
(1994) 12 GUJ CK 0006

In the Gujarat High Court

Case No : Sp. Cr. Application No's. 166 and 250 to 254 of 1988

Vania Silk Mills Pvt. Ltd. and Others

APPELLANT

Vs

Provident Fund Inspector, Surat and Another

RESPONDENT

Date of Decision : 02-12-1994

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14(1A), 14(2A), 14C, 15(2)

Citation : (1995) CriLJ 2735

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

1. This group of six petitions by Vania Silk Mills Private Limited, Bilimora is directed against the impugned judgment and order dated June 29, 1987 passed by the learned Sessions Judge, Valsad at Navasart, confirming the impugned judgment and order dated March 19, 1986 passed by the learned JMFC, Gandevi, wherein the petitioners on coming to be tried for the alleged offence punishable u/s 14(2-A) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 (for short "the Act") on their "Pleading guilty" each one of them were convicted for the same and sentenced to pay fine of R. 250/- in each one of the cases, and in default, to undergo SI for ten days. Not only this but the petitioners were also directed to deposit the Provident Fund dues in all the cases running into several thousand rupees in four equal quarterly instalments to be paid during the course of the year as stated in detail in the impugned order.

2. To briefly narrate the prosecution case, Mr. D. John, Provident Fund Inspector, Surat, filed as many as six complaints for the alleged offence u/s 14(2-A) of the Act before the learned J. M. F. C., at Gandevi against the petitioner inter alia alleging that Petitioner Nos. 2 to 6 were in charge of and accordingly responsible for running the petitioner No. 1-Company and that they had failed to contribute the Provident Fund amount already deducted by them from the wages of the workers, as shown in detail in the complaints. On the basis of these allegations, on the complaints coming to be filed, for the aforesaid alleged offence, the same

were registered as Criminal Case Nos. 1881, 1882, 1883, 2810, 2811 and 2812 of 1984, and pursuant thereto process came to be issued. Thereafter, it appears from the Rojkam proceedings that the proceedings went on being merrily adjourned from time to time for as many as two and half years and ultimately, on petitioners" pleading guilty to the charge came to be convicted for the same and sentenced by the learned Magistrate, as stated above in para-1 of this Judgment.

Feeling aggrieved, more particularly against the impugned order directing them to deposit the Provident Fund dues within one year's time, the petitioners preferred six criminal appeals before the Sessions Court, Valsad at Navasari, which came to be registered as Criminal Appeal Nos. 46/A of 1986 to 51-A of 1986, and ultimately, dismissed by the common judgment and order dated June 29, 1987, giving rise to the present group of petitions.

3. Mr. R. P. Bhatt, the learned Senior Counsel appearing for the petitioners while challenging the impugned judgment and order submitted that the Courts below have committed patent and obvious error in directing the petitioners to pay up the Employees" Provident Fund dues within the course of years" time, in four quarterly instalments running into thousands of rupees, as stated in detail in the impugned order. According to Mr. Bhatt, the learned Magistrate had not only no such powers but assuming that he had such, even then taking into consideration the stringent financial conditions of the Company at the relevant point of time, the impugned orders were quite harsh and unjust, and therefore, the same deserve to be suitably modified.

4. Now the aforesaid submission of Mr. Bhatt has indeed no substance as it clearly overlooks the specific provision made in this regard in Section 14-C of the Act which reads as under :

14-C Power of Court to make Orders :

(1) Where an employer is convicted of an offence of making default in the payment of any contribution to the Fund (the Family Pension Fund or the Insurance Fund) or in the transfer of accumulations required to be transferred by him under sub-Section (2) of Section 15 or sub-Section (5) of Section 17, the Court may in addition to awarding any punishment, by order in writing require him within a period specified in the order (which the Court may, if it thinks fit and on application in that behalf from time to time extend) to pay the amount of contribution or transfer the accumulations, as the case may be, in respect of which the offence was committed.

