25,000 were issued for their appearance in the case.

4. The applicant has prayed for quashment of the complaint on the ground that no prima facie case is made but against the applicant because under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 Form 5-A is required to be submitted before the competent Authority and on April 16, 1998 the Form 5-A was filled and whereby Mr. K.C. Mohta, occupier of the factory and Mr. R.S. Mantri, Factory Manager were declared responsible for the conduct and business of the company. In my opinion, the entries in form 5-A is not to the fact that the applicant will not be responsible for depositing the amount of the provident fund collected from the employees. From the perusal of Form 5-A it is clear, that the responsibility for the conduct and business of the company was fastened on Mr. K.G. Mohta and Mr. R.S. Mantri, It is settled proposition of law that while quashment of the prosecution at initial stage in exercise of inherent power the Court has to apply the test whether uncontroverted allegation made against the accused prima facie establishes the offence or not and at this stage, the Court is not required to take the document of the accused on record and examine the defence or the accused.

5. It is argued by the learned counsel for the petitioner that the offence of criminal breach of trust is not made out against the applicant on the allegation that Provident Fund collected by him was not deposited in the office of the Commissioner of the Provident Fund, The argument is not prima facie tenable in view of the explanation No. 1 of Section 405 of the Cr.P.C. Explanation No. 1 of Section 405 of I.P.C. runs as below:

"a person being an employer of an establishment whether exempted u/s 7 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee''s contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established in any law for the time being in force shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law; shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid."

6. Learned counsel for the applicant contended that the cognizance of such

alleged offence can only be taken on report in writing by Provident Fund Commissioner or such other officer duly authorized with the previous sanction of the Central Government. Learned counsel for the applicant has failed to show any provision of law which bars the filing of private complaint in case the management of the factory commits any breach of trust of the Provident Fund collected by them from the employees. However, the applicant can raise objection before the JMFC of the tenability of the complaint on account of Section 14AC of the Act.

7. This fact is not in dispute that the applicant is a senior Executive of the Company and the amount of Rs. 1,72,80,485 was deposited by the employees and the management has not deposited the amount in the office of the Commissioner as required under the law. The provident fund of many years of the employees was detained by the applicant. The defence of the applicant is that the company is a sick company under the provisions of SICA and as such, the provident fund could not be deposited by the company in time. From the copies of the order of the High Court of Calcutta filed in the case it is clear, that the applicant is directed to make the payment or all its dues under the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 and under the laws relating to the provident fund. Consequently, it is clear that there is a prima facie evidence against the applicant of his involvement in an offence punishable u/s 406 of the I.P.C.

8. It is reiterated time and again by the Apex Court that the power of the quashment of the complaint where prima facie case is made out should not be exercised on the basis of the defence which can be raised by the accused in the Trial. In this regard the following observation made in case of M. Narayandas v. State of Karnataka and Ors.AIR 2003 SCW 6030 are relevant:

"We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too is the rarest of rare case, that the Court will not be justified in embarking upon an inquiry as to the reliability, or genuineness or otherwise of the allegations made in FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

It is settled law that the power to quash must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare case. It is observed in case of State of Madhya Pradesh v. Awadh Kishore Gupta and Ors.AIR 2003 SCW 6501 that where there is no material to show that the complaint is mala fide, frivolous or vexatious, the indulgence by High Court u/s 482 Cr.P.C. is uncalled for. This case is not that no case is made out against the applicant. Consequently, it will not be proper to quash the case u/s 482 of Cr.P.C.

9. The petition is devoid of merits and it is, hereby, dismissed.

