

(1995) 06 GUJ CK 0007
In the Gujarat High Court

V.K. Bhatt, Provident Fund Inspector

APPELLANT

Vs

Aryodaya Ginning Mills Limited

RESPONDENT

Date of Decision : 22-06-1995

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14, 14A, 17(iii)(a)
Penal Code, 1860 (IPC) — Section 406

Citation : (1996) 2 GLR 38

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

Bench : Single Bench

Judgement

K.J. Vaidya, J.—Once again the very same squalid, shocking, disgraceful and disgusting old tale of woe and pity, of fraud and the dereliction of duty, the patent modus operandi being that of the illicit "plea-bargaining" between the learned Magistrate and the accused, resulting into the gross miscarriage of justice ! ! Once again the law and justice appears to have been perversely made to divorce against their will in the matter of statutory minimum sentence, in total defiance on the one hand of the Law on the point of minimum sentence being crystal clear, and on the other hand of the Courts, i.e., High Courts and the Supreme Court, repeatedly deprecating this unholy practice of "plea-bargaining", the same is not given up !! If despite the High Court and the Apex Court of the country deprecating the said practice of illicit "plea-bargaining" as illegal and unconstitutional in unmistakable terms which is even otherwise first and elementary thing, duty, principle to be known, scrupulously taken care of and religiously observed by any Magistrate worth the name, and yet if the same shamefully is not to be paid any heed to mend, amend or improve its ways and instead obstinately the concerned learned Magistrate is to persist therein in the most unjudicial manner, the time has indeed come to seriously consider and take stem, deterrent action against the deliberate defiance of the Law by the concerned Magistrate in order to restore, maintain and uphold the respect, dignity and the honour in the first instance, of the Parliament which enacts the

Law, in the second instance of the particular "Act" & "Law" and in the third instance, the overall faith of people in the "Administration of Justice" !! In absence of these neither any Law nor Justice nor even for that purpose the Constitution will have any respect, any future or authority in the Society !! We do not want our "Administration of Justice" to be condemned and exposed to a vulnerable situation where the people may some day openly allege remarking that "They (learned Magistrates) have hearts but understand not with them !! They have eyes but perceive not with them !! They have ears but they hear not with them!!!" And accordingly, once the Court finds in any case where the learned Magistrates despite they having hearts but did not understand with them, they having the eyes but did not perceive with them, they having ears but yet they did not hear with them and going astray pass any judgment and order as capriciously and perversely as they like, then it is the bounden duty of this Court, as a "Constitutional functionary" to point out to them making conscious of their slippery unjudicial tendency and trend regarding the illegal, unjust and perverse manner in which the trials are so short-circuited either by acquitting the accused on the common grounds such as that the complainant not present when the matter was called out, and/or accepting the fraudulent pleas of guilty, entering into illicit plea-bargaining and thereby letting-off the accused softly by just patting/imposing the flea-bite sentence, which is shamefully low, and therefore, patently unjust, illegal, as has been done in the instant cases !

2. This Court is indeed quite clear in its concept as regards its role as the "Constitutional functionary", which is surely not only confined merely to decide the constitutional issues and or to appreciate the evidence or interpret any provision of law one way or the other and then without caring for anything to pronounce the verdict on the limited question of facts and the Law only. Rather whenever this Court has an occasion to come across any persistent, patent illegalities and perversities, eclipsing public interest, resulting into the gross miscarriage of the justice, the same is not only required to be merely quashed and set aside but it is also further required to be point-blank criticised in so many words of the attitude, method and manner of the concerned learned Magistrate and also to further explore the possibilities of the wiser-ways of dispensing with the justice, bringing it to the recognition of all the concerned, as to where lies the folly and what could be the greater wisdom, equipped with which he can become proficient and social justice oriented enough thereby proving to be an asset to the "Administration of Justice" by giving, to the people, the pure, expeditious and unadulterated justice.

3. No doubt, sometime dealing with such types of cases like the present one some certain unavoidable observations may be found to be little hard and unpalatable !! But then many a time, like a worried parent wishing well for their children who have gone astray, the parent Courts also as duty bound in overall interest of the Administration of Justice are sometimes just constrained (in goss case like the present one) even at the cost of becoming little unpleasant to chide and chastise the concerned Courts below without there being the slightest

intention to derogate them !!

4. In fact, the fact-situation, the unambiguous legal position on the point of statutory minimum sentence and the ignoble background of cases of "plea-bargaining" still continuing, constraining this Court prefacing this judgment as above, with forthright, unreserved observations without mincing any words expressing righteous indignation is firstly, the contemptuous practice of illicit "plea-bargaining" by some of the learned Magistrates which if not prevented with some stern measures, it is likely to turn into the cancerous growth; secondly, despite the High Courts and the Supreme Court deprecating the said practice of illicit plea-bargaining as unconstitutional, the same is shamelessly going on unabatedly in uninhibited manner. To cite only recent example, this Court (Coram: K.J. Vaidya, J.) had an occasion to deal with and decide on 28th April, 1995 a group of 24 Criminal Revision Applications, the same being C.R.A. Nos. 154 to 177 of 1995 with identical facts-situation involving identical question of the enhancement of sentence. These revisions arose out of the impugned judgment and order wherein in an identical manner Mr. P.N. Patel, the learned Advocate appearing on behalf of the accused going out of way on requesting Mr. A.J. Brahmbhatt, the learned Metropolitan Magistrate to immediately call the cases on Board as the accused wanted to plead guilty. The learned Magistrate obliging the learned Advocate for the accused, accepting his request immediately recorded plea of guilty by sentencing each one of them to pay petty fine of Rs. 150/- only, though for the alleged offences under the P.F. Act the minimum sentence is prescribed !! Thereafter, hot in heels comes rushing the present group of six matters from the Court of the Metropolitan Magistrate, Ahmedabad itself wherein in an identical facts-situation and manner on the basis of illicit plea-bargaining, the accused came to be let off with the flea-bite sentence ! Thirdly, the need of the hour to restore and maintain the dignity and respect for the Law & Justice and the faith of the working class in the Administration of Justice which are just made to kiss the dust; in the first place by the employers and thereafter, sorry to say, in the second place, by some of the irresponsible learned Magistrates also ! Accordingly, to state case-wise few relevant facts, which according to the Complainant Mr. V.K. Bhatt, Provident Fund Inspector, Ahmedabad is as under:

