

D.K. Bhattacharjee, Provident Fund Inspector Vs Chandidas Chitra Mandir and Others

Court: Calcutta High Court

Date of Decision: May 13, 1982

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 401, 482

Citation: 86 CWN 863

Hon'ble Judges: N.G. Chaudhuri, J; N.C. Mukherjee, J

Bench: Division Bench

Advocate: Dipak Kumar Sengupta, for the Appellant; D.P. Dutta and Himanshu De for the State, for the Respondent

Judgement

N.C. Mukherji, J.

This Rule arises on an application u/s 401 read with Section 482 of the Code and is directed against order No 15 dated

30 8 80 passed by Shri M. M. Mukherjee, Metropolitan Magistrate, 5th Court, Calcutta in Case No. C/1089 of 1979 dropping the proceeding

under Sections 14(1 A) read with 14A(1) of the Employees' Provident Fund & Miscellaneous Provisions Act, 1952 and releasing the

accused/opposite parties, The facts of the case may be stated at follows :-

In the year 1979 the complainant filed a petition of complaint in the court of the learned Chief Metropolitan Magistrate against the accused

opposite parties u/s 14(1 A) read with section 14A(1) of the Employees Provident Fund & Miscellaneous Provisions Act on the allegation that the

accused persons failed to pay the contributions and the Administrative charges for the months of May and June, 1977.

On receipt of the petition of

complaint, the learned Magistrate took cognizance. Subsequently, the case was transferred to the learned Metropolitan Magistrate, 5th Court, On

20 5 80 an application was filed before the learned Metropolitan Magistrate 6th Court on behalf of the accused for dropping the proceeding on the

ground that the learned Metropolitan Magistrate had no jurisdiction to try the case as the accused opposite parties carry on their business at

Bankura and at such the obligations for payment of provident fund contributions and administrative charges, if any, are to be made at Bankura

which is outside the jurisdiction of the learned Magistrate's Court. A written objection was filed by the petitioner stating that in view of the decision

reported In 1974 CHN 142, the contention of the accused is not correct. The learned Metropolitan Magistrate after considering the application

and the written objection dropped the Criminal proceeding by his order No. 15 dated 30.8.80 on a finding that he had no jurisdiction to try the

case. Being aggrieved, the petitioner has come up before us.

2. Mr. Dipak Kumar Sengupta learned Advocate appealing on behalf of the petitioner, relies on a decision of a single Judge reported in 79 CWN

129 (B. P. Ghosh & Ors. Vs. Regional Provident Fund Commissioner), in this case, it has been held "where a prosecution is lodged under para 76

of the Employees' Provident Fund Scheme for alleged failure to pay the contributions to the fund, failure to submit statements and for non

compliance with other requirements of the scheme, the Court within the jurisdiction of which the fund is located and the Office of the Regional

Commissioner of the Employees' Provident Fund is situated has jurisdiction to try the offences. "Mr. Sengupta next relies on another unreported

decision of a single Judge in C. R. No. 1499 to 1505 of 1976 disposed of on August 2, 1978. In these cases, it was held "...learned Chief

Metropolitan Magistrate had jurisdiction to entertain all the petitions of complaint, First, because the offences, if any, were committed within his

jurisdiction when the petitioner failed to comply with the provisions of the Employees' Provident Fund & Family Pension Act, 1952. The Office of

the complainant is at 24, Park Street, Calcutta where the deposits were required to be made. Accordingly, it cannot be said that the learned Chief

Metropolitan Magistrate have had no jurisdiction to entertain the complaints." In this case, the allegation was that the accused was Proprietor of

M/s. Toonbari Tea Estate failed to pay the contributions, both of employees as well as employers' share and also failed to pay the administrative

charges and failed to submit return for such months and thereby committed offence u/s 14(1A) 14(2), 14A(1) and 14AA of the Act. Mr.

