
(1970) 10 BOM CK 0008
In the Bombay High Court

Siku Industries and Others	Vs	APPELLANT
Smt. C. D'Souza and Others		RESPONDENT

Date of Decision : 16-10-1970

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1898 (CrPC) — Section 177

Citation : (1971) CriLJ 1322 : (1971) MhLj 172

Hon'ble Judges : M.N. Chandurkar, J;D.B. Padhye, J

Bench : Division Bench

Judgement

Padhye, J.—This petition is filed for quashing and setting aside the criminal complaints Nos. 1982, 1983, 1984, 1985 and 1986, all of 1969 and/or criminal proceedings pending before the 23rd Court of the Presidency Magistrate, Esplanade, Bombay by an appropriate writ, order or direction either under Article 226 or 227 of the Constitution and/or u/s 561-A and/or Under Sections 435 and 439 of the Code of Criminal Procedure.

2. The criminal proceedings before the Presidency Magistrate at Bombay which are sought to be quashed arise out of five complaints lodged by the Opponent No. 1 against the present petitioners for contravention of the provisions of the Employees' Provident Funds Act, 1952. The petitioner No. 1 is a registered partnership firm carrying on its business under the name of Messrs. Siku Industries, Industrial Estate, Kamptee Road, Nagpur and the petitioners Nos. 2 to 4 are the partners of the petitioner No. 1. The Opponent No. 1 is an Inspector in the Office of the Regional Provident Fund Commissioner, State of Maharashtra. The opponent No. 1 in her capacity as Inspector appointed u/s 13 of the Employees' Provident Funds Act, 1952 lodged complaints against the petitioners for offences under paragraph 76 (a) of the Employees' Provident Funds Scheme, 1952, read with Sections 14 (2) and 14-A (1) and/or Section 14-A (2) of the Employees' Provident Funds Act, 1952. The several complaints are for the offences alleged to have been committed during different periods from the years 1966 to 1969. In all these complaints the grievance of the opponent No. 1 has

been that the petitioners Nos. 2 to 4 are the persons in charge of the said establishment of the petitioner No. 1 and are responsible to it for the conduct of its business and they are thus required to comply with all the provisions of the said Act and the said scheme in respect of the said establishment. According to the complaints the petitioners-accused are under paragraph 38 of the Employees Provident Fund Scheme required to send towards the employees' provident fund account with the State Bank of India, the provident fund contributions of the employees of the said establishment together with an equal amount as employer's share and administrative charges due for every month within 15 days of the close of that month. It is further alleged that in spite of several requests the accused-petitioners failed to send the provident fund contributions for the different periods mentioned in each of the complaints and therefore, the accused No. 1 that is, petitioner No. 1 has committed offences under paragraph 76 (a) of the Employees Provident Funds Scheme, 1952 read with Section 14 (2) of the Employees' Provident Funds Act, 1952 between the said period. It is also the case of the complainant that as the accused Nos. 2 to 4, that is. the petitioners 2 to 4, were during the relevant period in charge of the said establishment and were responsible to it for the conduct of its business and/or as the aforesaid offences were committed by the said establishment with their consent or connivance and were attributable to their neglect, the said accused persons have committed the offences under paragraph 76 (a) of the Employees Provident Funds Scheme, 1952 read with Sections 14 (2) and 14-A (1) and/or u/s 14-A (2) of the Employees' Provident Funds Act. 1952.

3. After these complaints were entertained by the learned Presidency Magistrate, it appears he issued summonses to the accused and on the first three occasions as the copies of the order-sheets show the cases were adjourned as the accused are said to have applied for time. The adjournments were on the hearings on 11-2-1970, 11-3-1970 and 29-4-1970. It is, however, stated on behalf of the petitioners-accused that they had no knowledge of these proceedings on these various dates, nor did they appear before the Magistrate either in person or through counsel and never applied for time as has been recorded in the aforesaid order-sheets. Then on 13-5-1970 the learned Magistrate recorded that the accused were absent and ordered the issue of bailable warrant of Rs. 500/- against each of the accused Nos. 2, 3 and 4, that is the petitioners Nos. 2 to 4 and fixed the cases for 3-6-1970. The warrant was not executed by that date and then the cases were adjourned to 15-6-1970 and later on they were adjourned to 22-6-1970. Though the cases were adjourned to 15-6-1970, on the ground that the warrant was not executed by 3-6-1970, the petitioners contended that they appeared before the learned Presidency Magistrate through their advocate and the advocate Mr. Narendra Nath Chatterjee of Nagpur has filed an affidavit stating that on 3-6-1970 he had appeared in the said criminal cases and had filed one Vakalatnama of the petitioners and had raised a preliminary objection that the petitioners could not be prosecuted for the alleged offences committed by the previous partners of the establishment. He was asked by the learned