5. In Criminal Case No. 3161 of 1987, respondent-accused are alleged to have committed offences pertaining to non-payment of "Administrative charges" to the tune of Rs. 16,209/- as provided u/s 17(iii)(a) of the Provident Fund & Miscellaneous Provisions Act, 1952 thereby committing offence under Sections 14, 14-A and 14(1-A) of the P.F. Act.

In Criminal Case No. 3162 of 1987, respondent-accused are alleged to have not paid the Insurance Fund to the tune of Rs. 11,400/- as required under the provisions of Employees Deposit Linked Insurance Scheme, 1976, thereby committing offence punishable under Sections 14, 14-A of the P.F. Act.

In Criminal Case No. 3136 of 1987, the respondent-accused are alleged to have

not paid the Family Pension Contribution to the tune of Rs. 35,796/- as required u/s 6 of the Provident Fund Act. Further, half of the amount of Rs. 35,796/- is already deducted at source from the salary of workers, thereby committing offence under Sections 14, 14-A and 14(1-A) of the P.F. Act.

In Criminal Case No. 3163 of 1987, respondent-accused are alleged to have not paid "Administrative charges" towards the Insurance Fund amounting to Rs. 2,493/- and thereby committed offence u/s 14 and 14(1-A) of the P.F. Act.

In Criminal Case No. 3165 of 1987, respondent-accused are alleged to have not paid P.F. Contribution to the tune of Rs. 3,62,978/- and thereby committed an offence punishable under Sections 14 and 14(1-A) of the P.F. Act. It is pertinent to note that half of this amount, i.e., Rs. 1,81,489/- has already been deducted by the respondent-accused from the wages of the workers. This amount is still outstanding and not paid.

In Criminal Case No. 1925 of 1987, respondent-accused are alleged to have not filed in requisite Form Nos. 3-A and 6-A. These are the forms of Return showing independent credit of the workers and thereby have committed an offence under Sections 14, 14-A read with para 76-B and 76 of the P.F. Scheme.

6. On the basis of the aforesaid allegations, the concerned Provident Fund Inspectors filed as many as six complaints, first one in the year 1986 and remaining five on 19-11-1987 for the alleged offences punishable under Sections 14, 14-A and 14(1-A) of the P.F. Act against "Aryodaya Ginning & Mfg. Company Limited, Ahmedabad and Ors." before the Metropolitan Magistrate, Court No. 16, Ahmedabad, wherein after issuance of the summons to the accused, making it returnable on 14-12-1987, all these cases were lying in the cold-storage on the one ground or the other, waiting disposal. It further appears that all of a sudden, after about five years and six months, i.e., on 24-6-1993, though all these cases were not listed on the Board for hearing and yet on a surprise move, Mr. P.N. Patel who filed his appearance on 24-6-1993 itself, on behalf of all the accused submitted an application bearing even date, inter alia, praying that though the hearing of the cases was fixed on 17-8-1993, however, as the accused wanted to plead guilty, the cases may be immediately called on the Board and the disposed off accordingly. This request of Mr. Patel was equally surprisingly accepted by the learned Magistrate and the cases were accordingly ordered to be placed for hearing on 24-6-1993 itself, giving preference over other cases which were so fixed on that date !! Thereafter, the learned Advocate Mr. Patel innovating illegal device submitted one more purshis on the very same date, i.e., 24-6-1993 wherein he himself "pleaded guilty" on behalf of all the accused, stating therein that (i) accused persons being aged and resident of Delhi, they were not in a position to remain present before the Court to "plead guilty"; (ii) that the financial condition of the accused was too bad; (iii) that the Mill in question was closed since quite long time; (iv) that the alleged offences in question were committed quite inadvertently due to the circumstances entirely beyond their control; and (v) since the default amount was already deposited, the purpose of

filing the complaint has already lost its ground. On the basis of these grounds, it was ultimately prayed that mercy be shown to the accused by imposing lighter sentence. Now this request of Mr. Patel was also accepted with still greater surprise and the matters came to be disposed off on the basis of plea of guilty wherein each one of the accused were ordered to be convicted for the alleged three offences imposing composite meagre fine of Rs. 100/- only, by the judgment and order dated 24-6-1993 ! It is under these gruelling circumstances that the present group of six Criminal Revision Applications have been filed for the enhancement of sentence.

