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**(1982) 05 CAL CK 0003**

**Calcutta High Court**

**Case No:** Criminal Rev. No. 1977 of 1980

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

**Date of Decision:** May 13, 1982

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - 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 en 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 ease 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 net 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 en a finding that he had no jurisdiction to try the case. Being aggrieved, the petitioner has come us before us.

2. Mr. Dipak Kumar Sengupta learned Advocate appealing en behalf of the petitioner, relies on a decision of a single Judge reported in 79 CWN 129 (B. P. Ghosh a Ors. Vs. Regional Provident Fund Commissioner), in this case, it hat 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 end 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 situate 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(1 A) 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, i do not see how the complaint could have been filed before the learned Metropolitan Magistrate. The offence have 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. Read 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 hag 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. Pare 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 Of 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 la 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 end 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 ho 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.