

(1996) 10 AHC CK 0131

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 2816 of 1985

Surendra Kumar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

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

Citation : (1997) 21 ACR 149

Hon'ble Judges : O.P. Jain, J

Bench : Single Bench

Advocate : Rajendra Singh Yadav, for the Appellant; A.G.A., for the Respondent

Judgement

O.P. Jain, J.—This judgment will dispose of the above bunch of 102 applications filed u/s 482, Code of Criminal Procedure. The facts and the parties in all the above cases are almost identical. All the petitions have been filed by Surendra Kumar, Vinod Kumar and Pramod Kumar who are Chairman, Director and Manager respectively of a company known as M/s. Tiger Hardware & Tools Limited, Marris Road, Aligarh. Petitioners No. 2 and 3 are the sons of Petitioner No. 1. The Respondents are State of Uttar Pradesh, Provident Fund Inspector, Agra and Regional Provident Fund, Commissioner, Kanpur.

2. Respondent No. 2, Provident Fund Inspector, filed a complaint against the Petitioner s and the Company for offences under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter called the Act) and the Schemes framed thereunder. The Petitioner s have been prosecuted for failure to deposit the Provident Fund amount. The period of default is different in each case. In application No. 6043 of 1985, the complaint relates to non-payment of Insurance Fund for the months of August, 1978, September, 1978 and October, 1978. In different cases, the period of default is different and it is not necessary to mention the same because it is not relevant for our purpose.

3. For the sake of convenience, the facts of the case may be narrated from Case

No. 6043/85. The Provident Fund Inspector lodged a complaint (Annexure 1 to the Petition) on 23rd March, 1979 alleging that he is an Inspector appointed u/s 13(1) of the Act and that M/s. Tiger Hardware & Tools Ltd. is an establishment to which the provisions of the Act and Schemes framed under the Act are applicable. M/s. Tiger Hardware & Tools Ltd., Marris Road, Aligarh is a Company within the meaning of Explanation to Section 14A of the Act and accused Nos. 2, 3 and 4 (Petitioner s in this Court) are the Chairman, Director, Occupier and Manager respectively of the aforesaid establishment. The accused have failed to pay to the Insurance Fund the amount of employers share of contribution for the months of August, 1978, September, 1978 and October, 1978 within fifteen days of the close of each said month in accordance with the provisions of Section 60(2) of the Act and Paragraph 8 of the Insurance Scheme and have thereby committed an offence punishable u/s 14(1B) of the Act read with Section 14A of the Act. Almost similar allegations have been made in the other cases and the difference is only with regard to the period or the Scheme.

4. On 16th March, 1983, the present Petitioner s who were the accused in the court below filed preliminary objections (Annexure 2 in Petition No. 6043/85) and contended that the complaint has been filed without previous sanction of the Central Provident Fund Commissioner. It was further contended that the sanction which has been filed is in a printed cyclostyled form and has been signed in a routine manner by the Sanctioning Authority. Another objection raised by the Petitioner s was that the provisions of Section 14A of the Act have not been complied with inasmuch as several persons have been prosecuted as accused without assigning their respective role, duties and liabilities.

5. The learned Chief Judicial Magistrate before whom the preliminary objection was filed, fixed 15th April, 1983 for arguments on the preliminary objections. On 3rd May, 1985 Order Annexure 4 was passed and the case was adjourned to 16th April, 1985 for prosecution evidence. The grievance of the Petitioner s is that the court below fixed the case for evidence without finally disposing of the objections raised by them.

6. In Criminal Case No. 2816 of 1985 and 15 other cases, the Petitioner s filed a revision before the Court of Session against the summoning orders passed by the trial court and the revision was dismissed by the learned Sessions Judge on 16.9.85 vide Annexure 3 to Criminal Misc. Application No. 2816 of 1985.

7. I have heard Sri V.P. Srivastava, learned Counsel for the Petitioner s, Sri J.N. Tiwari, Senior Advocate assisted by Sri Rakesh Tiwari for the Respondents and learned A.G.A. for the State.