7. Mr. J.D. Ajmera and J.A. Shelat, the learned Advocates appearing respectively for the petitioner and the State of Gujarat, while challenging the impugned orders of sentence, after at length and elaborately arguing the cases, submitted that the same was not only unduly lenient, manifestly unjust and perverse but the same being ex-facie less than the statutory minimum prescribed, has resulted into serious miscarriage of justice. The learned Advocates further submitted that the way in which the cases came to be hushed up and disposed of throwing to the dust-bin the overall credibility of the Administration of Justice is nothing less than the mockery of justice! The learned Advocates further submitted that so far as the first case is concerned, there were no adequate and special reasons worth the name to take a lenient view for awarding less than the minimum sentence prescribed under the P.F. Act. It was further contended by the learned Advocates that once the accused was convicted for the alleged offences punishable under the P.F. Act, and thereafter if he was once again convicted for the same, then he would be straightway liable to be punished u/s 14-AA of the P.F. Act, wherein no discretion is vested in the learned Magistrate to impose sentence which shall not be less than two years and shall also be liable to fine, which may extend to Rs. 25,000/- !! According to the learned Advocates, in fact, after convicting and sentencing the accused in the first case for the rest of the cases, the legislature has vested no discretion whatsoever to impose less than the minimum sentence as prescribed in Section 14-AA of the P.F. Act. It was further pointed out by learned Advocates that in previous group of 24 Criminal Revision Applications, the accused have been let off in a similar fashion wherein Mr. P.N. Patel, the very same learned Advocate appearing for the accused-persons all of a sudden requested the learned Magistrate to call for the cases on the Board as the accused wanted to plead guilty. Thereafter, the learned Magistrate accepting the plea of guilty, convicted and sentenced accused by imposing mere fine of Rs. 150/- only

8. There also no substantive sentence was imposed upon the accused !! On the basis of these submissions, it was vehemently urged by the learned Advocates that if such perverse, crude practice of en masse accepting the plea of guilty and thereby throwing away the matters and that too matters under the Social Welfare Legislation like the P.F. Act is not seriously viewed then not only the Administration of Justice would suffer bad name but such miscarriage of justice would go unredressed with undesirable impunity to the greatest detriment of the

overall interest of justice !! It was further urged that all these cases appear to be more or less the cases of illicit "plea-bargaining" and in that view of the matter, the impugned judgment and order of sentence deserve to be quashed and set aside and the matters be remanded to the trial Court to be decided on merits according to law.

9. Now taking into consideration the offences alleged in the complaint, the statutory minimum sentence prescribed for the same etc., and the arguments advanced before this Court, by the learned Advocates, three patent illegalities and irregularities surface to have been committed, by the learned Advocate Mr. P.N. Patel and thereafter, the learned Magistrate Mr. N.C. Shukla ! They are: Firstly, it is indeed quite shocking and stunning that Mr. P.N. Patel, the learned Advocate for the accused who filed his appearance on 24-6-1993 just on the very same day had guts to request the learned Magistrate to place the matters on the Board which were not otherwise listed on the Board on the ground that the accused wanted to plead guilty; secondly, the learned Magistrate for the reasons best known to him obliging the learned Advocate for the respondent-accused called for the said matters; thirdly, without issuing notice to the complainant - P.F. Inspector, accepted the "plea of guilty" and that too fourthly, unbelievably that of the learned Advocate on behalf of the accused !! fifthly imposed a composite flea-bite fine of Rs. 100/- for all the three distinct offences, and sixthly, unquestionably as a result of the illicit plea bargaining which is nothing less than the fraud on the Statute !!

First of all, it is indeed too difficult to conceive even as to what was that impelling necessity which ultimately prevailed upon, in the first instance, the learned Advocate Mr. P.N. Patel appearing for the respondent-accused to abruptly request and call for present group of six cases in absence of both - the complainant and accused persons before the Court and plead guilty on their behalf on the very same day of filing his appearance and thereafter in the second instance, for the learned Magistrate to hastily yield to apparently illegal, unjust and improper request of learned Advocate to go out of the way and without informing even the complainant, calling out as many as six important cases and that too after about five and half years, disposing off the same in an unholy haste by imposing meagre fine of Rs. 100/- only and further that too the composite one for all the three distinct offences. Unfortunately, the said illegality and perversity do not rest here only as it appears from the judgment that the learned Magistrate has went on (sic) to make utterly false statement in the judgment itself that the plea was read-over and was explained to the accused persons and that they have voluntarily pleaded guilty, which on face of the record is down right falsehood ! If this sort of dealings or illicit plea-bargaining is not ex-facie fraudulent and travesty of justice then what else it could be?

10. It may be stated that for the alleged offence u/s 14 of the P.F. Act though it provides for imprisonment which could be extended to one year or fine of Rs. 5,000/- or both, the learned Magistrate has thought it fit to impose flea-bite

sentence of Rs. 100/- only, which taking into consideration the facts and circumstances of each one of these cases is grossly inadequate. It is true that so far as Section 14 of the P.F. Act is concerned, the Statute has not prescribed any minimum sentence but at the same time the fact also remains that despite the fact that the P.F. Act came into force as far back as more than 50 years before, i.e., in the year 1952, there are no signs about the waves of rising tide of this sort of offences receding, rather on the contrary they are found to be unabatedly, accelerating and alarmingly rising as if there is indeed no agency to apply brake to prevent the same !! One can quite understand that if the accused were found to have committed an offence u/s 14 of the P.F. Act at the initial earlier stage or its coming into being somewhere in the year 1952 or 1953 or say at the most in the year 1954, then in that case for the alleged offences committed for the first time, if the accused pleaded guilty, a lenient view can be taken by imposing reasonable amount of fine only but since the tendency to commit the alleged offences u/s 14 of the P.F. Act have not indicated any signs of withdrawal or subsiding but on the contrary as stated above, it is gaining further roots one of the reasons for the same appears to be unduly lenient and manifestly unjust and over-charitable view of some of the learned Magistrates eager to pounce upon the so-called "plea of guilty" by imposing too trivial sentence of fine !! In fact, in order to control and eradicate this sort of offences against the workers" interest what the learned Magistrate needs is not the greedy heart, compromising head and the yearning for cheap disposal of the cases but a resolute heart, matter of fact head and craving for justice and the substantial justice to understand the correct relationship between the Law and Justice and then not to spare accused and weed them out for making the P.F. Act effective and meaningful. In this view of the matter, unless the Courts order unto themselves "attention" and takes much needed realistic, resolute and stricter view of the matter, it is indeed not possible to have the deterring effect upon the accused, who most of the time deliberately flout the law and thereafter cleverly pleading guilty deceitfully manage to get released themselves from the clutches of the law by avoiding the deterrent sentence of some imprisonment and heavy fine !! As a matter of fact, the learned Magistrate should and accordingly ought to be quite intelligent enough to appreciate and understand the scheming game of the alleged plea of guilty through and through as quite sham, bogus and crafty one, as the offences under the P.F. Act are so complete that whether the accused pleads guilty or not, they are ultimately going to be convicted for the same unless of course in the first place there are some genuine, real, adequate and special reasons to get away with the lighter sentence and/or in the second place, genuine defence regarding the liability under the P.F. Act.