(2) Where an order is made under Sub-Section (1) the employer shall not be liable under this Act in respect of the continuation of the offence during the period of extended period, if any, allowed by the Court, but if on the expiry of such period of extended period, as the case may be, the order of the Court has not been fully complied with, the employer shall be deemed to have committed any further offence and shall be punished with imprisonment in respect thereof u/

s 14 and shall also be liable to pay fine which may extend to one hundred rupees for every day after such expiry on which the order has not been complied with);

5. The bare reading of aforesaid Section 14-C of the Act leaves no doubt that the learned Magistrate was perfectly within his powers in directing the petitioners to pay up the employees provident fund dues in four quarterly instalments during the course of the year. Further, merely on the basis of some wild observations that their financial condition was quite stringent they cannot be allowed to allege that the impugned orders directing them to deposit huge amount in question was harsh and excessive. In this view of the matter, the submission made by Mr. Bhatt having no substance deserves to be rejected and the same is rejected accordingly.

6. Unfortunately, however, the matter simply cannot be allowed to rest here as for whatever reasons all the three that is to say - the Provident Fund Inspector, thereafter the learned Magistrate and even the learned Sessions Judge have quite surprisingly failed to take into account the glaring fact that for the alleged offence u/s 14(2-A) of the Act, the minimum sentence of not less than one month and also of fine which may extend to Rs. 5,000/- have been provided. The said Section 14(2-A) of the Act reads as under :

14 (2-A) Whosoever contravenes or makes default in complying with any provisions of this Act or of any condition subject to which exemption was granted u/s 17 shall if no other penalty is elsewhere provided by or under this Act for such contravention or non compliance, be punishable with imprisonment which may extend to (six months but which shall not be liable to fine which may extend to five thousand rupees).

When this was pointed out to Mr. Bhatt, he submitted that when the complainant himself has chosen it fit not to prefer an appeal for the enhancement of the sentence, this aspect of minimum sentence should not be taken into consideration at this stage. Mr. Bhatt further submitted that even the learned Sessions Judge though he was conscious of the fact that the sentence imposed by the learned Magistrate was quite inadequate, still however, since the State had not preferred any appeal for the enhancement of the said sentence, quite rightly though it not advisable to enter into the said arena. Now it is indeed not possible to accept either of these two submissions of Mr. Bhatt. When the statute itself prescribes minimum sentence for the alleged offence, the learned Magistrate had indeed not business, discretion left with him to impose a sentence lesser than the minimum prescribed. In fact when the proceedings by way of various appeals by the accused persons were before him, having noticed the patent illegality committed by the learned Magistrate in not imposing the minimum sentence prescribed under the Act, it was the duty of the learned Sessions Judge to remand all these cases on the said count alone and should not have unnecessarily felt helpless, tied by slender thread of technicality, viz. That the State has not preferred any appeal for enhancement of sentence. In fact there was no scope for the learned Sessions Judge to unduly feel handicapped in

overlooking his powers to intervene and remand the matters, when the learned Magistrate was found having flagrantly violated the express provision of law in not imposing the minimum sentence prescribed under the Act. In this view of the matter, the impugned order of sentence being ex facie perverse and illegal, the same instantly call for interference at this stage, warranting further to remand these cases to the Trial Court to be decided on merits according to law.

7. At this stage. Mr. Naik, the learned Advocate appearing for the complainant submitted that having regard to the nature of the allegations made in the Complaints against the petitioners, the same would constitute offence u/s 14(1-A) of the Act and that due to some inadvertence instead of stating Section 14(1-A), Section 14(2-A) has been mentioned in all these complaints. Mr. Naik further submitted that the minimum sentence provided u/s 14(1-A) appears to be not less than one year and fine of Rs. 10,000/-, etc. Now if that is so, the complainant may be permitted to amend the complaints according to law and the accused be tried for the alleged offence punishable u/s 14(1-A) instead of Section 14(2-A), after duly satisfying the learned Magistrate in the said regard.

