

(2000) 01 AP CK 0006

Andhra Pradesh High Court

Case No: Criminal Appeal No's. 102 to 107 of 1994

Provident Fund Inspector

APPELLANT

Vs

Shama Beedi Factory and Others

RESPONDENT

Date of Decision: Jan. 22, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 251, 255(1), 468, 472
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 13, 14(2), 14A(1), 14A(2)
- Mines Act, 1952 - Section 66, 79

Citation: (2000) 1 ALD(Cri) 369 : (2000) CriLJ 3427

Hon'ble Judges: B. Sudershan Reddy, J

Bench: Single Bench

Advocate: R.N. Reddy, for the Appellant; P. Prasad, Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B. Sudershan Reddy, J.

This batch of criminal appeals may be disposed of by a common judgment as the same question arises for consideration in all these appeals. That apart, the parties in all these appeals are also the same.

2. The Provident Fund Inspector preferred these appeals against the judgment of the learned I Addl. Munsiff Magistrate, Warangal dismissing the complaints on the ground that they are barred by limitation u/s 468 of the Code of Criminal Procedure (for short "the Code"). The respondents-accused were accordingly acquitted u/s 255(1) of the Code. Hence this batch of appeals.
3. The appellant herein filed the complaints against the respondents-accused alleging that in spite of several requests and persuasions, the respondents-accused

have failed to submit the annual returns in Form 6-A for the years 1978-79 to 1984-85, and thus contravened the paragraph 38(3) of the Employees" Provident Funds Scheme, 1952 (for short "the Scheme"). The appellant herein under those circumstances filed the complaints against the respondents-accused under Sections 14(2), 14-A(1) and 14-A(2) of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act") read with para 76(b) of the Scheme.

4. It is the case of the appellant-complainant that the respondent-accused No. 1 is a Beedi factory and is established within the meaning of provisions of the said Act. Respondents A-2 and A3 are the persons in charge of the said establishment and responsible for the conduct of its business and for the compliance of the provisions of the Act and the Scheme framed thereunder.

5. The respondents-accused appeared before the trial Court and were examined u/s 251 of the Code. All of them have pleaded not guilty of the said offence.

6. The complainant-Provident Fund Inspector examined himself as PW1 and marked Ex.P1 to Ex.P11. Ex.P11 is Form No. 6-A, Ex.P2 is the proceedings dated 5-10-1989, Ex.P3 is the notice dated 30-8-1991, Ex.P4 is the postal receipt, Ex.P5 is the notice dated 11-9-1991, Ex.P6 and Ex.P7 are postal acknowledgments, Ex.P8 is the notice, Ex.P9 and Ex.P10 are also postal receipts and Ex.P11 is the sanction order.

7. On behalf of the defence, the Production Manager of the first respondent-beedi factory was examined as DW1 and marked EX.D1.

8. The learned Magistrate after appreciation of the evidence and material available on record, instead of disposing of the complaints on merits, framed a question as to whether the complaints are barred by limitation in view of the provisions contained in Chapter XXXVI of the Code. The learned Magistrate came to the conclusion that the complainant ought to have filed the complaints within one year from the date of the offence. But the complaints are filed on 17-12-1991, almost after a decade, and under those circumstances, the learned Magistrate came to the conclusion that the complaints are barred by limitation u/s 468 of the Code.

9. Sri R.N. Reddy, learned Counsel for the appellant contends that non-submission of annual returns in Form No. 6-A is a continuing offence. The non-submission of annual returns in Form No. 6-A is a contravention of paragraph 38(3) of the Scheme. The learned Counsel submits that the question of limitation as such does not arise.

10. Sri P. Prasad, appearing on behalf of the respondents-accused submits that the complaints filed by the appellant herein are clearly barred by limitation. It is submitted that Section 468 of the Code would apply to the facts on hand. According to the learned Counsel for the respondents, the learned Magistrate has not committed any error whatsoever in rejecting the complaints as barred by limitation.