11. In this view of the matter, the time has indeed come where even though there is no statutory minimum sentence prescribed for the alleged offence u/s 14 of the P.F. Act but at the same time in order to make the said Act quite effective and meaningful, depending upon the facts and circumstances of that particular case, the Court has to first determine itself and then to uncompromisingly exert

to impose some substantive sentence of imprisonment as well as some more and more amount of fine, viz., Rs. 500/-, Rs. 750/-, Rs. 1000/- and in a given case even Rs. 5,000/- (depending upon the facts and circumstances of the case) so as to make on the one hand accused feel the pinch of the sentence for the offence they committed and on the other hand, the same may fully demonstrate that the learned Magistrate has exercised its legal acumen and the judicial discretion quite pragmatically. Unless the object of the Act and the purpose of punishment is properly viewed and determined Section 14 of the P.F. Act will not have any arresting, deterring effect upon the scheming defaulters under the said Act who openly deduct the amount of hard-earned wages of the employees, pocket them and yet blatantly do not deposit the same and when prosecuted for the alleged offence u/s 14 of the P.F. Act, projecting deceitful low-profile just pleading guilty smilingly walk out of the Court room with some trivial sentence of time only which is far more disproportionate to the precious public time, the labour put in by the department and public money involved in the administrative charges of the P.F. Department and Court by way of salaries to the staff etc. !! Not only that but in given case fine imposed is far more less than even monthly interest earned upon the P.F. amount not so deposited for years !!

12. Over and above Section 14 of the P.F. Act, if we further turn to Sections 14(1-A) and 14(1-B) of the Act, in absence of adequate and special reasons, though the learned Magistrate was not justified in imposing a meagre fine of Rs. 100/- only, and yet he has dared to do the same offending on the one hand the mandate of the Legislature by imposing the sentence which is less than the statutory minimum prescribed and on the other hand the numerous reported decisions of High Courts and the Apex Court of the country ! The very fact that the learned Magistrate has not seen in the first place, the striking difference between Section 14 and in the second place, Sections 14(1-A) and 14(1-B) of the P.F. Act where the statutory minimum sentence is provided for (of course with discretion to award less than the minimum sentence prescribed for some adequate and special reasons) sadly reflects, to say the least, upon his competency as a Magistrate if that is the case. The learned Magistrate has quite blissfully ignored the fact that though the respondent-accused had pleaded guilty for all the three offences, viz., offences under Sections 14, 14-1 and 14(1 -A) of the Act, still for all these offences, he has imposed a composite fine of Rs. 100/- only !! This is simply unintelligible and ridiculous !! In fact, for the reasons best known to the learned Magistrate, he has not even disclosed his mind as to what were those compelling circumstances and reasons which impelled him to take such a ridiculously low and lighter view in the matter of imposing a composite fine of Rs. 100/- for all the three offences in order to enable this Court to appreciate and ascertain as to what actually passed in his mind and ultimately prevailed upon him to decide imposing the meagre quantum of fine only !!

13. This takes us now to those five grounds which the learned Advocate Mr. P.N. Patel, while pleading guilty on behalf of the accused, also prayed for the mercy in the matter of imposing the sentence. However, before considering these grounds

for mercy, first of all this Court is required to clear one more point going to the root of the proceedings, viz., Whether the learned Advocate appearing for the accused, in absence of accused before the Court, on their behalf can be permitted to plead guilty and for that purpose the Court can accept the same and act upon it? Whether the learned Advocate for the accused in absence of the accused-persons can be permitted to file purshis and on their behalf plead guilty? The straight answer to this questions is "NO". Of course, it is quite true that by virtue of Section 206 (Special Summons in cases of petty offences) in the Criminal Procedure Code, 1973, some provisions have been made by virtue of which even when the accused is not present before the Court, in petty cases, he can plead guilty by submitting the purshis through his learned Advocate. In some petty cases, this may be permissible but in serious offences, as the one under the P.F. Act, more particularly when the statute has prescribed the minimum sentence and further when the less than the said statutory minimum sentence could be imposed, if the accused makes out adequate and special reasons, this is not permissible simply because while recording the plea of guilty, the learned Magistrate is supposed to read over the charge and explain the same to the accused in the Court room. If the accused persons are not personally present in the Court room, there is no question in the first place, of reading over and explaining the charge and in the second place, having regard to the statutory minimum sentence prescribed, making the accused understand that even if he pleaded guilty, there was no scope for imposing less than the minimum sentence unless of course some adequate and special grounds are made out by him for the said purpose and in the third place, the satisfaction of the learned Magistrate that he has explained the aforesaid things to the accused and that they having understood the same, voluntarily pleaded guilty.

