

(1992) 11 BOM CK 0042
In the Bombay High Court
Case No : Criminal Appeal No. 897 of 1985

State of Maharashtra

APPELLANT

Vs

Shivprakash Seth and others

RESPONDENT

Date of Decision : 20-11-1992

Acts Referred:

Constitution of India, 1950 — Article 21

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

Citation : (1993) 1 BomCR 714 : (1993) CriLJ 2777 : (1999) 3 LLJ 11

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

Bench : Single Bench

Advocate : B.R. Patil, app, for the Appellant; V.P. Vashi, for the Respondent

Judgement

1. The State of Maharashtra has preferred this appeal for enhancement of the sentence of simple imprisonment for one week and fine of Rs. 1,000/-, in default, simple imprisonment for one month each imposed on the directors of the Simplex Woollen Mills Ltd. u/s 14-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The short point raised in the appeal is that admittedly the Accused, who were directors of the Mills, had pleaded guilty to certain breaches of the provisions of the Act on earlier occasions and that, consequently, the sentence imposed, which is below the minimum as prescribed by the Act, is in breach of the provisions of the law. It is pointed out that the Accused had pleaded guilty and that the learned Magistrate has obviously erred because he is precluded in law from having imposed any lesser sentence than the minimum of three months' rigorous imprisonment as provided in the Section. The companion appeals raise the same point, though the periods and the sentences awarded are slightly different. Since issues involved are common, I propose to deal with all of them in this judgment, though for purposes of record, separate orders will be necessary.

2. Shri Vashi, learned Counsel appearing on behalf of the Respondent, sought to canvass certain submissions with regard to the merits of the matter. He drew my

attention to a decision of this Court in the case of *Mansinh L. Bhakta v. State of Maharashtra*, (1992) 80 FJR 331 : 1991 Lab IC 1361, as also to a second decision of this Court in the case of *ESI Corporation v. G. N. Mathur*, (1992) 80 FJR 343; and thirdly, to the decision in the case of *Tpt. Corp, of India v. R. M. Gandhi*, (1992) 64 FLR 697. He canvassed certain arguments with regard to the aspect of the legal liability of the directors, but I have refrained from examining that aspect of the matter because, to my mind, once a plea of guilty has been recorded, it would not be permissible to go behind that plea. Secondly, the cases in question dealt with certain aspects of the liability that can be foisted on directors of limited Companies with regard to situations that were prevalent in those cases. I do not consider it necessary to go into that aspect of the matter because it is for the prosecuting authority to consider these questions in the view that this Court finds it necessary to take.

3. Shri Vashi admitted that the practice of accepting a plea of guilty before the trial Court in relation to situations where the Accused will be visited with a minimum jail sentences or minimum fine which is relatively heavy must be disapproved of. He submitted that the origin of this system is obviously rooted in the concept of "plea-bargaining" and that even if it may be permissible as regards petty or trivial offences where liabilities are serious and where the statute prescribe a minimum sentence, it is improper on the part of the trial Court to rush through with the case and to dispose it of in such a slipshod fashion. Shri Vashi has relied on a decision of the Supreme Court in the case of *Kasambhai Abdulrehmanbhai Sheikh and Others Vs. State of Gujarat and Another*, wherein a situation arose under the provisions of the Prevention of Food Adulteration Act, 1954 that an accused having pleaded guilty before the trial Court faced the prospect of enhancement of the sentence because the law provided for a minimum of three months' rigorous imprisonment. The Supreme Court had occasion to observe that this procedure ought not to be followed, set aside the order of the High Court and remanded the matter of the trial Court for disposal on merits. Along with this submission, Shri Vashi also contended that these are not cases which can answer to the definition of "petty or trivial cases" and that, consequently, it is improper to try these cases summarily under Chapter XXI of the Code of Criminal Procedure, 1973.