Sengupta next draws our attention to an unreported decision of a single Judge in C. R. Nos. 1616 to 1620 of 1976. In these cases the allegation

was that the accused who were Directors of Escal India (P) Ltd. of P 34, C.I.T Road, Calcutta 14 failed to contribute administrative charges and

submit return for the months of August to December, 1975 as required under the Act and thereby committed offences u/s 14(1A) 14(2) and

14A(1) of the Act. In this case, it was held "since the prosecution was not for offence for non-submission return for particular month or months, it

do not see how the complaint could have been filed before the learned Metropolitan Magistrate. The offence has been committed at the office of

the Company at P 34, C. I. T. Road, Calcutta 14 within the jurisdiction of Sealdah Court. Therefore, the petitions of complaint should have been

filed before the learned Magistrate, Sealdah...Accordingly, I hold that the learned Metropolitan Magistrate has no jurisdiction to entertain these

complaints. I quash the proceeding in all the cases....." Mr. Sengupta in fair to say that the latest case reported in 1979(2) CHN 400 (Industrial

Construction Co, & Ors v. D. K. Bhattacharjee Provident Fund Inspector) of another single Judge is directly in conflict with the decision reported

in 79 CWN 129. In 1979 (2) CHN 400, the establishment was situated at B. T. Road outside the jurisdiction of the Court of the Metropolitan

Magistrate, Calcutta. The alleged offence was for nonpayment of provident fund contribution and administrative charges. There was no allegation

of non submission of provident fund returns which are required to be filed in the Office of the Provident Fund Commissioner situated within the

jurisdiction of the Metropolitan Magistrate, In such circumstances. It was held by Monoj Kumar Mukherjee, J. that the Metropolitan Magistrate

had no jurisdiction to entertain the complaints." As such, the proceedings were quashed.

3. Mr. Dipak Kumar Sengupta, learned Advocate appearing on behalf of the petitioner draws our attention to the definition of Fund in Section 2(h)

of the Act. It has been provided in Section 2(h) that Fund means the Provident Fund established under a scheme. Fund, according to Mr.

Sengupta is the Fund of the Provident Fund Commissioner which is at the office of the Provident Fund Commissioner, namely, at Park Street

within the jurisdiction of the Court of Metropolitan Magistrate, Calcutta.

4. Mr. Dutt joins issue and submits that according to the definition "Fund" means Provident Fund established under a scheme. Para 38 of the

Scheme provides mode of payment of contribution, it is clear that the payment is to be made with Reserve Bank of India or the State Bank of

India of the station where the factory or other establishment is situated It has further been provided that where there is no branch of the Reserve

Bank or the State Bank of India where the factory or other establishment is situated, the employer shall pay to the fund the amount mentioned

above by means of Reserve Bank of India (Governments Draft at par) separately on account of contributions and administrative charges. So, it is

clear that where the allegation is only for nonpayment of contribution and administrative charges, payment is to be made locally and not to the

office of the Provident Fund Commissioner at Calcutta. In the present case just like the case reported in 1979(2) CHN 400 (supra) the only

allegation is for nonpayment of contribution and administrative charge. So was the case in CR Nos 1616 to 1620 of 1976. In the unreported

decision of A N Banerjee J in CR Nos. 1499 to 1505 of 1976 and the case reported in 79 CWN 129 (supra) besides the allegation of

nonpayment of contribution and administrative charge there was further allegation of non submission of returns. It has been provided in the Act that

the returns will have to be submitted with the Office of the Provident Fund Commissioner at Calcutta. This being the position, the decision reported

in 19 CWN 129 and the unreported decision of A N. Banerjee, J do not apply to the facts of the present case. The unreported decision of

Jyotirmayee Nag, J. in CR Nos. 1616 to 1620 of 1976 and the case reported in 1979(2) CHN 400 apply in all forms to the facts of the present

case. In such circumstances, we held that the learned Magistrate was quite right in holding that he had no jurisdiction to entertain the proceedings

and as such, he was right in dropping the proceedings. We find nothing to interfere.

5. In the result, the Rule is discharged. The order passed by the learned Magistrate is affirmed.

N.G. Chaudhuri, J.

I agree.