Magistrate to file separate Vakalatnamas for the other cases and the cases were adjourned to 15-6-1970, on which date he filed the remaining 4 vakalatnamas. He also filed three affidavits duly sworn by the three accused persons and one application u/s 205 of the Code of Criminal Procedure for exemption of the accused persons from personal appearance in the Court. It is his grievance that these affidavits and the application were not entertained by the learned Magistrate who told him that the petitioners should first present- themselves before the Court and thereafter he would record the pleas of the petitioners and then hear the prosecution witnesses and thereafter the counsel should raise whatever objections he had and argue the points which he had raised on the maintainability of the complaints in that Court. The cases were then adjourned to 22-6-1970 for the presence of the petitioners in the Court. On these happenings the petitioners then filed this petition in this Court on 20-6-1970 praying for the quashing of the proceedings before the learned Presidency Magistrate against the present petitioners in the aforesaid criminal cases. No return has been filed on behalf of the respondents.

4. The learned Counsel for the petitioners contends that the learned Presidency Magistrate has no jurisdiction at all to entertain these complaints as no part of the cause of action arose within the jurisdiction of the learned Presidency Magistrate and whole of the cause of action arose at Nagpur only. u/s 177 of the Code of Criminal Procedure every offence has ordinarily to be enquired into and tried by a Court within the local limits of whose jurisdiction it was committed. It is contended on behalf of the petitioners that the petitioners are residents of Nagpur, that the industry or establishment in respect of which the charges have been made against them is also located in Nagpur and the provident fund contribution which has to be made on behalf of the employees and the employer is also required to be made at Nagpur. It is the contention of the petitioners, and is also the case of the complainant, that in the State Bank at Nagpur there is a provident fund account in which the employees' and employer's contribution as well as the administrative charges are to be deposited and such deposit in that account is a payment to the provident fund account under the Act. It is, therefore contended that no part of the cause of action has arisen in Bombay and, therefore, the proceedings before the learned Presidency Magistrate in all these cases are absolutely without jurisdiction. It is also further contended on behalf of the petitioners that during the period for which the petitioners are charged in those criminal cases, the petitioners 2 to 4 were not the partners and the Siku Industries was owned by different persons altogether and, therefore, the petitioners Nos. 2 to 4 could not be criminally proceeded against for the defaults, if any, of their predecessors. For that purpose, they have filed a copy of the sale deed executed in their favour by the previous proprietors of the concern. Such a document Ajjas evidently not filed before the Presidency Magistrate in those cases since the petitioners did not at all put in appearance before the Magistrate except through their counsel on 3-6-1970 and 15-6-1970 on which particularly nothing was done. The petitioners contend that on the face of the

complaints, there is no case against the petitioners and the proceedings, therefore, should be quashed as they would unnecessarily cause harassment to them.

5. On behalf of the respondents, it is urged that the petition should be thrown out firstly on the ground that this Bench at Nagpur could not entertain and decide this petition or quash the proceedings of the Presidency Magistrate at Bombay, which could only be done by the High Court sitting at Bombay. The respondents' further contention is that the petitioners having not submitted to the orders of the learned Presidency Magistrate for remaining present before him, this Court even if it has the power to quash the proceedings before the learned Presidency Magistrate should not exercise the discretionary powers in favour of the petitioners who are callously disobeying the orders of the learned Presidency Magistrate before whom the proceedings are pending. Before going to any of these questions, it will first be necessary to consider whether this Bench sitting at Nagpur can quash the proceedings which are pending before the Presidency Magistrate at Bombay.

