

(1989) 11 P&H CK 0022

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Provident Fund Inspector

APPELLANT

Vs

Brake Lining Ltd. and Another

RESPONDENT

Date of Decision: Nov. 29, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 202, 204
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14, 14A, 17, 6, 6C

Citation: (1990) 2 ACC 61 : (1990) 1 RCR(Criminal) 490

Hon'ble Judges: S.D. Bajaj, J

Bench: Single Bench

Judgement

S.D. Bajaj, J.

Twenty four Criminal Revision Petitions bearing Nos. 419 to 442 have all been filed by the Provident Fund Inspector, Faridabad, in this court against the order of discharge dated November 14, 1984, made in favour of the respondents, by the learned Judicial Magistrate Ist Class, Faridabad, separately in all his twenty four complaints aforesaid, filed against them, under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, for their failure to deposit the contributions due from them in respect of their employees with the State Provident Funds Commissioner in due time.

2. In operative part of its impugned order dated November 14, 1984, learned trial court observed, "No specific liability of the accused has been fixed nor it is even prima facie shown as to how they can be made liable for any offence under the Act. The complaints are stereotyped petitions filed in a perfunctory manner." The sole point requiring attention of this court is whether the averments found wanting by the learned trial court were required to be made by the petitioner in the complaints before it to warrant the inferences regarding existence of a prima-facie case and

sustain the making of a summoning order against the respondents.

3. I have heard Shri C.D. Dewan, Sr. Advocate, with Mr. S.K. sharma and Mr. A.K. Kanwar, Advocate, for the petitioner, Shri Ranjit Sharma, Advocate, for the respondents and have carefully gone through the record of proceedings before the learned trial court.

4. Referring to the observations made in Dwijendra Nath Singh and Ors. v. The State and Ors. 1978 Lab. I.C. 1420 , [State \(Delhi Admn.\) Vs. I.K. Nangia and Another](#) , Ram Kripal Prasad and Ors. v. The State of Bihar and Ors. 1986 Lab. I.C. 571 and Sampat Mal Lodha v. State of Rajasthan and Ors. 1988 Cri.LJ 298, it has been urged on behalf of the petitioner that it is not necessary that in the petition of complaint it must be stated how and in what manner each of the partners is in charge of and was responsible to the company for the conduct of the business of the company. That would be a matter of evidence. Where a complaint stated that the accused were partners of the defaulting firm and as partners were in charge of and responsible to the firm for the conduct of its business. The averments in the complaint were sufficient for the purpose of the issue of the process.

5. In the complaint only the factum of the respondents 2 and 3 being the persons in charge of the said establishment is mentioned and it is only asserted that they are as such required to comply with the provisions of the said Act and Scheme and family pension scheme in respect of the said establishment. These averments, have been held in Mis Mahaldaram Tea Estate (Pvt) Ltd. and Ors. v. DN Prodhan and Ors. 1978 Lab. I.C. 898 Prabha Shanker Vajpayee v. State of Rajsthan and Anr. 1982 Lab. I.C. 33 and K.N. Genda and Anr. etc., v. The Stale and etc. 1982 Lab. I.C. 1777 to be insufficient in law, from which the Magistrate could satisfy that the accused took some pan in the running of the company. In the absence of such averments the cognizance taken by the Magistrate against the accused was held to be bad in law. The relevant observations read:-

Next Mr. Ghosh places the petition of complaint before us and submits that in the petition of complaint, the averments which have been made are not at all sufficient to connect the accused with the offence. In paragraph 2 of the petition of complaint it has been stated that the above named persons (meaning the accused) are the principal employers of M/s Calco Engineering Works. In paragraph 3, it has been stated that the principal employers are required to pay the employee's share of contribution. In paragraph 4, it has been stated that the accused persons have committed criminal breach of trust within the meaning of Expln. 2 of S.405 of the I.P.C. In support of his contention Mr. Ghosh relies on a decision reported in 1981 (2) CHN 301 (Krishna Kr. dalmia v. State.) In this case, we "Under Section 14A of the Act, a company is made primarily liable for an offence committed under the Act. The liability may extend to other persons vicariously only under the conditions laid down in the Act. In the instant case, there is no material to show that the directors were in-charge of the business or in over all control of the day today business of the

Company, the petitioners, therefore, cannot be made vicariously liable for the offence alleged to have been committed by the Company. The statements in the petitions of complaint have not made out a case against the petitioner. Mr. Ghosh submits that the present case is stronger because in the case referred to above, there were averments that the accused persons during relevant period were in-charged of the establishment and were responsible to it for the conduct of its business. But in the present case, besides stating that the accused persons are principal employers of the establishment nothing more has been stated. On behalf of the opposite parties in order to refute this contention, reliance has been placed on a decision reported in [Bhimappa Basappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda and Others](#), . In paragraph 11, it has been held "The word complaint" has a wide meaning since it includes even an oral allegation. It may, therefore, be assumed that no form is prescribed which the complaint must take. It may only be said that there must be an allegation which prima facie discloses the commission of an offence with necessary fact for the Magistrate to take action. Section 190(1) makes it necessary that the alleged facts must disclose the commission of an offence". It has been argued that it is not necessary to state on details as to how the accused are connected with the offence. That will be a matter for evidence. If there is allegation in the petition of complaint that the accused persons have committed some offence then the petition of complaint cannot be thrown out on the ground that the same is wanting in details. Reliance has also been placed on a decision reported in [Girdhari Lal Gupta Vs. D.H. Mehta and Another](#), . This case cannot help the opposite parties as in the facts of this case it was held that "A partner of the firm who himself stated that he alone looked after the affairs of the firm is liable for contravention of Section 23C of the Foreign Exchange Regulation Act, 1947. He does not cease to in charge merely because he proceeds abroad unless there is evidence that he handed it over to another person." Observations made by their Lordships in paragraph 7 of this decision help the petitioner. As it has been held "it seems to us that in the contest a person in-charge must mean that the person should be in over all control of the day to day business of the Company or the firm. This inference follows from, the wording of Section 23C(2)". In coming to this decision reported in 1981 (2) CHN 301 (supra) we very much relied on these observations. After hearing the learned advocates at length and considering the decision referred to above we find no reason to differ from what we said in the case reported in 1981 (2) CHN 301 (supra). That being so, we find that in the present case there is no sufficient averment to connect the accused with the alleged offence and on this ground the proceeding is liable to be quashed.

