

(1974) 02 CAL CK 0021

Calcutta High Court

Case No: None

B.P. Ghosh and Others

APPELLANT

Vs

Regional Provident Fund
Commissioner

RESPONDENT

Date of Decision: Feb. 5, 1974

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 179, 5(2)
- Employees Provident Funds and Miscellaneous Provisions Act, 1952 - Section 13, 14, 14(2), 14A, 2(h)

Citation: 79 CWN 129

Hon'ble Judges: A.K. De, J

Bench: Single Bench

Advocate: Biswanath Sanyal, for the Appellant; Balai Chandra Roy for O.P. No. 1, S.K. Palit for the State in Cr. Revision Cases 243-251 of 1970 and S.G. Poddar for the State in Cr. Revision Cases Nos. 563-565 of 1970, for the Respondent

Judgement

A.K. De, J.

This batch of 14 cases, involving common question, are heard together for the sake of convenience. This judgment will cover all the 14 cases.

2. One of several accused, Sri B. P. Ghosh, a Director of Messrs. Bungo Steel Furniture (P) Ltd. located at 57 Diamond Harbour Road, is the petitioner in the first group of nine cases under paragraph 76(a) (c) & (e) of the Scheme read with Section 14(2) of Employees' Provident Fund Act, 1952, to be hereafter called the Act, namely, Criminal Revision Cases Nos. 243-251 of 1970. Sri B. P. is also the petitioner in the second batch of two cases, namely, Criminal Revision Cases Nos. 432-433 of 1970. Those two cases have arisen out of two cases started against him and some two cases started against him and some other persons under paragraph 76(a) & (c) read with Section 14(2) of the Act. The petitioner is being prosecuted as one of the

Directors of Messrs. Bungo Steel Furniture (P) Ltd. located at 57, Diamond Harbour Road. In the third batch of three cases, namely, Criminal Revision Nos. 563-565 of 1970, Tarak Nath Mitra and J. M. Joardar, accused Nos. 2 and 3 are being prosecuted as Directors of Messrs. Almetal Equipments Works (P) Ltd. Located at 57, Diamond Harbour Road under paragraph 76(a) & (e) of the Scheme read with Section 14(2) of the Act. The prayer of the petitioner in each of these 14 cases is for quashing the proceeding as against the petitioner and the other accused persons who have not yet appeared before the learned Magistrate.

3. It is firstly submitted by the learned Advocate appearing for the petitioner in these cases that the cases having been started in disregard of the provisions of sub-section (3) of section 14 of the Employees' Provident Fund Act, 1952 should be quashed. Sub-section (3) of section 14 of the Act is as follows:

No court shall take cognizance of any offence punishable under this Act or under any Scheme except on a report in writing of the facts constituting such offence made with the previous sanction of such authority as may be specified in this behalf by the appropriate Government, by an Inspector appointed u/s 13.

4. Cognizance may be taken of an offence under this Act or Scheme on a report in writing by an Inspector appointed u/s 13 with the previous sanction of the authority as specified by the Government. We find that in each of these cases there is a report of an Inspector, appointed u/s 13 of the Act, and a sanction of the Deputy Secretary to the Government who has been specified in that behalf by the Government. Whether or not these reports or by sanction is adequate will be a matter for the Magistrate to consider at the trial. The report and the sanction are there. So the petitioners cannot ask for a quashing of the proceeding on that ground. The first submission is rejected.

5. It is next submitted that the petition of complaint does not disclose that any of the petitioners, who are all Directors of the Company, is responsible for the offence alleged in the complaint. I have gone through the complaint. I find that there are allegations against the Directors of the Company. Section 14A of the Employees' Provident Fund Act, 1952 provides for prosecution of the Company as also persons who at the time the offence was committed was in charge of, and/or responsible to the Company for the conduct of the business of the Company. Sub-section (2) of that section further provides that where an offence under this Act or the Scheme has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any Director or Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. These provisions clearly, on the basis of the complaint, go to show a case against the petitioner before me. Whether or not the complainant will be able to prove at

the trial that the Director was in charge of or was responsible to the Company for the conduct of the business of the Company or whether the offence alleged was committed with the consent or connivance or is attributable to any neglect on his part will be for the trying Magistrate to decide. The complaints as they stand make out a case against the petitioner. The petitioner cannot, therefore, on this ground ask for a quashing of the proceeding.