6. The learned Counsel for the petitioners urges that the writ of this Bench could travel within the whole of the State of Maharashtra and it could travel by virtue of the provisions of Article 226 (1A) of the Constitution even beyond the State of Maharashtra if either the whole or a part of the cause of action arises in the State or in this region. According to him, not only a part of the cause of action, but the whole cause of action arose at Nagpur and hence there is no bar to a writ of this Court travelling to Bombay for quashing the proceedings before the Presidency Magistrate. We were referred to Article 214 of the Constitution which says that there shall be a High Court for each State and it was contended that this Bench also is a High Court for the State of Maharashtra and, therefore, has jurisdiction in relation to the whole territory of the State of Maharashtra and it would issue a writ to the Presidency Magistrate at Bombay for quashing the proceedings before him. So far as the question falling for consideration Under Sections 435, 439 and 561-A of the Code of Criminal Procedure is concerned, what we are concerned with is not the cause of action for making the complaints by the opponent No. 1 against the petitioners, but the pendency of the application by the petitioners invoking the powers of the High Court under those provisions and the occasion for filing the application is really the act of the learned Presidency Magistrate in entertaining the complaints and in proceeding with them against the petitioners. It may be that the cause of action for the complaints might have arisen in Nagpur as is the claim of the petitioners, but that will be a matter for the learned Magistrate to decide on the material placed and contentions raised before him or it may be open even to the High Court to quash the proceedings either u/s 561-A of the Code of Criminal Procedure or Under Sections 435 and 439 of the said Code or under Article 227 of the Constitution. The question, however, is whether this Bench sitting at Nagpur could quash those proceedings which are in Bombay or whether it would be the High Court sitting at Bombay which alone would have the power to quash those

proceedings if found to be without jurisdiction or on the face of it untenable.

7. Under Article 227 of the Constitution, the High Court has superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. If this Bench could exercise jurisdiction in relation to the territories of the whole State of Maharashtra including the Vidarbha Region, then certainly this Court would be in a position to interfere with and quash the proceedings before the learned Presidency Magistrate at Bombay. This Article, however, has to be read with Section 41 of the Bombay Reorganisation Act, 1960 and Section 51 of the States Reorganisation Act, 1956. By virtue of Section 41 of the Bombay Reorganisation Act, a permanent Bench of the Bombay High Court has been located at Nagpur in order to exercise the jurisdiction and power for the time being vested in the High Court in respect of cases arising in the districts of Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara, Chanda and Rajura. The Chief Justice, however, in his discretion could order that any cases arising in any such district shall be heard at Bombay. This Court has also made rules under Article 227 of the Constitution and Rule 1 in Chapter XXXI provides that all appeals, applications, references and petitions including petitions for exercise of powers under Articles 226 and 227 of the Constitution arising in the Judicial Districts of Akola, Amravati, Bhandara, Buldana, Chanda, Nagpur, Wardha and Yeotmal, which lie to the High Court at Bombay, shall be presented to the Special Officer of that High Court at Nagpur and shall be disposed of by the Judges sitting at Nagpur. Now so far as the remedy Under Sections 561-A, 435 and 439 of the Code of Criminal Procedure is concerned the High Court sitting at Bombay will be exercising the powers in respect of the cases which are pending before or decided by the Courts or Tribunals located in the rest of the State excluding Vidarbha Region and the Bench at Nagpur could exercise the jurisdiction and the power in respect of cases which are pending before or decided by the Courts or Tribunals located in the districts of the Vidarbha Region. Now these cases which are pending before the Presidency Magistrate are certainly not cases in the Vidarbha Region but are cases which are pending at Bombay and any remedy against any orders passed by the Presidency Magistrate at Bombay or for quashing those proceedings will lie to the High Court sitting at Bombay under the aforesaid provisions of the Code of Criminal Procedure. The Bombay Reorganisation Act itself has limited the jurisdiction and the power of this Bench confining it to the 8 districts of the Vidarbha Region and Rajura and we cannot accept the contention of the learned Counsel for the petitioners that this Court would be able to exercise its jurisdiction and power with respect to the cases which are pending at Bombay.

8. So far as the powers under Article 227 of the Constitution are concerned, similar position will arise. We are not concerned at the moment whether the proceedings before the Presidency Magistrate are with or without jurisdiction. There are already cases pending before the Presidency Magistrate. The matter that has to be considered is whether in view of the provisions of Section 41 of the Bombay Reorganisation Act and the Appellate Side Rules which we have

