

(2008) 08 CAL CK 0013

Calcutta High Court

Case No: C.R.R. No"s. 2294, 2295, 2296, 2297 and 3346 of 2007

M/s. Bharat Biscuit
Pvt. Ltd. and others

APPELLANT

Vs

Employee"s Provident
Fund Orgn., W.B. and
others

RESPONDENT

Date of Decision: Aug. 1, 2008

Acts Referred:

- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 7A

Citation: (2009) 121 FLR 1129

Hon'ble Judges: Arunabha Basu, J

Bench: Single Bench

Advocate: Subhasis Pal, for the Appellant; Tapas Kumar Middya for P.F. Authority and
Barin Roy for State, for the Respondent

Final Decision: Dismissed

Judgement

Arunabha Basu, J.

By this common judgment and order I propose to disposed of the following C.R.R. No, 2294 of 2007, C.R.R. No. 2295 of 2007, C.R.R. No. 2296 of 2007, C.R.R. No. 2297 of 2007, C.R.R. No. 3346 of 2007, as common question of law and fact are involved in this matter. C.R.R. No. 2294 of 2007

2. In the revisional application Petitioners have challenged the initiation of Criminal Case against them for commission of offence punishable under the provisions of Employees Provident Funds and Miscellaneous Provisions Act, 1952 mainly on the ground that consequent to the demand notice the amount involved is already deposited.

C.R.R. No. 2295 of 2007

3. Petitioners have taken the similar plea as mentioned above. C.R.R. No. 2296 of 2007

4. Petitioners have taken a similar plea in the revisional application. C.R.R. No. 2297 of 2007

5. Petitioners took identical plea as mentioned above.

6. In fact in the four aforesaid revisional applications-Petitioners have filed conjoint prayer of quashing the Complaint Case No. C/5/07, C/6/07, C/7/07 and C/8/07, now pending before the Court of learned Additional Chief Judicial Magistrate, Alipore.

7. Petitioners have also prayed for quashing the proceeding u/s 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. C.R.R. No. 3346 of 2007

8. In this revisional application same set of Petitioners as mentioned above, have challenged Case No. 06/2007 u/s 406/34 of the Indian Penal Code.

9. In this case also Petitioners have taken the plea that amount is already deposited.

10. The Petitioners are facing prosecution for non-deposit of the employee's share along with employer's share within the statutory period as prescribed under law.

11. In support of the contention, learned Advocate for the Petitioners has referred to the following decisions:-

(1) K.J.B.L. Rama Reddy v. Annapurna Seeds and another. 2005 SCC (Cri.) 1652.

(2) [Adoni Cotton Mills Ltd. and Others Vs. Regional Provident Fund Commissioner and Others](#), .

(3) M/s. Air Transport Corporation and Ors. v. The State of West Bengal and another. 2006 (1) C. Cr.LR. (Cat) 616 .

12. In K.J.B.L. Rama Reddy v. Annapurna Seeds and another case (supra) supreme Court permitted compounding offence in connection with case u/s 138 of the Negotiable Instruments Act.

13. In Adoni Cotton Mills Ltd. and Ors. v. Regional Provident Fund Commissioner and others case (supra), Supreme Court in the facts situation of the case directed that the prosecution will be quashed on certain terms and conditions as fixed by the Supreme Court mainly on the ground that prosecution was initiated 15 years back.

14. In M/s. Air Transport Corporation and Ors. v. The State of West Bengal and mother case (supra), learned Single Judge of this Court quash a proceeding on the ground of subsequent payment dues by the accused company.

15. In reply learned Advocate appearing for the Opposite Party has referred o the decision of Supreme Court in [Rajneesh Aggarwal Vs. Amit J. Bhalla](#), . in this case the

Supreme Court held that subsequent deposit of entire amount by the accused does not absolve him from the liability of offence. Such deposit can have some(sic) effect on sentence to the awarded.

16. In Kamala Tea Company Limited and Ors. v. The State of West Bengal and mother, 2007 (2) CLJ (Cal) 124 . learned Single Judge of this Court took into consideration the decision of supreme Court in Rajneesh Aggarwal v. Amit J. Bhalla case (supra) and dismissed he revisional application after observing that subsequent deposit may be taken nto consideration by the learned Court below.

17. It may be pointed out that under Clause 38 of the Employees" Provident sunds(sic) and Miscellaneous Provisions Scheme, 1952, mode of payment of contributions by the employers is prescribed. It is evident that the deposit of contribution shall be in the manner as prescribed by law. The deposit is to be effected not as per the choice of the employer but as per the rule prescribed under law and any breach thereof attracts commission of offence under the provisions of Employees" Provident Funds and Miscellaneous Provisions Act, 1952 and also under the provisions of Section 406 of the Indian Penal Code.

18. It may be pointed out in this context that in connection with C.R.R. No. 1642 of 2007, I have considered the stand taken by the Petitioners and after referring to the decision of this Court in Kamala Tea Company Limited and Ors. v. The State of West Bengal and Anr. (supra) dismissed the revisional application.

19. In my view these cases are similarly placed and there cannot be any different order so far as the present cases are concerned.

20. However, I must point out that after going through the revisional application, it appears that in connection with each revisional application, the Petitioners have prayed for quashing more number of cases. Such conjoint prayer in connection with revisional application is not maintainable. Petitioners have also prayed for quashing the proceeding u/s 7-A of the Employees" Provident Funds and Miscellaneous Provisions Act, 1952. It is not clear to me as to how while exercising criminal jurisdiction under the Code of. Criminal Procedure, proceeding u/s 7-A of the Act can at all be quashed. This Court while exercising criminal jurisdiction deals with offence and cannot deal with any other matters, proceeding u/s 7-A cannot be termed to be an offence within the purview of the Act and as such question of quashing the same does not arise.

21. In my view it only reflects total non-application of mind by the Petitioners while moving the revisional application.

22. In view of my above discussion all the revisional applications being devoid of any merit, stand dismissed.

23. There shall be no order as to costs.

24. Criminal section is directed to forward a copy of the order to the learned Court below.

25. Criminal section is also directed to supply urgent certified copy of the order to the parties as and when applied for.