
(1991) 08 BOM CK 0007
In the Bombay High Court
Case No : Criminal Appeal No. 52 of 1984

State of Maharashtra

APPELLANT

Vs

Espee Engineers and Others

RESPONDENT

Date of Decision : 30-08-1991

Acts Referred:

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

Citation : (1991) 4 BomCR 449

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : Y.V. Patil, app, for the Appellant; V.D. Govilkar, for the Respondent

Judgement

M.F. Saldanha, J.—This is an appeal preferred by the State of Maharashtra and is directed against an order passed by the learned Vth Judicial Magistrate, First Class, Thane, in a prosecution at the instance of the Provident Fund Inspector. It is relevant to mention that this is the first of a group of 21 such cases, each of which cover a prescribed period which is not very relevant.

2. The facts indicate that M/s. Expee Engineers, Unit No. 1, of which the two accused before the trial Court, who are father and son, are partners, were prosecuted on the ground that they had not paid the employees' contribution alongwith administrative charges to the insurance fund within 14 days of the close of the preceding month. The accused did not dispute the charge and pleaded guilty and the learned Magistrate convicted them and imposed a fine of Rs. 100/- in default R.I. for 10 days. The State of Maharashtra has preferred these appeals on the ground that the punishment awarded by the lower Court was inadequate in so far as infringements of this type are persistent and that the accused persons not only find it more economical to pay the fine than to comply with the provisions of law but furthermore, that the punishment is so light that there is neither corrective action nor does it work as a deterrent. As a result, the public welfare legislation is suffering serious set-backs in its implementation.

3. There are different learned Public Prosecutors who are appearing in each of the matters. I am, however, summarising the submissions advanced by them which follow a common pattern viz., that in recent times, the courts have come down heavily on displaying any leniency in respect of offences of the present type. They have also submitted, and rightly to my mind, that where it is evident to the trial Court, such as in the present group of cases, that the accused have consistently and over a relatively long period of time repeated flagrant breaches of the provisions of law, that it would be a rank miscarriage of justice if they were to be allowed to get away lightly. The A.Ps. have also justifiably submitted that the imposition of sufficiently stringent punishment is a legal necessity if the recurrence of these offences is to be curtailed.

4. Mr. Govilkar, learned Counsel appearing on behalf of the respondents, pointed out to me that the Unit in question was a small one and that, it is not as though the whole of the contribution had not been paid but that, it was the employers' share and the administrative charges along which had not been paid. He submitted that the financial condition of the accused at that time was virtually on the border line which is evident from the fact that subsequently, the entire unit collapsed and that the accused were reduced to such pathetic condition that they had virtually to sell the little jewellery which their wives possessed in order to pay off the debts. He submitted that it is the financial stringency alone that caused this situation and that even if all the principles enunciated by learned A.P.Ps. and by the courts in recent times which he does not dispute, were to be upheld, that no further punishment should be imposed on the accused in this case. Mr. Govilkar pointed out that these are cases of the year 1982 which are being disposed of in 1991, that out of the two accused, the son Suresh has passed away and that the original accused No. 2 Prabhakar is an old man aged about 80 years who is not only impoverished but is in extremely frail health. While these last few submissions advanced by Mr. Govilkar may provide a valid ground for not enhancing the sentence, to my mind, these grounds would not be sufficient justification to get over the submissions made by the learned A.P.Ps. with regard to the correctness of the order of the learned Magistrate.

5. On a perusal of the orders passed, even though these are cases which were disposed of summarily, it must be mentioned that the learned Magistrate ought to have taken judicial notice of the fact that where accused persons, for whatever reasons, have committed persistent breaches of the law over a period of time, that leniency is wholly and completely misplaced and should reduce the legal proceeding to the level of a "tamasha. It is unfortunate that this cardinal aspect has been virtually overlooked and it is equally unfortunate that this is happening persistently in the trial courts where these cases are pending by the thousand according to learned A.P.Ps. There is no reason why the cases should be kept pending and the learned Magistrate should dispose of these proceedings immediately and at the earliest point of time after they are filed. The further aspect which must be borne in mind is that where the law makes for provision for imprisonment of upto six months and in some cases provide a compulsory

minimum and where the Law also provides for fine upto Rs. 1000/- and it is disclosed that a businessman has, for whatever reason, withheld substantial amount of money from the provident fund authorities, there is no justification for the trial courts in taking a lenient view of the matter. To my mind, in such situations, it is virtually compulsory to impose a jail sentence along with an adequate fine. This aspect will be taken note of by all the trial Magistrate before whom such proceedings are pending.

6. In the result, the appeal is allowed. The order of the learned trial Magistrate is accordingly set aside. In view of the death of respondent No. 3, there would be no question of the imposition of any enhanced punishment as far as he is concerned. The firm, original accused No. 1 has also collapsed and has closed down and in these circumstances, any order passed against the firm would be infructuous. As far as respondent No. 2 is concerned, for the reasons indicated by Mr. Govilkar, I am not inclined to enhance the sentence against him on the special facts and circumstances of the case.

7. The appeal is accordingly disposed of. The bail bond of respondent No. 2 to stand cancelled.