(1978) 04 CAL CK 0056

Calcutta High Court

Case No: Criminal Rev. No. 840 of 1977

Hind Tin Industries and Others	APPELLANT
Vs	
The State and Others	RESPONDENT

Date of Decision: April 28, 1978

Acts Referred:

- Employees Provident Fund and Family Pension Act, 1952 - Section 14(1A)

Citation: 82 CWN 936

Hon'ble Judges: Sudhamay Basu, J

Bench: Single Bench

Advocate: S.P. Talukdar and B.K. Singh, for the Appellant;Mukul Gopal Mukherjee and Barin Mitra, Public Prosecutor and Rash Behari Mahato for the State, for the Respondent

Judgement

Sudhamay Basu, J.

This Rule relates to a proceeding in case No. C-5335 of 76 under Employees Provident Funds Act, 1952, pending before the learned Metropolitan Magistrate, 7th Court Calcutta u/s 14 (1A), 14(2) and 14A (1) of the Employees Provident Funds and Family Pension Fund Act, 1952 read with paragraph 7(6) (b) and 7(6) (d) of the Employees Provident Fund Scheme. The petitioner No. 1 is M/s. Hind Tin Industries is situated at 107A, Raja Dinendra Street, Calcutta. The petitioner No. 2 is the General Manager. The petitioner No. 3 is the karta of M/s. Hind Tin Industries. The petitioner No. 4 is the factory manager. It appears that a petition of complaint dated the 25th of November, 1976, was filed by the Provident Fund Inspector before the learned Chief Metropolitan Magistrate, Calcutta on the basis of which cognisance was taken u/s 14 (1A), 14(2) and 14A(1) of the Employees Provident Fund and Family Pension Fund Act, 1952, read with para. 76(b) and 76 (d) of the Employees Provident Fund Scheme. The same was then transferred to learned Metropolitan Magistrate 7th Court.

2. It is stated in the petition upon which this rule was issued that it would be gross abuse of the process of law if the prosecution initiated upon a perfunctory, baseless and vague complaint is allowed to continue. Mr. Talukdar, the learned advocate appearing in support of the rule mainly urged that the allegations against Mr. J.K. Kaiyan and Sri Gopal Chandra Saha are that they are in charge of the said establishment and are responsible to it for the conduct of his business. According to Mr. Talukdar, the same is not enough to implicate the aforesaid petitioners and on the basis of the said complaint no process should have been issued, nor any cognisance taken. He referred in this connection to a decision, Mahalderam T.E. Vs. Prodhan reported in 1978 CHN 336, in which similar averments in the petition of complaint were considered not enough for the purpose of taking cognisance. In that case Mr. D.P. Chowdhury, the learned advocate, who appeared for the petitioners submitted that it had to be established "that the Director was in charge of or was responsible to the company for the conduct of the business of the company. A bold statement like that made in this petition of complaint was not enough". Mr. Das appearing for the provident Fund Inspector also conceded that the complaint was not happily worded. Under those circumstances the cases pending against the petitioners were quashed. After quoting section 14A (which may be noted here also) these observations were made by the Division Bench.
Section 14A of the Act is in the following terms :-

If the person committing an offence under this Act, the scheme or the Family Pension Scheme is a company, every person, who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-s. (1), where an offence under this Act, the Scheme or the Family Pension 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.

"Under the aforesaid section" it was observed, "a company is made primarily liable for an offence committed under the Act. The liability may be extended to other person vicariously only under the conditions laid down in the section. A director of a company may be concerned only with the policy to be followed and might not have

any hand in the management of its day to day affairs. Such persons must necessarily be immune from such prosecutions".

3. With respect I agree with the said observations. Thereafter the complaint was analysed and on the facts of that case which concerned a limited company and its Directors, the court ordered the quashing of the proceedings. It observed "In the three petitions of complaint filed before the learned Magistrate, apart from the statement that the petitioners Nos. 2, 3 and 4 are Directors of the aforesaid company and hence responsible for the conduct of its business and management, there is no further material from which the learned Magistrate could satisfy himself that the petitioners Nos. 2, 3 and 4 took some part in the running of the business of the company or its tea gardens". It would thus be evident that in that case, apart from the statement that the petitioners Nos. 2, 3 and 4 were Directors of the aforesaid company and hence responsible for the conduct of its business and management there was no further material to satisfy the learned Magistrate. In the present case, however, there is categorical averment in paragraph 3 that accused Nos. 2 and 3 are in charge of the said establishment and are responsible to it for the conduct of its business. Although Mr. Talukdar submitted that the facts are similar the aforesaid difference vitally distinguishes the present case from the other one. In another criminal revision case No. 1550-54 of 77 the same court also quashed some other proceedings to which Mr. Talukdar drew my attention. The mechanical way in which the complaint was filed with no attempt even to score out the unnecessory portions were commented upon in that case. Lack of diligence also is manifest even in the complaint before me.