14. Furthermore, in this cases for the alleged offences under Sections 14(1-A) and 14(1-B) of the P.F. Act, the minimum sentence is provided, the Court is expected to further explain that even if the accused pleads guilty, minimum punishment provided under the statute would be awarded and that there is no alternative left with the Court but to impose the said minimum sentence unless of course adequate and special grounds for same is made out for imposing less than the minimum !! Now, this cannot be done unless accused is personally present before the Court !! In case, the learned Magistrate was to impose statutory minimum sentence of imprisonment and fine and that was made clear to the accused then in that case, perhaps the accused might have given second thought to pleading guilty and would have denying the charge levelled against him loved to be tried by taking chances for the acquittal. In this view of the matter, it is not permissible to the learned Magistrate to record plea of guilty in absence of the accused. While recording the plea of guilty in such type of cases, the presence of the accused before the Court is must. If for whatever reasons, they were found not responding to the summons, the Court has to, even if not requested by the complainant, remember its duty to issue non-bailable warrants to secure their presence because the ultimate liability of defending and upholding

the social cause and dignity of the law and justice is upon the Court. Accordingly, if the Court fails on its part then the law has indeed no future.

15. This takes us now to five grounds pleaded in pursuance by accused praying for mercy in matter of awarding sentence. First of all, it is indeed no ground for the accused persons, not to appear before the Court on the ground of old age and that they were the distant resident of Delhi and thereby Mr. P.N. Patel, the learned Advocate for them to plead guilty on their behalf !! The alleged offences under the P.F. Act cannot be said to be petty offences by any stretch of imagination, wherein in the absence of the accused, the learned Advocate can plead guilty. Such plea of guilty having no legal basis could never have been offered and accepted !

16. Similarly, turning to the second and third plea of the accused, viz., that the financial condition of the Mill is critical and the Mill is closed, is also of no consequence. Once the employer deducts the amount from the wages of the employees/workers, thereafter, even if the financial condition of the Mill becomes critical and as a result it is closed, the same is indeed of no consequences, as taking into consideration the profits earned by the employer in the past and coupled with the further indisputable fact that he had already deducted some amount from the wages of workers, he is deemed to be straightway liable to P.F. dues and accordingly, the same must be personally paid by the employer. It is not open to such employers to play the deceptive game of "Head I win and tail you lose" with its employees !! Therefore, the liability under the P.F. Act is not merely that of the Mill only in that absolute and limited sense as the Mill was merely an agency, the instrument through which the employer did the business and earned the profits and therefore, even if the Mill is subsequently closed, so far as the payment of P.F. amount is concerned, that continues as personal liability of the employer concerned. Apart this financial liability, if the Mill is closed that can never be a ground for not imposing a sentence of imprisonment upon the other accused persons.

17. Turning to the fourth plea of the accused, viz., that since the outstanding amount in question has been duly paid-up, and therefore, the object of filing complaint has lost its ground, it may be stated that the same has also no substance for the simple reason that once the crime is committed, unless the accused is tried for the same and ultimately discharged, acquitted or convicted, its object never comes to an end.

18. Turning to the fifth plea of the accused, viz., that the occupier or the Directors were mere servants of the respondent-Mill, and that they were in a critical financial condition, is also of no consequence. The reason is that the occupier and/ or the Directors must know that so far as the statutory liability is concerned, it is their first and foremost duty to see that the statutory requirements are duly complied with. If in case they feel that the Mill was not in a position to discharge its legal obligation under the P.F. Act, they should have better resigned from the Mill, but cannot be permitted to take defence against

the interest of workers that since the Mill was in a critical financial condition, the P.F. amount could not be deposited moment they are found to be in the charge and control of the affairs of any of the Company !! The duty of the Manager or for that purpose of even other person/s in charge and control of the management affairs of the Mill is towards the statute first, viz., P.F. Act and in case when default is knowingly committed no such defences as pleaded here in the present group of cases are available. In fact, having once already deducted some amount from the wages of the employees, under no circumstances they can be permitted to work against the interest of the workers, therefore, they cannot be permitted to take defence that the P.F. amount could not be deposited because of stringent financial condition of Mill. If the Mill or the company was in any financial difficulties, the officers of the Mill/company who are in-charge and control would know in advance that the Mill was not in a position to discharge its statutory obligations. In that view of the matter, they should have atleast stopped from deducting the wages of employees from the sources. It is indeed strange that the Mill on the one hand wants to plead deteriorating financial condition as a ground for not discharging the legal obligation and at the same time still continued to deduct the wages of employees from sources !! In fact, having once deducted from source the contribution of workers from their wages and thereafter not depositing the same in their respective P.F. Account amounts to the misappropriation for which persons responsible can be prosecuted for the alleged offence u/s 406 of the Indian Penal Code. Having thus known that the Mill was committing offence under the P.F. Act and further still that they were incharge and control and still if they continue then there is no course left open but to face the consequences.