4. Parliament has stepped up the punishment for offences. Under this Act particularly because they are welfare measures which require to be considered and implemented with a degree of seriousness. It may be that in a given case even if a default had been committed that there is a very valid defence available to the Accused and under these circumstances it would be incorrect on the part of the learned Magistrate to try these cases summarily. Secondly, it is essential that the prosecuting authority should attend to complaints of this type with a greater sense of responsibility. Shri Vashi is right when he pointed out to me that the departments have been filing virtually printed or cyclostyled complaints before the Courts merely by filling in names, dates and other spaces that are kept blank and that this is hardly the manner in which offences under the Act

require to be prosecuted. The department shall, therefore, ensure that the time of the Court is not wasted with complaints of such a type and that the requisite ingredients of law are set out when such complaints are presented to the Courts. This application of mind will also ensure that only those of the cases wherein an offence is legally sustainable reach the Courts and that indiscriminately every so-called breach will not be mechanically converted into a complaint and dumped on the trial Court.

5. The position that emerges as far as the present set of cases is that, undoubtedly, there may be nothing on record to indicate that the Accused were induced to plead guilty on the ground that they would be let off with a light sentence. That aspect of the matter is irrelevant because the Court ought not to have tried these cases summarily, even if the Accused desired to plead guilty. The learned Magistrate ought to have pointed out to the Accused that there is a minimum sentence prescribed by the statute and recorded that he is pleading guilty in spite of being aware of those provisions. The duty to act fairly and judiciously as enunciated in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, while interpreting Article 21 of the Constitution is as much a duty that is cast on the Courts as on every public authority. Under these circumstances, it would be essential that the present set of appeals be remanded to the trial Court for proper disposal according to law. The convictions and sentences awarded to the Accused are set aside and the case is remanded to the trial Court for disposal according to law. In view of what has been pointed out in this judgment, the department shall, if necessary, re-examine the complaint and re-draft or recast the same, if the law so requires. Apart from this, it shall be open to the Accused, if they so desire, to defend the cases on merits. Having regard to the fact that these are extremely old cases, the learned trial Magistrate shall proceed with the same on a priority basis and shall refuse all and any unnecessary adjournments. In the light of the directions given in this judgment, the appeal succeeds and is accordingly partly allowed.

6. This Court has been required in the recent past to observe repeatedly that the light-hearted manner in which these Provident Fund and Employees State Insurance cases are being dealt with by the trial Court is downright wrong. In particular, it has been noticed that the provisions of the Act are being totally frustrated by the imposition of ridiculously low fines and, more importantly, by passing acquittal orders on all sorts of frivolous, technical and unsustainable grounds. The learned Magistrate seem to have overlooked completely the spirit and scope of the enactment; whereas the Legislature has tightened up these provisions and prescribed rigorous punishments, the trial Courts have continued to mechanically accept what has been pleaded on behalf of the Accused without realising the gravity of these offences. In cases without number, the plea is put forward that the unit in question had gone sick or that it was in financial difficulties, and these sort of pleas are viewed sympathetically instead of noting that the so-called sickness and inability are of the making of the very Accused who are before the Court. I have had occasion to observe that the style

and manner in which the department is enforcing the Act and in particular prosecuting these cases also leaves much to be desired. Often times where the department is half-hearted and the prosecutors are either disinterested or are whole-heartedly on the side of the Accused, the Court is left with precious little option. The authorities will, therefore, take note of these observations and shall ensure that the provisions of law are abided by and are enforced with the vigour that is required and that in not a single cases are wrong-doers allowed to get away. The learned Magistrates trying these cases shall ensure that the disposals are time-bound and that they are strictly in consonance with law. They will particularly take note of the fact that unlike in other statutes, none of the grounds on which sympathy, difficulty or extenuating circumstances are pleaded, are available under this Act. The Courts shall not be shy of awarding the requisite sentences merely because the Accused before them are directors of Companies or the like. In the present case, the authorities and the trial Court shall ascertain as to what has happened to the proceedings against one of the Accused who was apparently unserved and shall see to it that the proceedings against him are also disposed of according to law. On completion of the trial, the Provident Fund Commissioner shall submit a report to this Court regarding the outcome of this case.

7. A copy of this judgment shall be sent to the Regional Provident Fund Commissioner with a direction to bring the same to the notice of the various concerned departments in the State of Maharashtra. The Registrar of this Court shall also forward a copy of the judgment to all the District Judges and to the Chief Metropolitan Magistrate, Bombay, with instructions to circulate a copy of the same to all the learned Magistrates who are entrusted with the handling of provident fund cases.

8. Order accordingly.