11. It may be required to notice that the paragraph 38(3) of the Scheme mandates that every employer shall send to the Commissioner within one month of the close

of the period of currency, a consolidated Annual Contribution Statement in Form 6-A, showing the total amount of recoveries made during the period of currency from the wages of each member and the total amount contributed by the employer in respect of each such member for the said period. The employer shall maintain on his record duplicate copies of the aforesaid monthly abstract and consolidated annual contribution statement for production at the time of inspection by the Inspector. Paragraph 76 of the Scheme provides that if any person fails or refuses to submit any return, statement or other document required by this Scheme or submits a false return statement or other document, or makes a false declaration, shall be punishable with imprisonment which may extend to one year, or with fine which may extend to four thousand rupees, or with both.

12. Section 14-A of the Act provides that if the person committing an offence under the Act, the Scheme or the Pension Scheme or the Insurance Scheme is a company, every person, who at the time of the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the 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. Section 14-AB of the Act declares that notwithstanding anything contained in the Code of Criminal Procedure, 1898 (5 of 1898) an offence relating to default in payment of contribution by the employer punishable under this Act shall be cognizable. Section 14-AC of the Act declares that no Court shall take cognizance of any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf, by an Inspector appointed u/s 13. These are relevant legal provisions.

13. In State of Bihar Vs. Deokaran Nenshi and Another, the question arose under the Mines Act (1952). Section 66 of the Mines Act, 1952 provides that any person omitting inter alia to furnish any return, notice etc., in the prescribed form or manner or at or within the prescribed time required by or under the Act to be made or furnished shall be punishable with fine which may extend to Rs. 1,000/-. Section 79 of the same Act, however, lays down that no Court shall take cognizance of any offence under this Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed or within six months from the date on which the alleged commission of the offence came to the knowledge of the Inspector, whichever is later. Under these circumstances, the Supreme Court came to the conclusion that failure to furnish annual returns within the time prescribed for it, is undoubtedly an offence punishable u/s 66 of the Act. A complaint in respect of such an offence has, u/s 79, to be filed within six months from the date of such default. In that context, the Supreme Court observed that "continuing offence is one which is susceptible of continuance and is distinguishable from the one which is, committed once and for all. It is one of those offences which

arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. On every occasion that such disobedience or non-compliance occurs and recurs, there is the offence committed. The distinction between the two kinds of offences is between an act or omission which constitutes an offence once and for all and an act or omission which continues and therefore, constitutes a fresh offence every time or occasion on which it continues".

14. The Supreme Court after going through the Regulations and other provisions of the Act, came to the conclusion that non-submission of returns is not a continuing offence.

15. It is required to notice that Section 79 of the Mines Act itself clearly lays down that no Court shall take cognizance of any offence under the Act unless a complaint thereof has been made within six months from the date on which the offence is alleged to have been committed.

16. In Bhagirath Kanoria and Others Vs. State of M. P., the question came up for consideration before the Supreme Court is as to whether the failure to pay the employer's contribution to the Provident Fund is a continuing offence. The Supreme Court after referring to various decisions including the decision in Deokaran's case cited came to the conclusion that "nonpayment of the employer'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". In that context, the Supreme Court made a pertinent observation that "the hair-splitting argument as to whether the offence alleged against the appellants is of a continuing or non-continuing nature, could have been averted by holding that, considering the object and purpose of the Act, the learned Magistrate ought to take cognizance of the offence after the expiry of the period of limitation, if any such period is applicable, because the interest of justice so requires". The Supreme Court took into consideration the object and purpose of the provision, which is to ensure the welfare of workers and under those circumstances, came to the conclusion that it is against to hold that the offence is not a continuing nature. The Scheme of the very provisions of the Act have been taken into consideration by the Supreme Court to find out as to whether the refusal to pay and deposit the contribution is a continuing offence.

