

(1991) 07 P&H CK 0029

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal A. No. 565 DBA of 1984

Provident Fund
Inspector

APPELLANT

Vs

New Janta Bus Service
Co. Ltd.

RESPONDENT

Date of Decision: July 24, 1991

Acts Referred:

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

Citation: (1999) 3 LLJ 190 : (1992) 101 PLR 16

Hon'ble Judges: S.D. Bajaj, J; Harmohinder Kaur Sandhu, J

Bench: Division Bench

Advocate: A.L. Bahl, for the Appellant;

Final Decision: Allowed

Judgement

S.D. Bajaj, J.

Four Criminal Appeals against acquittal bearing Nos. 565 DBA of 1984 to 568 of 1984 are directed against the acquittal of M/s. New Janta Bus Service Company Limited, Batala, ordered by the learned lower Appellate Court vide its impugned judgment dated December 8, 1983. Learned trial Court, however, convicted the respondent Bus Service Company arrayed as accused before it in the criminal complaint filed against it by the Provident Fund Inspector, Batala, under Sections 14(2) and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and paragraph 76 (b) of the Employees' Provident Fund Scheme, 1952. In respect of the various lapses enumerated in the complaint, Bus Service Company aforesaid was fined by the learned trial Court. Feeling aggrieved from the acquittal ordered by the learned trial Court, Provident Fund Inspector, Batala, has filed the four Criminal Appeals aforesaid in this Court.

2. We have heard Shri A.L. Bahl, Advocate, for the appellant, nemo for the respondent in spite of due service and have carefully perused the relevant record.

3. Relevant Section 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and paragraph 76 of Employees' Provident Funds Scheme, 1952 read :

"14A. Offences by Companies.-- (I) 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 incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection 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;

Explanation.-- For the purposes of this Section (i) "company" means any body corporate and includes a firm and other association of individuals, and

(ii) "director", in relation to a firm means partner in the firm.

76. Punishment for failure to pay contribution etc.--If any person -

(a) deducts or attempts to deduct from the wages or other remuneration of a member the whole or any part of the employer's contribution, or

(b) fails or refuses to submit any return, statement or other document required by this Scheme or submit a false return, statement or other document, or makes a false return, statement or other document, or makes a false declaration, or

(c) obstructs any Inspector or other official appointed under the Act or this Scheme in the discharge of his duties or fails to produce any record for inspection by such Inspector or other official, or

(d) is guilty of contravention of or non-compliance with any other requirement of this Scheme;

shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both."

4. In para 7 of its judgment dated February 19, 1983 learned trial Court observed:

"So far as the case of M/s. New Janta Bus Service Company (Pvt.) Ltd., Batala accused is concerned it cannot escape the liability for the above said offences. Ex. PA clearly shows that this company has been in existence since a time prior to 1955. Obviously during the period in question it was obligatory for it in law to submit the returns to the Regional Provident Fund Commissioner but it is not at all shown to have taken any steps towards this. In fact the main stress on behalf of the accused has been only that accused Harbans Singh and Lakhwant Singh were not accountable because they were not, the functionaries of the establishment at the material time. Section 14A of the 1952 Act envisages the commission of offences under this Act by the companies. This establishment undoubtedly by failing to submit the returns for the period in question has committed the offences alleged against it. I accordingly convict M/s. New Janta Bus Services Company (Pvt.) Ltd., Batala, under paragraph 76-B of the Employees' Provident Funds Scheme, 1952 read with Sections 14(2) and 14A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952."

In appeal learned lower Appellate Court did not advert to Section 14A of the Act or paragraph 76 (b) of the Scheme, both reproduced above. Its entire discussion revolves around the culpability u/s 14(1) of the Act which is entirely in different situation of the person liable to make payment under the Act evading it on the basis of false statement or false representation while the culpability under Sections 14(2), 14A and Paragraph 76 (b) of the Scheme is the outcome of failure to submit the return or documents supporting it within time. Falsity of the statement or representation made by the delinquent is not the sine qua non of the criminal liability envisaged in Clause (b) of paragraph 76 of the Employees' Provident Funds Scheme, 1952. Mens-rea under the legal provisions set out in the complaint or discussed in the judgment of the learned trial Court having not been adverted to or discussed in the impugned judgment of the learned Appellate Court, its judgment dated December 8, 1983 is wholly out of context and completely redundant. The same is consequently vacated and the judgment of the learned trial Court is restored. Ordered accordingly.

4. In result all the four Criminal Appeals aforesaid succeed and are allowed.