8. While parting it is required to be observed that it is indeed unfortunate that in the first instance, the Provident Fund Inspector (the statutory functionary) who was in-charge of all these cases and who is certainly and always supposed to be the custodian and trustee of the interests of the workers" despite the fact that the learned Magistrate imposed sentence less than the minimum, neither he nor his department appears to have taken desired care to prefer appeals for the the enhancement of the sentence!! This is something quite unusual, unthinkable and therefore too grave, serious and shocking !! If the Provident Fund Inspector is not to take care of the worker"s interest, the duty which the law has specifically entrusted to him, then who else in the world is expected to take such care ? ? The reason is for that purpose all matters do not come before the Court as a matter of course, and therefore, if the Provident Fund Inspector takes care of the workers" interest then to that extent it is quite well and good, otherwise the workers are always exposed to any sort of exploitation which their employers may subject them to and their grievance and cries arising out of it would be the cry in the wilderness and there would be none to take care of them despite the so-called statutory provisions and P. F. Inspectors appointed for the purpose !! Similarly, this Court also fails to understand that if the concerned Magistrate is not to take the desired care of the relevant provisions of law, and that too under special beneficial piece of labour welfare legislation like the present one, then who else is supposed to take such care !! Once again the reason is but for the fact the petitioners unwittingly approached this Court, even this Court would not have come to know that the learned Magistrate has flagrantly violated the law regarding the statutory minimum by abusing his judicial discretion. This also once again is too serious a thing, much more serious than than the dereliction of duty on the part of the Provident Fund Inspector.

One can quite understand the employers committing some breach of the

provisions of the Act, for which the machinery comprising of Provident Fund Inspector, Courts, and the provisions for the punishment is provided for in the Act. One can also quite understand that the Provident Fund Inspector in a given case for whatever reason may not perform his duties that faithfully as enjoined upon him by law. But the fact that the learned Magistrate can violate the express provisions of the law regarding the minimum sentence and commit patent and obvious illegality on fact of it is indeed too difficult to conceive, to be countenanced lightly !! If the courts of law will start giving way by flouting the mandates of law where there is no ambiguity altogether abusing the discretion, then this Court simply shudders to think as to what indeed would happen firstly, to "the rule of law" and then secondly to the faith of people in the "Administration of Justice" more particularly of the beneficiaries/workers under such a special Labour Welfare Legislation !! This sort of awarding less than the statutory minimum on face of it smacks of "plea bargaining" which is unquestionably an indelible blot on the learned Magistrate trying the criminal cases. Such an unjust and unhealthy practice of illicit "plea bargaining" cannot be lightly equated with the bona fide mistake committed by the Learned Magistrate while either appreciating some evidence and/or interpreting the relevant provisions of law, as with eyes wide-open, the learned Magistrate cannot be permitted to flout the express provisions of law, and if indeed he still dares and persists to flout the same, he will have to face and be answerable for whatever consequences that may follow.

It is also little painful to find that even the learned Sessions Judge in his turn knowing fully well that the sentence imposed by the learned Magistrate on face of it was inadequate, being less than the statutory minimum, has adopted totally unconcerned and passive attitude by simply observing that since the State had not preferred any appeal for the enhancement of sentence, he did not think it proper to enhance the same forgetting altogether that the order of sentence passed by the learned Magistrate was on face of it in clear violation of the statutory mandate, and therefore, it was his duty to remand the cases to the Trial Court. If the courts are not to uphold the dignity, honour, respect and wisdom of the legislature reflected in a particular Act sanctified by the Parliament, who else is going to do the same ? Further still, what will happen to the future of "Rule of law" is not that difficult to imagine as the consequences of anarchy and disorder always shadow such disregard of law. It is hoped that such patent perversity and illegality will not be committed by any learned Magistrate of the State in future, while trying such type of cases, bearing in mind the Administrative Consequences.

9. In the result, all these petitions are allowed. The impugned Judgment and order passed by the Courts below are hereby quashed and set aside. The matters are remanded to the Trial Court to be disposed of on merits according to law, preferably on or before March 31, 1995 in the light of the observations made hereinabove. The complainant shall appear before the Learned Magistrate on January 2, 1995 and will see to it that the processes are immediately served

upon the petitioners and in the event of any difficulty, he may take assistance of police to serve the same.

10. Office registry is directed to place a copy of this Judgment before the Hon"ble Chief Justice for appropriate orders. The registry is further directed to forward a copy of this Judgment to the Regional Provident Fund Commissioner, Bhavishya Nidhi Bhavan, Income Tax Circle, Ashram Road, Ahmedabad for information and necessary action.