8. A preliminary objection has been raised on behalf of the Respondents in Criminal Misc. Application No. 2816 of 1985 and 15 other cases which is to the effect that an application u/s 482, Code of Criminal Procedure is barred because against the summoning order, the Petitioner s filed a revision which has been dismissed by the Sessions Judge. In support of this objection, the learned

Counsel for the Respondent have cited Dharampal and others Vs. Smt. Ramshri and others, , in which it was observed that the inherent powers u/s 482, Code of Criminal Procedure cannot be utilised for exercising powers which are expressly barred by the Code. Hence, the High Court had clearly erred in entertaining the second revision at the instance of 1st Respondent.

9. However, it has been held by the Apex Court in Ganesh Narayan Hegde v. Shri S. Bangarappa and Ors. JT 1993 (4) SC 124, that availing of the remedy of the revision to the Sessions Judge u/s 399 does not bar a person from invoking the power of the High Court u/s 482, Code of Criminal Procedure It was further observed that the High Court should not act as a Second Revisional Court under the garb of exercising inherent power. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of Court or that the interest of justice otherwise call for quashing of the charges.

10. In view of the observations of the Apex Court quoted above, it cannot be said that an application u/s 482, Code of Criminal Procedure is barred on the ground that the party has availed of the remedy of revision to the Court of Session. The preliminary objection is, therefore, overruled.

11. The learned Counsel for the Petitioner s has argued that under the provisions of the Act, the sanction is to be given by the Regional Provident Fund Commissioner as provided u/s 14AC of the Act. It is argued that in the instant case, the sanction has been given by the Regional Provident Fund Commissioner and, therefore, the sanction is not valid.

12. This contention has no force because Section 14AC contemplates sanction being given by such other officer as may be authorised by the Central Government, by notification in this behalf in the Official Gazette. In pursuance of this power, the Central Government has issued a Notification S.O. No. 549 (E) which is published in Gazette of India Extraordinary. Section 3(ii) at page 1797. The notification reads as under:

S.O. 549 (E). In exercise of the powers conferred by Section 14AC of the Employee's Provident Funds and Family Pension Fund Act, 1952 and in supersession of all previous notifications on the subject, the Central Government hereby authorises that the powers vested in the Central Provident Fund Commissioner under the provisions of the above said section shall also be exercisable within each of the regions specified in the Schedule by the respective Regional Provident Fund Commissioners in whose region the establishment is covered or has its Head Office.

This notification shall come into force on the first day of November, 1973.

13. In view of the above notification, the learned Counsel for the Petitioner s has not pressed the above objections and the same is not tenable.

14. It is, however, argued by the learned Counsel for the Petitioner s that there

has been non-application of mind on the part of the Regional Provident Fund Commissioner in granting the sanction. It is pointed out that the sanction annexed with the complaint is a cyclostyled sanction in which some blank places have been filled in by hand and it has been signed by the Regional Provident Fund Commissioner in a mechanical manner.

15. A copy of the sanction has not been placed on the record by the Petitioner. However, even if it is assumed for the sake of argument that the sanction granted by the Regional Provident Fund Commissioner was cyclostyled one, this cannot be a ground for concluding that the Sanctioning Authority did not apply its mind to the facts of the case. Learned Counsel for the Petitioner s has cited *Habib v. State of U.P.* 1983 ACC 200, which was a case under the Prevention of Food Adulteration Act. It was found by the Court that the Chief Medical Officer merely signed the form of sanction filled up by the clerk. The Chief Medical Officer was also not examined in the case. The Court observed that in such cases, it is the duty of the prosecution to examine the Sanctioning Authority who has to state on oath that he applied his mind to the facts of the case and then had accorded sanction for the prosecution. With these observations, the conviction was set aside. Another case relied upon by the learned Counsel for the Petitioner s is *Ikram v. State* 1985 ACC 369. It was also a case under the Prevention of Food Adulteration Act. It was found that the sanction was not typed at the dictation of the Sanctioning Authority. The defect was considered to be fatal. A perusal of the case shows that in the cited case, the prosecution evidence and the defence evidence was recorded and the conviction was upheld by the Court of Session. When the matter came before this Court, the question of sanction was raised and it was observed that the officer granting the sanction did not come forward to testify about the papers perused by him and the application of his mind prior to according the sanction and the person who typed this sanction has not been examined. The signatures of the authority concerned were not proved by the Food Inspector. Under these circumstances, it was held that the conviction and sentence are not sustainable.