referred to above, this Court could quash those proceedings or set aside any orders passed by the learned Magistrate at Bombay. Those cases which are pending before the learned Magistrate at Bombay cannot be said to be cases arising in this region for purposes of Sections 435, 439 and 561-A of the Code of Criminal Procedure or Article 227 of the Constitution and. therefore, it would not be possible for this Bench to exercise its jurisdiction and power in respect of those cases which are pending outside this region. The cause for moving the High Court either Under Sections 435 or 439 or 561-A of the Code of Criminal Procedure or under Article 227 of the Constitution for quashing the proceedings has arisen because of the pendency of those proceedings before the Presidency Magistrate and his act of proceeding with the said cases. Section 41 of the Bombay Reorganisation Act does not in our view, empower this Bench to quash the proceedings in question which are pending in a Court outside the territory in which this Court can exercise its jurisdiction. The Appellate Side Rules also do not authorise such a course. If we were to accept the contention of the petitioners, it would cause confusion and at the sweet will of a litigant, any proceeding or decision in any such proceeding, pending or decided by a Court or Tribunal in Western Maharashtra or Marathwada area could be challenged before this Bench, or a matter from the Vidarbha Court or Tribunal could be challenged in the High Court sitting in Bombay, causing inconvenience, harassment or prejudice to the opponent. Section 41 of the Bombay Reorganisation Act has been advisedly enacted to avoid this confusion.

9. So far as the exercise of the powers under Article 226 of the Constitution is concerned, the matter stands on a different footing. It empowers the High Court to issue to any person or authority, including in appropriate cases any Government, directions, orders or writs for the enforcement of any of the rights conferred by Part III and for any other purpose. Article 226 has been amended by inserting a Sub-article (1-A)-This sub-article extends the authority of the High Court to issue writs to any Government, authority or person even outside the territories in relation to which the High Court exercises jurisdiction provided the cause of action wholly or in part arises within the territory in relation to which the High Court exercises jurisdiction. Under Article 226 (1-A) of the Constitution, if any part of the cause of action arises at Bombay, the criminal proceedings against the petitioners pending in the Court of the Presidency Magistrate would be within his jurisdiction u/s 177 of the Code of Criminal Procedure and any orders passed by the said Court would be amenable to the jurisdiction of the High Court sitting at Bombay and the proceedings pending in that Court would also be subject to the superintendence of the High Court sitting at Bombay. In such a case, the exercise of the powers under Article 226 of the Constitution by this Bench would not in fact arise. For the matter of that, the High Court sitting at Bombay also may not be able to exercise the powers under Article 226 of the Constitution on the grounds alleged by the petitioners. It is, however, the contention of the petitioners that no part of the cause of action for the criminal proceedings against the petitioners arose at Bombay and the whole of the cause

of action arose at Nagpur alone, and therefore, the proceedings before the Presidency Magistrate at Bombay are wholly without jurisdiction and the complainant is not entitled to prosecute the petitioners in the Court of the Presidency Magistrate or any other Court in Bombay.

10. The prosecutions against the petitioners are for failure to pay the contributions which they are liable to pay under the Employees' Provident Funds Scheme. Section 6 of the Employees' Provident Funds Act 1952 provides for the contributions which have to be paid by the employer to the fund and for the employees' contribution. "Fund" is defined in Section 2 (h) to mean the provident fund established under a Scheme. Any person committing an offence under this Act or the Scheme is guilty of an offence u/s 14-A of the Act and Section 14-B of the Act deals with the power of the Government to recover the amounts of contribution from the employers. Paragraph 30 of the Scheme framed under the Act requires employer to pay his own contribution as well as of the employees, directly or by or through a contractor. Paragraph 38 gives the mode of payment of contribution. It reads as under:

38. Mode of payment of contribution (i) The employer shall, before paying the member his wages in respect of any period or part of period for which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as an administrative charge of such percentage of the pay (basic wages, dearness allowance, retaining allowance, if any, and cash value of food concessions admissible thereon) for the time being payable to the employees other than an excluded employee and in respect of which provident fund contributions are payable, as the Central Government may fix, he shall within fifteen days of the close of every month pay the same to the Fund by separate bank drafts or cheques on account of the contributions and administrative charge.

Provided that if payment is made by a cheque on an outstation bank, the actual bank collection charges in respect of both the contributions and the administrative charges shall be included in the amount for which the cheque is drawn in respect of the administrative charge:

Provided further, that where there is no branch of the Reserve Bank or the State Bank of India at the Station where the factory or other establishment is situated, the employer shall pay to the Fund the amount mentioned above by means of Reserve Bank of India (Governmental Drafts at par) separately on account of contributions and administrative charge.