19. As a matter of fact, the question of accused having become old or subsequently dying or not available at residential address because of retirement or had gone abroad or the Mill getting closed, arises only because of the fact that the learned Magistrate trying such offences indiscreetly adjourns such cases month after month, sometimes even year after years, without recording reasons for such prolong adjournments ultimately frustrating the justice under the P.F. Act. In such cases, the Court shall have to gird up its loins and must resolve to see and decide such cases at the earliest possible by taking first step in fixing a particular date on which plea of the accused must be recorded, followed by the next step of asking the complainant to enter into the witness box, bearing in mind that undue consumption of time resulting into protracted trials, always work against the statutory interest of the workers and justice and would be a great hurdle. In the instant cases, from the Rojkam proceedings, it appears that though the summons were time and again issued against the concerned accused, they were not appearing and on every returnable date, and yet the Court instead of inquiring as to whether the summons were served or not, or whether returned either served or unserved or whether bailable or non-bailable warrants were required to be issued it appears that the learned Magistrate mechanically went on issuing fresh summons adjourning the case to some future date !! Once it was

found that accused was not responding to the bailable summons, was it not the duty of the learned Magistrate to issue non-bailable warrants to secure their presence before the Court? Could it ever be that merely because the accused are Directors of the Mill, they were above law and powers of the Court not to be served with non-bailable warrants, once they are found to be not responding to the summons becoming recalcitrant?!! Are the powers of the Court when accused do not repeatedly respond to the Court's summons require issuance non-bailable warrant to be exercised against? The time consumption by the accused in protracting the criminal trial always acts against the prosecution interest and the interest of justice as in the course of time either the Mill would be closed or accused may die or go to the foreign country or become sick, etc. etc. or that the P.F. Inspector (Complainant) is transferred or sick or he is expired. Many such eventualities can take place. All these eventualities in the course of prolong adjournments work against the interest of justice.

20. In fact every adjournment drip by drip go on injecting the slow poison to the cause of justice aiming at defuncting the Courts of law and thereby in some case denying the "speedy justice" and in some case totally denying justice because of very many factors intervening during the course of various adjournments, weakening and then failing good cases !! Therefore, in order to forestall these eventualities, the Magistrate has to try the case as early and as efficiently as possible in the interest of Justice. To indiscreetly adjourn such cases is always to play in the hands of accused and sometimes inefficient and corrupt prosecuting agency. This on the one hand puts a premium over the wrong committed by the employer/accused who having already deducted the amount, subsequently not depositing the same in the P.F. account of the concerned workers and on the other hand still keeping the law and justice at a safe distance under the protective umbrella of the Court!! This can never be permitted.

21. In a given case, every indiscreet adjournments by the learned Magistrate makes him also a party to injustice !!

As stated above, while trying the cases under the Provident Fund Act, the learned Magistrate ought to know firstly, that the plea of guilty in almost all cases is merely sham, bogus and deceitful, trotted out only with a view to give handle to some of the Courts to escape with the lighter sentence, and secondly, should also bear in mind the statutory minimum prescribed for the alleged offence, thirdly, the object underlying for providing the stringent punishment by providing the statutory minimum. The learned Magistrate accordingly must know what is the gravity and seriousness of the alleged offence, which if little efforts are made on his part, could be gathered by scanning the very provisions of the P.F. Act. The P.F. Act is essentially the Labour Welfare Legislation which provides for the much needed social security measures for employees. In fact, the Provident Fund is meant for making some provisions of some funds which may enable the employees to meet with certain financial contingencies which he may come across during the life time !! On scanning the scheme and the provisions of

the Act, it appears that the Parliament has made as many as 11 special provisions by virtue of which special care has been taken of the workers' future interest. Those benevolent provisions are as under:

(1) Para-62 Financing to the members' Life Insurance Policies. (2) Para-65 Bonus Policy to be adjusted against payment made from the funds. (3) Para-68B Withdrawal from the fund for the purposes of dwelling house/flat or for the construction of a dwelling house, including acquisition of a suitable site for the purpose. (4) Para-68BB Withdrawal from the fund for repayment of loan in special cases. (5) Para-68H Grant of advance in special cases. (6) Para-68I Advance from the funds for illness in certain cases. (7) Para-68K Advance from the funds for marriages or costs of Matriculation education of the children. (8) Para-68L Grant of advance in abnormal conditions. (9) Para-68M Grant of advance to members affected by cut in supply of electricity. (10) Para-69 Circumstances in which accumulation in the funds are payable to member (retirement benefits). (11) Para-70 Accumulation of deceased member.

On carefully perusing the aforesaid benevolent provisions, it is very clear that the Legislature with its utmost anxiety to do something for the workers in none too enviable conditions, has taken all the necessary care to see that in these hard days, of fast escalating, sky-rocketing prices, workers' earning their wages, if they were to be spent up much earlier before the month even ends and nothing is saved, then there would be indeed nothing to sustain them in the event of their rainy days of financial crisis and contingencies, during service, after the retirement and after his death to sustain family !! It is with this anxiety and concern that the Parliament has made aforesaid elaborate benevolent provisions in the Act to safeguard the economic interest of workers !! Now once the employer commits default, it would automatically start chain reactions which in its turn would apply a brake to the aforesaid benevolent scheme granted in favour of the employees !! And that too for no fault of them !! Rather despite their contributory share towards the P.F. Fund stood duly deducted at source from their wages !! Under such circumstances, the question is, can an employer be permitted to snatch the protective umbrella or a life-jacket from the employees who are just struggling hard for their existence in this world? And if certainly no, then overlooking the patent injustice meted out to the employee, the victims how indeed the learned Magistrate could have justifiably imposed the ridiculously low sentence as the one imposed in the instant cases? In fact, the learned Magistrate while imposing sentence can never, never afford to be oblivious to the benevolent scheme of the Act meant to economically sustain and pick-up the worker, and accordingly when the employer is found to be robbing its employees of the said benefits, there is indeed no alternative but to take stricter view and adopt harder line in the matter of imposing substantive sentence of the imprisonment and also quite heavy fine !! There cannot be any question of sympathy to the accused in such types of deliberate default cases ! !