16. In the opinion of this Court, the judgments relied upon by the learned Counsel are of no help to the Petitioner s. Whether the Sanctioning Authority applied its mind or not is a question of fact and cannot be decided without recording evidence. The mere fact that the sanction was granted on a cyclostyled paper is not sufficient to invalidate the sanction. It has been held in *Kesar Singh Vs. State*, that merely because the sanction was given on a cyclostyled form, it could not be said that Sanctioning Authority mechanically signed it without applying its mind to the facts of the case. Whenever sanction is to be granted in a large number of cases, a cyclostyled form can be used and the sanction cannot be questioned merely on the basis that the form is cyclostyled. It is interesting to note that Criminal Misc. Application No. 2816/85 which has been filed in this Court is itself a cyclostyled one. It cannot, therefore, be said that the mere fact of document being cyclostyled is sufficient to draw inference of non-application of mind.

17. It was further contended that the role of each accused has not been mentioned in the complaint. It has already been stated above that in the complaint, it is mentioned that the accused are Chairman, Director, Occupier and Manager of the Establishment. Section 14A of the Act deals with offences by companies and provides that where the offence is committed by a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

18. There is proviso to Section 14A which lays down that such a person shall not be liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. It is, therefore, for the prosecution to establish that the Petitioner s are the persons who were incharge of the affairs of the company and were responsible to the company. It will be open to the accused to establish by evidence that his case falls under the Proviso. In this way, this objection is also relating to a question of fact which can be decided only after the evidence is recorded.

19. The next grievance of the Petitioner s is that a preliminary objection was raised on 16th March, 1983 and the Court fixed 15th April, 1983 for the disposal of the preliminary objection and yet the case was fixed for evidence by order dated 3rd May, 1983 without deciding the preliminary objection. It is significant to note that the Petitioner s have not filed the order-sheets for two years, i.e., from 16th March, 1983 to 3rd May, 1985. They have also failed to produce the order-sheet of 15.4.1988. It does not appear from the record that after filing the application, the attention of the Court was drawn to it and a request was ever made to the Court to decide the objections raised on 16th March, 1983. It is possible that the Court below considered it proper to decide the objections after recording of evidence because after all the objections raised by the Petitioner s were mixed questions of law and fact.

20. In Criminal Misc. Application No. 2816/85, learned Counsel for the Petitioner s has drawn the attention of the Court to order-sheet dated 19th December, 1978 in which it is recited that the charge-sheet has been received and the case may be registered and accused may be summoned. On this basis, it is argued that the summoning order was passed without applying mind. In the opinion of this Court, a clerical error of this nature does not indicate non-application of mind. In the judgment of the learned Sessions Judge dated 16.9.1985 (Annexure 3), it is mentioned that the learned Magistrate has taken extra care to write in his own handwriting on the face of the complaint to register a case and summon the accused. According to the learned Counsel due it ensures that the Magistrate has taken care to examine the complaint before summoning accused. It appears that the Magistrate wrote an order in his own handwriting but in the order-sheet which was written by a court official, some mistake has crept in. On this account,

it cannot be said that the summoning order was passed without applying mind.

21. In view of what has been stated above, all the objections which have been raised in this Court are of a nature which can be decided only after recording of evidence. Therefore, it is not a fit case for interference u/s 482, Code of Criminal Procedure. In this connection, the following observations of the Apex Court in *State of West Bengal and another Vs. Mohammed Khalid and others*, , can be quoted:

In this case, the order of sanction, on the face of it, shows that the sanctioning authority had gone through all the reports, the recorded statements of witnesses, confessions, and seizure list and the opinion of experts. The High Court has to accept these averments on their face value. The correctness or otherwise of the statement is only subject to proof during the trial.

22. The request of the learned Counsel for the Petitioner for a direction to the court below for deciding these objections prior to recording of evidence, cannot be acceded to. These cases have already remained pending for more than ten years and from the nature of objections recording of evidence is necessary. The number of witnesses to be examined does not appear to be much. At the foot of the complaint, name of only one witness is cited and it is mentioned that if there are any more witnesses, their list will be supplied at the time of trial. The prosecution is likely to examine the Officer granting the sanction and, if he has retired, the member of the staff who put up the papers before the sanctioning authority.

23. As a result of the above discussion, all the 102 Criminal Misc. Petitions are hereby dismissed. If the record of the lower court has been received in any of the petitions the same should be returned to the court concerned within two weeks. The Petitioner s are directed to appear before the trial court on 1st November, 1996.