11. Paragraph 50 of the Employees' Provident Funds Scheme provides that the aggregate amount received as the employer's and the employees' contributions to the Fund shall be credited to an account to be called the "Provident Fund Account". Now it is contended on behalf of the petitioners that the establishment is located in Nagpur and the employers and the employees are also from Nagpur and the liability to pay the contributions to the provident fund also arises at

Nagpur since the contributions are to be deducted from the wages of the employees at Nagpur and the employers are also to make their contributions at Nagpur. It is further contended that the contributions of the employers and the employees and the administrative charges are also required to be deposited in the State Bank of India at Nagpur where the Provident Fund Account has been opened. It is thus the contention of the petitioners that the amount which is to be paid by the employers on account of the contribution is paid and received in the Provident Fund Account at Nagpur itself and, therefore, so far as the payment of the contribution is concerned, the whole of the cause of action for any contravention of that obligation or liability arises at Nagpur alone and no part of the cause of action arose at Bombay. The amount has to be paid in the Provident Fund Account and when the Provident Fund Account is opened by the Provident Fund Commissioner or the trustees in Nagpur itself and employers of the establishments in Nagpur are required to deposit their contributions in that Provident Fund Account at Nagpur, then any contravention on the part of the employers in not depositing the amounts would be a liability on them at Nagpur and any breach of that obligation would necessarily arise at Nagpur. It is urged that the payment by the employers of the contributions in the Provident Fund Account at Nagpur relieves them of all obligations under the Act regarding the payment and fully discharges their liability. The discharge of their liability for the contributions does not depend upon the payment of their contributions at Bombay either in the Provident Fund Account there or by cheques or drafts or by sending the cheques or drafts to the Provident Fund Commissioner at Bombay. The nonpayment of the contribution would, therefore, amount to a default or a breach arising at Nagpur and nowhere else. According to the petitioners, if the Provident Fund Commissioner or the Provident Fund Account is their creditor with respect to the liability, then that creditor is in Nagpur where the contributions are required to be deposited.

12. On the other hand, it is urged on behalf of the opponents that the amounts of contributions are required to be paid to the Provident Fund Commissioner whose office is located in Bombay and the petitioners who are the contributors and as such the debtors in a sense, have to seek under the common law rule the creditor who is the Provident Fund Commissioner in Bombay. According to the opponents, therefore, the obligation is to pay the amount at Bombay and hence a part of the cause of action arises at Bombay and hence a complaint for contravention of the provisions of the Scheme regarding nonpayment is tenable before a Court at Bombay. The opponents rely upon certain decisions for this proposition. In *North Bengal Das Brothers Zemindary Co. Ltd. v. Surendra Nath Das* ILR (1957) Cal 6, a question was raised about the jurisdiction of the Court to entertain a suit. In that case, the cause of action was based on the nonpayment of rent. Section 54 of the Bengal Tenancy Act provided for the time and place for payment of rent and Sub-section (2) thereof gave an option to the tenant to pay the rent either at the landlord's village office or at a place appointed in that behalf by the landlord or to send the rent by postal money order. The option was

not exercised and covenant to pay did not provide for any specific place for payment, nor was any custom fixing the place of payment pleaded or proved. In those circumstances, it was held that the general principle that the debtor must seek his creditor must be followed. Now this case is distinguishable from the instant case. In the instant case the Provident Fund Commissioner has opened a Provident Fund Account in the State Bank of India at Nagpur and the payment in that account is held to be a good payment so as to give a full discharge to the employers.

13. A similar principle was applied in *Bharumal Udhomal and Others Vs. Sakhawatmal Veshomal and Others*, . There also the place for the performance of the contract was not fixed. Section 49 of the Contract Act came in for construction in that case. u/s 49 of the Contract Act, a promisor is required to apply to the promise to appoint a reasonable place for the performance of the promise and the promisor has to perform his promise at such a place. In that case such application was made by the promisor to the promise for the performance of the contract, and, there-fore. Section 49 had no application. It is in that context it was held that if Section 49 had no application, the common law rule that the debtor must find the creditor ought to apply. A Full Bench case of the Madras High Court in *Employees' State Insurance Corporation, Madras Vs. Md. Ismail Sahib and Others*, was also relied upon. That was a case of payment of contribution under the *Employees' State Insurance Act, 1948*. The Office of the -Employees' State Insurance Corporation was at Madras. The Factories were outside Madras. There were defaults in making contributions. No place for payment was specified either expressly or by implication. In those circumstances, it was held there that the general common law rule that the debtor must seek the creditor must apply. That is not the case here. Here, a Provident Fund Account is maintained in the State Bank at Nagpur and the amount is required to be deposited in that account. Thus the Provident Fund Commissioner can be said to have appointed the place expressly and in any case by implication for making the payment. These decisions, therefore, have no application to the facts of the present case. In fact, so far as the payments of contributions are concerned, nothing had to be done at Bombay so far as the present petitioners are concerned, assuming that they are liable for the payment of the contributions which the petitioners claim, they are not. Thus the whole of the cause of action which gives rise to the prosecution against the petitioners arose at Nagpur, and, therefore, u/s 177 of the Code of Criminal Procedure, the prosecution if any, ought to lie in Nagpur and not at Bombay. In other words, the complainant can prosecute the petitioners for the alleged contravention in a Court at Nagpur which would have the .-jurisdiction to try the case. If that is the position, then the act of the complainant in prosecuting the petitioners at Bombay is illegal and unauthorised and this Court under Article 226 of the Constitution could issue a writ to the complainant directing not to proceed with the prosecution against the petitioners in a Court at Bombay. In our view, such a direction could be given to the complainant-opponent No. 1 in this case

