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(2017) 01 BOM CK 0127

In the Bombay High Court

Case No : 1354 of 2005

Suwalal Chaganlal Bafna APPELLANT

Vs

The State of Maharashtra RESPONDENT

Date of Decision : 25-01-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 468 - Bar to taking cognizance after lapse of the period of limitation
Indian Penal Code, 1860, Section 34, <a href=1767-406>Se

Citation : (2017) 01 BOM CK 0127

Hon'ble Judges : N.W. Sambre

Bench : SINGLE BENCH

Advocate : K.B. Shriram, D.S. Bagul, V.S. Badakh

Judgement

1. The matter is on final hearing board. Respondent No. 2 - original complainant, who appears in person, is consistently absent. The matter is part heard.

2. Heard learned Counsel for the applicant and learned Additional Public Prosecutor.

3. Facts as are necessary for deciding present application are as under : It is claimed by respondentcomplainant in a complaint being Regular Criminal Case No.738 of 1999 filed in the Court of Judicial Magistrate, First Class, (Court No.3) Dhule that present applicant was an office bearer of Indira Gandhi Memorial Foundation, Dhule, which was running Dadasaheb Swaroopsingh Naik Ayurved Mahavidyalaya, Nagaon. It is claimed by respondentcomplainant that he was employed as a lecturer in the said Ayurved college. The role attributed to the applicant in the said complaint is, he being President of the said Memorial Foundation, was duty bound under the statute, particularly under the provisions of Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, Provident Funds Act) to deduct contribution of employee and deposit the same along with the contribution by the employer to the said authority. It is

claimed that though the amount was deducted from salary of the complainant, instead of depositing the same every month, it was deposited at the end of the year thereby causing loss to the complainant and financial gain to the present applicant and the society. It is claimed that the said act on the part of applicantaccused amounts to criminal breach of trust and is punishable under Section 406 read with Section 34 of the Indian Penal Code.

4. Learned Judicial Magistrate, First Class (Court No.3), Dhule, on 24th November, 1999 after considering the contents of the complaint and other material on record, was pleased to issue process for offence punishable under Section 406 read with Section 34 of the Indian Penal Code. The said order is questioned in the present application.

5. While questioning the legality and maintainability of the proceedings against the applicant, learned Counsel for the applicant would urge that it is an admitted position that the amount of provident fund was deducted from the salary of the complainant and after adding contribution by the employer society, same was deposited with the competent authority under the Provident Fund Act. Learned Counsel would then urge that though the amount is deposited late in point of time, neither monetary loss is caused to the present complainant nor any illegal financial gain is made by the applicant or society. He would then submit that the alleged incident, according to complainant, had taken place some time in 1995 to 1997, however, complaint came to be filed in 1999 and in view of Section 468 of the Code of Criminal Procedure, the complaint is time barred and not maintainable.

6. Learned Counsel would then invite attention of this Court to the judgment of the Apex Court in the matter of Provident Fund Inspector, Faridabad vs M/s Jaipur Textile, Faridabad and another, reported in A.I.R. 1987 SC 1738 so as to canvass that once the contribution towards provident fund was deposited and nothing was outstanding qua duty to be performed by applicant, the prosecution in such eventuality is not maintainable.

7. Learned Additional Public Prosecutor, in absence of original complainant, submitted that what was expected of, was to supervise deposit of the amount of provident fund contribution in the capacity of President of society by the applicant. Though accused Nos. 3 and 4 are discharged, however, they are required to perform their duties qua functioning of association/trust in question under the supervision of the applicant. It is the applicant, who has failed to perform and supervise working of the trust. He would then urge that the amount was due to be deposited from April, 1995 to March, 1997, instead of depositing the amount on monthly basis, same was deposited at the fag end of the year, thereby causing illegal financial gain to the applicant or society in question. Learned Additional Public Prosecutor would then urge that learned magistrate having satisfied that there is prima facie case made out, particularly having satisfied all ingredients of Section 406 read with Section 34 of the Indian Penal Code has ordered issuance of process, which according to him, does not warrant

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any interference. According to him, proceedings are very much maintainable.

8. What could be gathered from the available material on record is, the amount of contribution of provident fund pursuant to Provident Funds Act was deducted from the salary payable to the complainant and said amount was deposited with the competent authority towards contribution of provident fund of both employer and employee. There might be some delay in deposit of the amount, however, there is no material on record, particularly any pleadings so as to infer that such delayed deposit has cused any financial loss to the complainant or any illegal financial gain to the present applicant or trust/association, of which, complainant was employee. Only vague and unspecific statements are made in the complaint, which is framed to be basis for initiation of criminal proceedings.

9. Admittedly, once the amount was deposited by the applicant, as could be gathered from the contents of the complaint, in my opinion, very ingredients of Section 406 read with Section 34 of the Indian Penal Code are not satisfied.

10. Learned Counsel for the applicant, in my opinion, has rightly relied upon the judgment of the Apex Court in the matter of Provident Fund Inspector, Faridabad, cited supra, so as to canvass that once amount is paid, it cannot be inferred that offence punishable under Section 406 of the Indian Penal Code is committed by the present applicant.

11. So far as the issue as regards the limitation is concerned, it is to be noted that Section 468 of the Code of Criminal Procedure provides for limitation of three years and the incident in question had taken place from April, 1995 till March, 1997, then it has to be inferred that the complaint was filed within time as prescribed limitation under the said provision is of three years, as offence of breach of trust is punishable with imprisonment for three years. As such, second contention is liable to be rejected.

12. In the background of what has been observed herein above, in my opinion, present application needs to be allowed. Criminal Application is allowed in terms of prayer clause (C). Rule is made absolute in above terms.

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