4. Whether the complaint contains sufficient materials, prima facie, for the learned Magistrate to take cognisance has, in my view, to be examined on the facts and circumstances of each case carefully. Reference may be made to the Supreme court decision in Smt. Nagawwa Vs. Veeranna Shivalingappa Konjalgi and Others, , in which it was observed that at the stage of issuing process the learned Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the stage for considering in detail the merits or demerits of the case. The Supreme Court held that the scope of enquiry u/s 202 was extremely limited--to ascertain the truth or falsehood of the allegation (i) on the materials placed before the court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact at that stage the accused has no locus standi and is not entitled to be heard on the question whether process should foe issued against him or not. It it true that the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence led by the complainant. The line of demarcation between a probability of conviction and establishment of a prima facie

case was described by the Supreme court to be very thin.

5. In the case of Momtaz Begum Vs. The State, , it was held in relation to a case u/s 14A(1) of the Employees Provident Funds Act 1952 that sub-section (1) of Section 14A made it quite clear that it was incumbent upon the prosecution to prove that the Director concerned was in charge and was responsible to the company for the conduct of the business of the company, it was when that initial onus was discharged the onus lay upon the accused to prove that the offence was committed without his knowledge. That was a decision after trial. But the essence of the ingredients of an offence u/s. 14A(1) of the Employees Provident Funds Act were spelt out in that case by Mitter, J.

6. Following the said decision Mr. Mukul Gopal Mukherjee, the learned advocate, opposing the rule submitted with some force--Mr. Mitter appearing for the State supported him--that the essence of the offence being that the person must "be in charge" and "responsible for the conduct of the business" and when the same are distinctly to be found in the complaint filed in the present case there is no reason why the proceedings should be quashed. I find substance in the said argument. Not only the guidelines in the Supreme Court decision but the other decision of this court referred to above dearly indicate that at the stage of taking cognisance the essential averments were there in the complaint. Whether the said averments are correct or not or how far they may be established by evidence are different matters. In this rule the main contention has been that the necessary averments are not there but on the facts and circumstances I find it difficult to sustain such a contention. In my view questions of "establishing" the essential averments do not arise at this stage. The decision of the Division Bench referred to by Mr. Talukdar also does not stand in the way. The said decision has already been analysed. Borooah, J. in delivering the Division Bench judgment made it amply clear that "apart from the statement that petitioners Nos. 2, 3 and 4 are Directors of the aforesaid company and hence responsible for the conduct of its business and management" there was no further material. Thus the averments in the complaint in that case sought to connect the accused merely because they were Directors and hence they were responsible. But that is not the case here. In this case there is a distinct averment that accused Nos. 2 and 3 are in charge of the said establishment and responsible for it.

7. While the judgment was being delivered Mr. Talukdar again rose and sought to point out that the facts in the cases viz., Criminal Revision Cases Nos. 1550-54 of 77 were similar to the present one. Even if so the ratio of the decision in the reported case which I have already discussed at some length was followed in the said case. The principles discussed above require no modification, in my view, on account of the same. On the other hand the principles discussed above would warrant quashing proceedings against Gopal Chandra Saha, the factory Manager, against whom no specific averments are made. Mr. Mukul Gopal Mukherjee also fairly

conceded the point and that is also in accord with the principles laid down in the Division Bench judgment.

8. Some suggestions were made at the bar that the case might be referred to a larger Bench. It may be made clear that a Division Bench decision is binding on a judge sitting singly. I have already indicated how the averments in the present case are different from the case decided by the Division Bench. Moreover the case at the present instance relates to a Hindu undivided family and not a company and its Directors as was the case in the other decision. Moreover sitting singly I donot think that the existing rules would permit me to refer the case to the learned Chief Justice for constituting a larger Bench even if there would be an occasion to differ from the Division Bench judgment The learned Chief Justice in exercise of inherent power may however constitute a larger Bench if he thinks that the points involved require consideration by such a Bench in view of the importance of the question (See Tara Dutta Vs. The State and Another,). In view of what is stated above the rule is made absolute so far as the petitioner No. 4 is concerned and the same is discharged against petitioner Nos. 1, 2 and 3. Let the records go back to the lower court for proceeding according to law.