(1987) 08 GUJ CK 0001

In the Gujarat High Court

V.K. Bhatt, Provident Fund Commissioner — APPELLANT

Vs

Manekchowk and Ahmedabad Mfg. Co. Ltd. and Others — RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 472

Employees Provident Fund and Family Pension Act, 1952 — Section 14(1)(A), 14A, 14A

Citation : (1987) 2 GLR 1265

Hon'ble Judges : B.S. Kapadia, J

Bench : Single Bench

Judgement

B.S. Kapadia, J.—In aforesaid revision applications a common point has arisen and, therefore, they are dealt with together and disposed of by this common judgment.

2. As the facts are also common it is not necessary to state facts of each case. The short facts are that the complainant-Provident Fund Inspector had filed various complaints against the accused on the allegation that they have failed to pay contributions as stated in the complaints within the prescribed period and have committed offences punishable under Sections 14-A/14(1)(A) of the Employees'' Provident Fund and Family Pension Act, 1952 read with para 76 of the E.P.F. Scheme, 1952. The said complaints were filed after obtaining necessary sanction from the Regional Provident Fund Commissioner.

3. In the said complaints the accused came out with an application stating that the complaints are time-barred. On behalf of the prosecution it was contended that the offence is a continuing offence and, therefore, the question of limitation does not arise. It was also submitted that Section 468 of Cr.PC. is not attracted but Section 472 Cr.PC. would apply to the case. The learned Metropolitan Magistrate, Court No. 2 at Ahmedabad by his order dated 30-9-1978 held that all the above complaints are time barred and that offence was not a continuing offence. He further held that there was no ground for condoning delay, accordingly he passed the order of discharge and the proceedings were dropped

against the accused, who were not served.

4. Against the said order the present revision applications are directed. The first preliminary objection which is raised by Mr. H.K. Thakore is that the revision applications are not ''competent and the limitation was not saved. He has further pointed out that offence u/s 14 of the Employees'' Provident Fund and Family Pension Act is punishable with six months'' imprisonment and that as per the definition of "summons case" given in the Criminal Procedure Code it would be a summons case and when it is a summons case there is no question of framing of charges and therefore, though the word "discharge" is used in the judgment of the learned Magistrate still however, it amounts to acquittal. He further points out that when there is acquittal the party who filed the complaint would have a right to appeal after getting necessary leave. He further points out that the State also will have a right to file appeal against the acquittal order and that when the appeal lies the revision application would not lie as per the specific provision of Section 401 of the Criminal Procedure Code.

5. It is true that it is clearly mentioned in Section 401(4) of the Criminal Procedure Code that where under this Code an appeal lies and no appeal is brought no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. Therefore, there is some substance in the point raised by Mr. Thakore.

6. Mr. C.K. Thakkar, the learned Advocate for the petitioners however, states that these are the cases in which welfare of number of employees of the Mills is involved and, therefore, it would be in the interest of justice to treat these revision applications as appeals. He has therefore, requested me to exercise powers u/s 401(5) of the Cri. Procedure Code which provides that where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interest of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

7. In these cases it appears to be the bona fide mistake on the part of the petitioners on account of the word "discharged" used in the order and, therefore, they have filed revision applications instead of criminal appeals. In fact, if the petitioners had minutely perused the legal position they would have filed criminal appeals against the orders of acquittal. Considering the facts and circumstances of the present cases as they involve the question of welfare of number of employees of the Mill, it is necessary in the interest of justice to treat these revision applications as criminal appeals, against acquittal. Accordingly, the Criminal Revision Applications are ordered to be converted into Criminal Appeals. Leave granted. Appeals are admitted.

8. The main question is whether the said complaints are time-barred or not. If it is treated that non-payment of contribution to be made by the employer under

the Provident Fund Scheme is a continuous offence there is no question of attracting the provisions of Section 468 of the Criminal Procedure Code and in that event Section 472 of the Criminal Procedure Code would apply. So, the main question would be whether it is a continuous offence or not. On this point the learned Magistrate has relied on the judgment in the case of S.B. Lachwani, Provident Fund Inspector v. Jupiter Spg. Wvg. and Mfg. Co. in Criminal Revision Application No. 337 of 1976 with Criminal Revision Application No. 338 of 1976 in which it is held that the period of limitation for filing complaints is one year from the date of commission of offence. It was also held that the offence is not a continuing offence and as the offence is completed as soon as a default is made in payment, limitation will begin to run from the day on which the offence is completed and no saving of limitation as in the case of continuing offence can be pleaded. Following the said judgment the learned Magistrate held the present complaints to be time-barred.

9. Mr. C.K. Thakkar, the learned Advocate appearing for the petitioners has pointed out that how the Supreme Court in the case of Bhagirath Kanoria and Others Vs. State of M. P., held that nonpayment of the employee''s contribution to the Provident Fund before the due date, is a continuing offence and, therefore, the period of limitation prescribed by Section 468 cannot have any application. The offence will be'' governed by Section 472 according to which a fresh period of limitation begins to run at every moment of the time during which the offence continues.

9.1. In that view of the matter the point is now set at right by the Supreme Court. Therefore, in my view all the aforesaid Criminal Rivision Applications which are now converted as Criminal Appeals are required to allowed.

10. It may be mentioned that Mr. Thakore has submitted that in the Company Petition No. 8 of 1969 of this Court the Provident Fund Department which was a party and the other parties tiled consent terms according to which an amount was determined as payable to the Central Board of Trustees of Provident Fund as Provident Fund Contributions and Administrative Charges It is also stated by him that more than Rs. 10 lacs have been paid so far and that this amount covers the amounts for which complaints are filed. It is a point to be considered in the trial of the case on merits.

11. In result the Criminal Revision Applications are ordered to be converted into Criminal Appeals. Leave granted. Appeals are admitted and are hereby allowed. The orders passed by the learned Metropolitan Magistrate, Court No. 2, Ahmedabad in Criminal Case Nos. 594 to 605 of 1977 and 607 and 608 of 1977 on 30-9-1978 are hereby quashed and set aside. The learned Magistrate is directed to start the said cases within one month from today and to proceed with the same day-to-day. The learned Magistrate is further directed to consider the contention raised by the accused about the contribution made by them towards the Provident Fund as per the order passed in the Company Petition No. 8 of 1969 on merits and according to law.