22. The Court before accepting the plea of guilty, and taking merciful view in the

matter of imposing sentence must be conscious and considerate enough of the victims and the victimology to avoid unnecessary misplaced sympathy. Accordingly, while exercising discretion in the matter of imposing sentence (statutory minimum also) unless the Court puts the aspect of the victims and victimology, in one pale of the scale and the circumstances pleaded in defending, not depositing the P.F. amount in time in the second pale, there is indeed no way to deliver golden justice. Unfortunately, these days the feigned cries, claims and crocodile tears of the accused are sometimes unduly magnified and evaluated out of proportion more than it actually deserves to be, shutting altogether judicial eye, to take into consideration the fate of the victim, the philosophy of victimology !! This out of focus sentencing process is simply unwarranted and unfortunate indicating imbalanced judicial discretion which needs to be eschewed

23. Now, since despite several decisions of various High Courts; including this Court and that of the Apex Court too, the illicit practice of "plea-bargaining" has not come to an end yet and is perhaps not likely to come to an end that easily to the desired extent for very many reasons, it appears that some way indeed is required to be found out whereby it could be eradicated right from its grass-root level once and for all. Accordingly, what occurs to this Court is laying down some conditions as condition precedent for the accused to submit the purshis at the time of pleading guilty. If that is done and scrupulously followed, in all probability neither the accused would dare even to pretend to plead guilty, nor the Court haunted by disposal mania would wander away from its judicial path in accepting the same by imposing flea-bite sentence, sometimes inadvertently may be, sometime advertently even in not imposing the statutory minimum sentence prescribed under the Act. Accordingly, it is hereby ordered that -- "No Court shall accept the "plea of guilty" tendered by the accused person more particularly in cases where in the statute has prescribed the minimum sentence unless and until he submits the purshis in the specimen form prescribed hereunder for pleading guilty alongwith the adequate and special reasons if any for taking a lenient view of the matter, in the matter of awarding sentence."

Specimen Form Form of Purshis Pleading Guilty and Praying for Mercy in Sentence

In the Court of the Learned Magistrate

at _____

Court No. _____

Criminal Case No. _____/199.

State/Complainant

v.

Accused

Sub: "Plead guilty & mercy in the matter of sentence."

Respected Sir,

1. _____,

accused No. _____ in this case state that I have read/read-over the complaint filed against me for the alleged offence(s) punishable under Sections _____ of _____ the _____ Code/Act.

2. I have also been read-over explained the charge against me, which is as under:

Charge

3. I have also been informed by the learned Magistrate that for the alleged offences, the statutory minimum sentence prescribed is SI/RI for not less than the _____ years/months and/or fine of Rs. _____ or both.

4. I have also been further informed by the Court that even if I plead guilty, it has no option to impose less than the minimum sentence prescribed under the Act; as stated above, unless I have some adequate and special reasons for praying less than the said minimum sentence.

5. Accordingly, having fully understood the consequences of "pleading guilty" I voluntarily plead guilty. I have not been promised to impose the lighter sentence, till rising of the Court and/or some small amount of fine only, if I pleaded guilty.

6. That I on being convicted on pleading guilty pray that having regard to the following "adequate and special reasons" your Honour be kind enough to impose less than the statutory minimum sentence prescribed.

Adequate & Special Reasons

(i) For less than the minimum period of imprisonment.

(ii) For less than the minimum amount of fine.

(If reasons are more, then separate sheet can be annexed)

7. On the basis of my above submission, my plea of guilty be kindly accepted and I be imposed with some lighter sentence.

Accused Date: _____ Sign. of the Complainant Sign. of the
Date: _____ Before me (Name of the learned Magistrate)
Date: _____ Before me, Sign. of the learned
Magistrate Date: _____

It shall be the duty of every Court before which the accused pleads guilty, to

record the same in the specimen form of purshis prescribed hereinabove, and accordingly, not to record the plea of guilty as directed would not only render the said plea illegal but would also render the concerned learned Magistrate liable to proceedings for judicial misconduct.

One thing more. Of course, there is no express legal provision but at the same time in some genuine cases of extreme old-age and/or serious illness, where accused is unable and/or confined to bed and is likely to recover soon and as a result it is not possible for him to attend the Court on a given date then in that case on the basis of verification of the alleged old-age disability and truthfulness and genuineness of the medical certificate, if accused submits an aforesaid specimen purshis "pleading guilty" on affidavit, then the same can be possibly accepted and acted upon !!

24. It is simply unfortunate that cases where hardly two to three witnesses at the most are to be examined have been found lingering on since the year 1986-87 and there too ultimately on the basis of the illicit plea-bargaining came to be disposed off !! In this view of quite shocking and disturbing state of affairs out of sheer anxiety, curiosity and concern for the cause of justice, that on being inquired from the learned Advocates appearing for the petitioner as to what were the fates and state of affairs of the P.F. cases in other Courts of the State, they have submitted a long list of cases wherein more than 1,000 cases under the P.F. Act are shown pending and gathering dust in various Criminal Courts of the State ! It has been pointed out that only in Ahmedabad District alone there are as many as 841 criminal cases under the said Act pending and the oldest one is that of the year 1979 !! Not only that but from the list submitted it appears that one case, viz., Criminal Case No. 984 of 1974 is still pending in the Court of learned Magistrate at Surat ! In other districts also cases of year 1983 onwards are found pending !! If this is true then it is indeed the saddest commentary firstly, on the statute, secondly, on the administration of justice and thirdly, on the Executive which till today has failed to appreciate the gravity and seriousness of not providing the adequate number of Courts and Judges, to deal with the cases. Neither any Law nor Constitution, nor for that purpose even the "Rule of Law" has any meaning, any fate as long as the immediate attention on war-footing is not paid to providing sufficient number of Courts and Judges to handle as many pending cases !! Speaking about the administration of Justice, it is quite true that unfortunately there are not as many number of Courts and Judges as they are ordinarily required to be to deal with the heavy backlog of cases and the incoming spate of further cases which are daily adding to the headache of all. But at the same time in cases where hardly one or two witnesses are to be examined, if the concerned Court is little careful and efficient enough, it should not take as much time as it is shown in the chart!! This is purely a question of Court management and therefore, efficiency and competency problems of the concerned learned Magistrates. If this is the way the complaints filed against the employers under the Act are to lie in cold storage without any justifiable reason what sort of the learned Magistrate he is? This further means that any dull,