7. It is next submitted that the Chief Presidency Magistrate, Calcutta who has taken cognizance of the offence and has issued process has not the territorial jurisdiction to try the cases and that the proceeding should, therefore, be quashed. The learned Advocate refers to the provisions of paragraph 38 of the Employees' Provident Fund Scheme, 1952 and submits that the offences have been committed at Alipore as the factories in these cases are located in 57 Diamond Harbour Road and as a branch of the State Bank of India is also at Alipore any failure in the payment of contribution or failure or refusal in submission of statement as required by paragraph 76(a), (e) or (a), (c), (e) of the Scheme can only be instituted in the court of the Alipore Magistrate. Certain modes of payment have been specified in paragraph 38. It states that the payment to the fund may be by bank drafts or cheques or by Reserve Bank of India Remittance Transfer Receipt. It further states that if there is a branch of Reserve Bank or State Bank at the station where the factory is situated, no extra charge for collection of the cheque or draft has to be paid. But if such payment is made by a cheque on an outstation bank, collection charges will also have to be paid. Further it provides that where there is no branch of the Reserve Bank of India at the station where the factory is situated, the remittance may be made by a Reserve Bank of India Remittance Transfer Receipt. These are only modes of payment. These do not indicate places of payment. Paragraph 38 is clear in showing that the place of payment is the place where the Commissioner holds his office. That place is 77 Park Street. Paragraph 76 of the Scheme reads as follows:

If any person -

(a) fails to pay any contribution which he is liable to pay under this Scheme, or

(b)...

(c) 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, or

(d) ...

(e) is guilty of contravention of or noncompliance with any other requirement of this Scheme, he shall be punishable with imprisonment....

8. The Act or the Scheme has not made any provision for place of trial of offences under the Act or Scheme. Section 5(2) of the Code of Criminal Procedure will, therefore, apply and the place of trial will be as laid down in Section 177 read with

section 179 of the Code. Prosecution in these cases is for failure to pay contribution, failure to submit statements and for contravention of or non-compliance with other requirements of the Scheme. Now paragraph 38 provides that the contributions are to be paid to the "Fund" as defined in section 2(h) of the Employees' Provident Funds Act, 1952 and that the statements are to be sent to the "Commissioner" as defined in section 2(d) of the Scheme. The office of the Commissioner is located at 77 Park Street within the jurisdiction of the Chief Presidency Magistrate, Calcutta. The "Fund" is also located at the same address. The offences are said to have committed, as, there has been failure to submit returns, failure to pay contribution or failure to send the contribution the office at 77 Park Street. That being so, these cases are entertainable by the Chief Presidency Magistrate and are triable by him or by any Magistrate to whom he may transfer in accordance with law. In this state of record it cannot be said that there is any want of territorial jurisdiction on the part of the Chief Presidency Magistrate to entertain these cases. I am unable to accept this contention.

9. Lastly a point was taken in the petition that these failure to pay contribution and to submit statements are also offences under the Indian Companies Act and that, therefore, a prosecution under the Employees' Provident Fund Act or the Scheme is not sustainable. This point was not, however, urged at the hearing as the self-same point, urged in another batch of cases, namely, Criminal Revision Cases Nos. 126-134 of 1970 and 1134 to 1142 of 1969 was negative by this Court by a judgment dated January 21, 1974. All the points urged by the petitioner fail.

10. In the result, I discharge these Rules.

11. Let the records go down to the Magistrate so that the cases may be proceeded with and expeditiously disposed of.