

(2009) 04 SC CK 0088

In the Supreme Court Of India

Case No : Criminal Appeal No's. 690-694 of 2009 (Arising out of S.L.P. (Criminal) No's. 3249-3253 of 2004)

Union of India (UOI)

APPELLANT

Vs

R. Dhandayuthapani

RESPONDENT

Date of Decision : 09-04-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14(1A), 14(A)

Citation : (2009) 04 SC CK 0088

Hon'ble Judges : G. S. Singhvi, J; B. N. Agrawal, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

1. Leave granted.

2. Heard learned Counsel for the parties.

3. The respondent was one of the four persons named in the complaints filed by the Enforcement Officer, Employees Provident Fund, Tamil Nadu u/s 14(1A) read with Section 14(A) of the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (for short 'the Act'), which were registered as CC Nos. 97-119 and 121 to 133 of 2000. The substratum of the allegations contained in the complaints is that the employer, namely, M/s. Kominar Textiles (P) Ltd. did not deposit provident fund dues of the workers for the period from October, 1995 to May, 1997 and Managing Director, Joint Managing Director and Director of the mill, who were responsible for the conduct of the business of the establishment are responsible for the same. On being noticed by the Court of Judicial Magistrate, Udumalpet, the respondent filed petition u/s 482 of the Code of Criminal Procedure for quashing the proceedings of complaints instituted by the Enforcement Officer by asserting that he had resigned from the position of Director much before filing of the complaints and an intimation to this effect was

sent to the Registrar of Companies in Form No. 32.

4. By the impugned order, the High Court accepted the respondent's plea that he could not have been arrayed as an accused because he had resigned from the position of the Director before institution of complaints.

5. A perusal of the record shows that even though an intimation was sent to the Registrar of Companies on 27.2.1997 about the alleged resignation of the respondent, in the return of the ownership submitted before the Regional Commissioner, Provident Funds in Form 5A on 18.8.1997, the respondent was shown as Director of the Company. This being the position, the question whether or not the respondent could be held liable for non deposit of the provident fund dues of the workers ought to have been left to be decided during trial and the High Court was not justified in quashing the proceedings of the complaints.

6. Accordingly, the appeal is allowed, the impugned order of the High Court is set aside. The Trial Court shall now decide the complaints in accordance with law and while doing so, it shall examine all the pleas which may be taken by the respondent and others.