inefficient Magistrate can indirectly sabotage and virtually repeal whole Act ! This situation is so unbearable that something radical is required to be done by all the concerned at the earliest. Under the circumstances, all the learned Magistrates of the State are hereby specifically directed to invariably take up all the cases under the P.F. Act immediately on their special Board and proceed with the same relentlessly, till the time old cases are decided and the time distance between the newly registered cases and their disposal do not exceed maximum 6 to 9 months!! This they should do firstly bearing in mind the overall pressure of work.

25. In Metropolitan Magistrates' Courts like Ahmedabad, etc. atleast one day every week invariably should be spared for these cases !! and in other Courts atleast two to three days in a week must be spared to clear of on merits such cases. Secondly, by seeing that the accused remain present before the Court by issuing summons and in case, he is found to be recalcitrant then even by issuing the non-bailable warrants. Thirdly, thereafter on accused appearing before the Courts, his plea should be recorded immediately without fail and fourthly, in case if accused desires to "plead guilty" then to record the same on the line of the Specimen Purshis indicated above, in the presence of the complainant or learned P.P. and in case if he does not plead guilty, and claims to be tried then fifthly, thereafter it will be the duty of the Court to immediately ask the complainant to enter into the witness box to give evidence. Sixthly, in case, the complainant even for whatever reasons do not appear before the Court and respond the call of the Court, in that case, his presence should be secured by issuing warrant and failing which if the need be by even issuing non-bailable warrant !! Unless and until the learned Magistrate focuses his/her attention on the aforesaid six aspects and conducts the Court management in quite hard and disciplined manner, the Courts have no useful, meaningful existence or future !! Let there be no doubt as to who fails law and how it fails it !! First it is the executive and then it is the Court like the one in the instant case ! Let not the Court be a party in failing law which every learned Magistrate/Judge should never forget ! Else he/she could be branded as an offender worse than the employer, manager, managing director, as the case may be facing the trial !! If this Court management and discipline is not ushered in at the earliest than that it is not the Law which has failed the Society but in the first instance, it is the complainant and therefore, in the second instance, the Court which is responsible for failing the Law which could be termed and alleged as the offence worst than the offence committed by the employer, factory owner or others, as the case may be ! Let there be no doubt about this position in the mind of any Court. Under the circumstances, in the first place, for whatever reasons, if the Courts are not proceeding further with their cases, it will be the duty of the complainant to make an application in writing to the said effect to the learned Magistrate, and if yet the same is not granted, to move the Sessions Court for their just redressal and in the second place, all the learned Magistrates are hereby requested to faithfully champion the cause of the Social Justice be seeing to it that cases under the P.F. Act and for that purpose any Social Welfare Legislation are tried expeditiously with the same amount of

zeal, zest and concern as the one entertained by the Parliament in enacting the particular Act and ultimately prove that the statute enacted by the Parliament is neither a paper flower nor the paper-tiger, a mere show-piece but it has both the refreshing fragrance of real flower to deliver justice and the claws of the real tiger to pounce upon the perpetrators of injustice and finish them !!

26. This Court is indeed quite conscious of the fact that this group of revision applications are only at the admission stage and therefore, ordinarily the rule is required to be issued to the accused, however, at the same time, this sort of ordinary practice is not and cannot be of the mechanical application irrespective of the facts and circumstances of the case !! In this view of the matter, when facts and circumstances of the case glaringly demonstrate a case of "illicit pleabargaining" and perversity of the judgment and the remand is the only forgone, inescapable and irreversible conclusion which even after the issuance of the notice to the otherside cannot be prevented and furthermore when the accused in case of "plea-bargaining" has no right to be heard disputing the Court's discretion to remand the case, there is no need to issue notice to the otherside. Accordingly, all these Criminal Revision Applications are decided to be heard and finally disposed off at the admission stage only. The learned Chief Metropolitan Magistrate is directed not to place any of these matters before the concerned learned Magistrate who earlier decided the same.

27. In the result, these revision applications are allowed. The impugned judgment and order of conviction and sentence is hereby quashed and set aside. The cases are remanded to the learned Magistrate to dispose of the same on merits according to law; preferably on or before 31st December, 1995. The learned Magistrate is further directed to issue summons within two weeks from the date of receipt of the copy of this judgment. In case, if the respondent do not respond to the summons then he should proceed with the cases in the light of the directions given hereinabove. 17. Registry is directed to (i) take on record, the chart of pending cases submitted by the learned Advocates appearing for the respective parties, (ii) bring to the notice of the Hon'ble the Chief Justice the observations made by this Court against the learned Magistrate as regards the manner in which the group of present cases were hushed up and illegally disposed of contrary to the statutory minimum sentence prescribed under the P.F. Act for information and necessary action, (iii) to place the copy of this judgment in confidential file of Mr. N.C. Shukla, (iv) forward the copy of this judgment to Bar Council of Gujarat, Ahmedabad for information and necessary action against Mr. P.N. Patel, the learned Advocate and (v) forward the copy to the Secretary, Legal Department.