Mr. Roy next submits that in the petitions of complaint minimum statements have not been made so as to connect the accused person with the alleged offence. In support of his contention, Mr. Roy refers to the decisions reported in [Bhimappa Basappa Bhu Sannavar Vs. Laxman Shivarayappa Samagouda and Others](#), : [Girdhari](#)

[Lal Gupta Vs. D.H. Mehta and Another](#), ; Reference may be made to a Bench decision reported in 1978 CHN 336 : 1978 Lab IC 898 Mahalderam Tea Estate Private Ltd v. D.N. Pradhan). In this case, it was held "A Director of a Company may be concerned only with the policy to be followed and might not have any hand in the management of its day to day affairs. Such person must necessarily be immune from such prosecution under Sec. 14A of the Act under which a Company is made primarily liable." It was also held that "there was no material from which the learned Magistrate could satisfy himself that the petitioners took some part in the running of the business of the Company. In the absence of such averments in the petitioners of complaint the cognizance taken is bad in law and must be quashed " Reference may also be made to another Bench Decision of this Court, reported in [G. Atherton and Co. \(Pvt.\) Ltd. and Others Vs. Corporation of Calcutta](#), . That was a case under Prevention of Food Adulteration Act. u/s 17 of the Act a Company has been made primarily liable. It was held that "to make other persons vicariously liable, it has to be shown that such persons were in charge of or were responsible to the company for the conduct of its day to day business. In the absence of any mentioning in the petition of complaint as to how the accused persons were concerned in the carrying on of the day to day business of the company, process could not been issued against them"" We had to consider all these decisions while deciding the case reported in 1981 2 CHN 301 (supra). In paragraph 3 of the petition of complaints it has simply been stated that accused Nos. 2 to 5 at all material time were the persons in-charge of the establishment and were responsible to it for the conduct of its business. Same thing was stated paragraph 5 also. In our opinion, these averments are not sufficient to connect the accused with the alleged offence. For the reasons elaborately stated by us while disposing of Criminal Revision No. 805 of 1982 we hold that in the se cases also the petitions of complaint should be quashed."

6. Relevant Sections 14 and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 read:

14 (1). Whoever, for the purpose of avoiding any payment to be made by himself under this Act the Scheme or the Family Pension Scheme or the Insurance Scheme or of enabling any other person to avoid such payment knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a terms which may extend to one year or with fine of five thousand rupees, or with both.

(1A) An employer who contravenes, or makes default in Complying with, the provisions of Section 6 or, clause (a) of Sub-section (3) of Section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of adminisitrative charges, shall be punishable with imprisonment for a terms which may extend to three years but-

(a) which shall not be less than one year and a fine of ten thousand rupees in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case;

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term. (1-B) An employer who contravenes, or makes default in complying with, the provisions of Section 6C, or clause (a) of Sub-section (3-A) of Section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than six months and shall also be liable to fine which may extend to five thousand rupees;

Provided that the court may, for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a lesser term.

(2) Subject to the provisions of this Act, the Scheme, the Family Pension Scheme or the Insurance Scheme may provide that any person who contravenes, or makes default in complying with, any of the provision thereof shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to four thousand rupees, or with both.

(2-A). Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted u/s 17 shall, if no other penalty is else where 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 less than one months, and shall also be liable to fine which may extend to five thousand rupees.

14A (1). If the person committing an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any

director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly....

A bare statement that the accused at all material times was the person in charge of the establishment and was responsible to it for the conduct of its business is not sufficient to connect the accused with the alleged offence. There should be some material from which the Magistrate can satisfy himself that the accused took some part in the running of the business of the company otherwise the cognizance taken of the complaint will have to be quashed.

7. In *Sampat Mal Lodha v. State of Rajasthan and Ors.* 1988 Cri.LJ 298 Hon"ble Mr. Justice N.C. Sharma of the Rajasthan High Court observed, "I may refer to a decision of Supreme Court in [Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others](#), . It has been held in that case that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he has only to be prima facie satisfied whether there sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into detailed discussion of the merits or demerits of the case nor can the High Court go into this matter in its revisional jurisdiction, the scope of the enquiry u/s 202 is extremely limited. It is true that in coming to a decision as to whether process should be issued, the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant, but where appears to be a very thin line of demarcation between a probability of conviction of the accused an establishment of prima facie case against him. Once the Magistrate has exercised his discretion, it is not for the High Court or even to the Supreme Court, to substitute its own discretion for that of the Magistrate to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately and in conviction of the accused. These considerations are totally foreign to the scope and ambit of an inquiry u/s 202 which culminates into an order u/s 204." Impugned order of the learned trial court having not been found to be suffering from any legal infirmity, there is no justifiable ground to tinker therewith in the present revision petition. In result all the twenty four Revision Petitions fail and are accordingly dismissed.

8. It must, however, be observed that rejection of complaints having come about on account of the existence of a formal defect therein, the petitioner would be well within his rights to file afresh all the twenty four complaints against the respondents on the same cause of action before the learned trial court.