

(1978) 03 CAL CK 0047

Calcutta High Court

Case No: Criminal Revision Cases No"s. 2013 and 2046 of 1977

S.S. Chamaria

APPELLANT

Vs

D.K. Bhattacharjee

RESPONDENT

Date of Decision: March 31, 1978

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 473
- Economic Offences (Inapplicability of Limitation) Act, 1974 - Section 2
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 14(1A), 14(2A), 14A(1)

Citation: (1978) 1 ILR (Cal) 314

Hon'ble Judges: S.C. Majumdar, J; P.C. Borooah, J

Bench: Division Bench

Advocate: Dilip Kumar Dutta, S.K. Deb, S.M. Dutta and R.K. Dutta, for the Appellant; Anjan Kumar Mukherjee, for Complainant, Biren Mitra, Public Prosecutor and H. Dey, for State, for the Respondent

Judgement

P.C. Borooah, J.

The Petitioner in all these thirtyfour Rules is a Director of Messrs Albion Plywood Ltd. of 18A Brabourne Road, Calcutta-1. The opposite party No. 1 D.K. Bhattacharjee, a Provident Fund Inspector, West Bengal, filed petitions of complaint before the Chief Metropolitan Magistrate, Calcutta, against the aforesaid company and its Directors including the Petitioner alleging commission of offences under Sections 14(1A) and (2), 14A(1) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, read with para. 76(b) of the Employees Provident Funds Scheme. Along with the complaints an application u/s 473 of the Code of Criminal Procedure, 1973, was filed for condoning the delay in filing the complaints beyond a period of one year from the date of default. The learned Chief Metropolitan Magistrate transferred the cases to the Metropolitan Magistrate, Tenth Court, for disposal.

2. By orders passed on January 25, 1977, Shri A.K. Chatterjee, learned Metropolitan Magistrate, Tenth Court, Calcutta, held that in view of the provisions of Section 2(b) of the Economic Offences (Inapplicability of Limitation) Act, 1974, the question of limitation does not arise since non-payment of Provident Fund dues is undoubtedly an economic offence and ordered the issue of summons against the accused persons including the Petitioner. This order of the learned Magistrate is the subject-matter of these Rules.

3. The Economic Offences (Inapplicability of Limitation) Act, 1974, provided for the inapplicability of the provisions of chap. XXXVI of the Code of Criminal Procedure, 1973, to certain economic offences. Section 2 of the said Act lays down that the aforesaid chapter of the Code would not apply to any offences punishable under any of the enactments specified in the Schedule of the Act or any other offence which under the provision of the Code may be tried along with such offences. It is clear that the said Act is not meant to be illustrative because in the Schedule the Acts which have been taken out of the purview of chap. 36 of the Code have been clearly mentioned. The learned Magistrate could not take upon himself the function of the Legislature and import into the schedule an Act which was not there. Therefore, the learned Magistrate's finding that the question of limitation does not arise in the present case as it is an economic offence is not tenable in law and cannot be supported.

4. It is not disputed that the complaints in all these cases which are the subject-matter of these Rules were filed more than one year after the date of default. We have held in the case of Wire Machinery Manufacturing Corporation Ltd. and Ors. v. State of West Bengal and Anr. Criminal Revision Cases Nos. 1211--1239 of 1976 decided By P.C Borooah and S.C. Majumdar JJ. that offences under the provisions of Provident Fund and Scheme are not continuing offences and complaints filed after a period of one year from the date of default are barred by limitation. For the reasons stated in the said decision, the proceedings pending against the Petitioner in all the aforesaid cases are quashed.

5. The Rules are thus made absolute.

S.C. Majumdar, J.

6. I agree.