restraining her from proceeding with the cases pending against the petitioners in the 23rd Presidency Magistrate's Court, Esplanade, Bombay, or before any other Magistrate in Bombay.

14. It is, however, contended on behalf of the opponent No. 1 that the petitioners had an adequate alternative remedy for challenging the jurisdiction of the Presidency Magistrate before the High Court sitting at Bombay either u/s 435 or 439 or 561-A of the Code of Criminal Procedure or Article 227 of the Constitution and could ask there for quashing of these proceedings and hence this Bench should not exercise its powers under Article 226 of the Constitution. If the proceedings are wholly without jurisdiction, then in that case even though there may be an alternative remedy, that does not prohibit the Court from issuing the necessary writ when the Court finds that the whole of the cause of action arises at Nagpur and part in Bombay and hence the proceedings are wholly without jurisdiction. It is also urged that the discretionary powers under Article 226 and Article 227 of the Constitution should not be exercised in the present case because the petitioners have failed to appear before the Presidency Magistrate in obedience to a summons and a warrant issued by him against the petitioners. If the Magistrate has no jurisdiction to entertain the prosecution or proceed with the same, he is honest and the petitioners are not bound to obey the summons or the warrant if issued without jurisdiction. If the Magistrate had jurisdiction and the summons and the warrant were disobeyed by the petitioners, the matter would have been entirely different and this Court would have been loath to use its discretion in favour of a person disobeying such summons or warrant. We however, find that the Presidency Magistrate has no jurisdiction to entertain and proceed with the complaints in these matters and there can be no fetter to our discretionary powers in issuing the necessary writ in spite of the fact that the petitioners have failed to appear before the Presidency Magistrate in answer to the summons or the warrant. We, however, find in this case that the petitioners were represented through a counsel before the Presidency Magistrate, but his objections which went to the root were not entertained or heard by the Presidency Magistrate. We do not, therefore, think that this is a case where we should not exercise our discretionary powers under Article 226 of the Constitution since the proceedings before the Presidency Magistrate are patently without jurisdiction. We are, therefore, of the opinion that the cause of action for the prosecution of the petitioners for the alleged contravention of the provisions of the Provident Funds Scheme has wholly arisen at Nagpur and the opponent No. 1 was not authorised to initiate the criminal prosecutions against the petitioners before a Magistrate at Bombay, nor were the petitioners liable to be prosecuted before a Magistrate at Bombay. Since the act of the opponent No. 1 in launching the prosecution at Bombay is unauthorised and illegal, we direct the opponent No. 1 by a writ of mandamus to refrain from proceeding with the criminal prosecutions against the petitioners in Bombay hearing Criminal Cases Nos. 1982 to 1986 of 1969 on the file of the Presidency Magistrate 23rd Court, Esplanade, Bombay and further direct that no prosecution for the alleged

offences be launched against the petitioners in respect of the matters which are now pending before the Presidency Magistrate, 23rd Court, Esplanade, Bombay. Since we take the view that the cause of action wholly arises at Nagpur and that is also the contention of the petitioners with respect to the defaults alleged to have been committed "by the petitioners, it would be open to the opponent No. 1 or any person authorised by the Provident Fund Commissioner to initiate the prosecutions against the petitioners if the concerned authority so desires, in a Court at .Nagpur.

15. In the result, the petition succeeds and is allowed to the extent indicated above.