17. In Premier Studs and Chaplets Company v. State 1980 (56) FJR 611, a Division Bench of Madras High Court, after an elaborate consideration of the matter came to the conclusion that failure to pay the contribution and also to submit the returns was a continuing wrong. The Madras High Court observed that "the failure to pay any such contribution or to submit any return or statement continues from day to day and from day to day a fresh offence is committed by the accused so long as he

continues in his failure to pay the contribution or to submit the return or statement. It is not mere failure to obey an order or to comply with a direction. It is not as if once he fails to pay the contribution or to submit the return on the due date, the employer is relieved of his duty and there is nothing more to be done. The duty to pay the contribution or to submit the return still remains and continues till the contributions are made or the returns submitted. There fore, a failure to pay the contribution or to submit the return is a continuing breach of a duty which continues till it is performed and the non-performance of such a duty from day to day is a continuing wrong".

18. However, the learned Counsel for the respondents-accused would place reliance upon a decision of the Karnataka High Court in C.B. Bhandari v. Provident Fund Inspector, Bangalore, 1988-10:32 AM 1/27/06II LLJ 400. The learned Judge came to the conclusion that the non-filing of returns in Form 6-A is not a continuing offence and such offence is committed once and for all. The Karnataka High Court placed reliance upon the observations made by the Supreme Court in Bhagirath Kanoria's case (cited), which is to the following effect:

The decision of this Court in State of Bihar Vs. Deokaran Nenshi and Another, to the effect that failure to furnish returns before the due date is not a continuing offence must be confined to cases of failure to furnish returns. It cannot be extended to cases like those before us in which, the contravention is not of a procedural or formal nature and goes against the very grain of the statute under consideration.

19. In my considered opinion, the Supreme Court in Bhagirath Kanoria's case (cited) has not laid down that the failure to furnish the returns before the due date is not a continuing offence. The observations so made by the Supreme Court may have to be understood in the proper background under which such an observation has been made explaining its earlier decision in Deokaran's case (cited).

20. It is required to notice the paragraph 76 of the Scheme which provides for failure to pay the contributions as well as for failure or refuse to submit any return, or statement or other document required by the Scheme. Paragraph 76 of the Scheme does not make any distinction whatsoever between the refusal to pay the contribution and failing or refusing to submit any return, statement or other document required by the Scheme. If the failure to pay the contribution is a continuing offence as held by the Supreme Court, the failure or refusal to submit any return, statement or other document required by the Scheme is also a continuing offence. This interpretation would be in consonance with the Scheme and object of the Act and the Scheme framed thereunder.

21. In Provident Fund Inspector, Chandigarh v. Delhi Faridabad Textile Mills and Ors. Crl. Appeal No. 372/1984 dt. 17-9-1984 (Supreme Court), the Apex Court observed that "Section 468, Cr.P.C. can have no application to the facts and circumstances of the present case inasmuch as refusal to pay provident fund and to submit returns is

a continuous offence and every day the breach continues a fresh cause of action arises". The Supreme Court relied upon the decision in Bhagirath Kanoria's case (cited) in arriving at such conclusion.

22. This Court in Criminal Appeal Nos. 84 to 111 of 1993, dated 2-9-1993 relying upon the judgment of the Supreme Court in Crl. A. No. 372 of 1984, dated 17-9-1984 (cited) held that non-submission of returns is a continuing offence. I do not find any reason or justification for taking a different view other than the one taken by this Court in Crl. A. Nos. 84 to 111 of 1993, dated 2-9-1993.

23. In the light of the above discussion, I have no hesitation to conclude that an offence punishable under Paragraph 76 of the Scheme is a continuing offence and Section 468 of the Code would not be applicable for such offences. The question of limitation as such does not arise.

24. For the aforesaid reasons, the judgment under the appeals are set aside. The complaints shall stand restored to its original file. The learned Magistrate shall proceed with the trial of the case in accordance with law, and dispose of the same on merits. However, the learned Magistrate may have to dispose of the case on merits, uninfluenced by any of the observations made in this judgment, as this Court has not expressed any opinion on the question as to whether the respondents-accused have violated any provisions of the Act or the Scheme framed thereunder. The cases shall be disposed of by the learned Magistrate within four months from the date of receipt of a copy of this judgment.

25. The appeals are allowed accordingly.