

(1991) 08 CAL CK 0026

Calcutta High Court

Case No: Criminal Revision No. 300 of 1988

Bharati Engineering Enterprises

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: Aug. 12, 1991

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 309, 483
- Penal Code, 1860 (IPC) - Section 405, 406, 409, 467, 471

Citation: (1994) 2 ILR (Cal) 302

Hon'ble Judges: Amal Kanti Bhattacharjee, J

Bench: Single Bench

Advocate: Sudipto Maitra and Subhasis Panchal, for the Appellant; Jayanta Kumar Biswas, for the Respondent

Judgement

Amal Kanti Bhattacharjee, J.

This is a Revisional application challenging a criminal prosecution pending against the accused Petitioner u/s 406, Indian Penal Code. The criminal case arose out of a petition of complaint filed by a Provident Fund Inspector before the O.C., Malipanchghara P.S., alleging that the accused Petitioner had committed criminal breach of trust in respect of an amount of Rs. 1145-25 P. being the employees' contributions of the provident fund for the months of September and October, 1981, which, although deducted from the salaries of the employees, were not deposited with the statutory authority. On the basis of the complaint the Police took up the investigation and ultimately a charge-sheet was filed u/s 406 of the Indian Penal Code. Cognizance was taken in the month of August 1983 and since then the case has been pending.

2. On behalf of the Petitioner Mr. Sudipta Maitra submits that the provident fund dues for the defaulted period was actually deposited in the month of February 1982, i.e., long before the criminal case was started. He, accordingly, claims that the

prosecution cannot proceed any further and that the same should be quashed. He quotes an unreported decision dated May 28, 1991, of a Single Bench of this Court in a writ case filed by M/s. Bengal Surgical Pvt. Ltd. wherein the learned Judge, relying on the observation of the Supreme Court in the case of [Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others](#), gave liberty to the Petitioners of the said case to apply before the trying Magistrate for quashing the criminal proceeding if it was found on scrutiny that the payment for the defaulting month had actually been made before the prosecution was launched. The Supreme Court case of the [Provident Fund Inspector, Faridabad Vs. Jaipur Textile, Faridabad and Others](#), has been briefly reported without any discussion. In the said case that Court gave liberty to deposit the arrears by a particular date and on such deposit being made it was ordered that the case should not be proceeded with. But the Court simultaneously made it clear that the relevant order would not serve as a precedent as it was passed in the peculiar facts and circumstances of the case. In view of such a remark it is obvious that the Court itself desired that the case shall not be treated as a proposition that any belated payment of arrears of provident fund dues for which prosecution was started would be a ground for quashing the proceeding.

3. On the other hand, Mr. Jayanta Kumar Biswas appearing for the opposite party refers to a Division Bench decision of this Court in *Pranati Textile and Ors. v. State of West Bengal and Anr.* 1989 (1) C.H.N. 173 in support of his argument that subsequent payment of provident fund amount by an accused, even if the same be paid before the prosecution was started, does not entitle him to claim that the prosecution be quashed. In the said case also a similar question arose. There the accused had deposited the dues payable under the Act after the statutory period was over but before the prosecution was launched and claimed that the prosecution should be quashed. The Division Bench negated the claim and held that failure to pay the dues within the prescribed time being an offence under the Act, later payment even before the prosecution was initiated could not by itself stand in the way of prosecution. According to the Court, such payment could be a mitigating circumstance, a relevant factor to be taken into consideration in determining the sentence, but not one to forestall prosecution and conviction. This appears to be the correct view although special circumstances may sometimes justify the taking of any other reasonable step including the cessation of the prosecution. Obviously, if the argument of the Petitioner in this case is accepted, it will virtually open up a concession not sanctioned by law and unscrupulous employers may be encouraged to avoid the rigours of law by making deposit of provident fund even after the expiry of the statutory period and thereby making undue gain apart from circumventing the mandatory provisions of law.

4. The next case relied on by Mr. Maitra is [Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others](#), In this case the Supreme Court discussed the scope of quashing a criminal proceeding. It was stated by the Court

that if a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is whether the uncontroverted allegations as made prima facie established the offence. The Court had further held that the special features, if any, in any particular case may also be taken into consideration to justify the quashing of a proceeding. The basis of such consideration may be that chances of an ultimate conviction are bleak and that as such no useful purpose is likely to be served by allowing a criminal prosecution to continue. Adverting to the facts of this case, the uncontroverted facts stated in the charge-sheet constitute an offence and no special reason has been urged why the same should be treated otherwise. The possibility of a conviction cannot be said to be remote and it cannot be said that the Court is sought to be utilized for any oblique purpose. If the accused has any bona fide mitigating circumstances to justify his exoneration the same should, for obvious ends of justice, be taken into consideration by the trial Court.

5. The next case cited by Mr. Maitra is [Narendra Pratap Narain Singh and another Vs. State of U.P.](#), In this case the accused persons were charge-sheeted for offences under Sections 467/471/409, Indian Penal Code. The High Court on appeal set aside the conviction and sentence under Sections 467 and 471, Indian Penal Code, but upheld the conviction u/s 409. The allegation against the accused persons was that they being entrusted with fertilizers, seeds etc. of the Government Agricultural Seed Store in their official capacity prepared forged bills in respect of the articles of the store in the names of some village level workers as if the workers were supplied with articles on credit and thereby committed criminal breach of trust. The Supreme Court found that none of the bills was bogus and that the articles were supplied on the long standing practice of credit sales which though disliked by the Government was in fact in vogue at the material time of the alleged offence. On such finding and in view of the fact that the bills alleged to have been misappropriated were deposited by the accused, there being no outstanding amount at the lime when the investigation was started, the Supreme Court held that there was no dishonesty in the actions of the accused. Thus the ingredients of criminal breach of trust having not been proved the said Court set aside the conviction and sentence awarded by the High Court.

6. Relying on the above decision it is argued by Mr. Maitra that the ingredients of the criminal breach of trust were also not proved in this case Speaking generally entrustment of the property and dishonest misappropriation of the same are not explicit in an ordinarily delayed payment of the Provident Fund dues under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. But under Expl. 1 to Section 405 of the Indian Penal Code the elements of entrustment and "dishonestly" using the amount have been introduced by a deeming provision. The result is that whenever there is any default in the payment of provident fund contributions of the employees in violation of the aforesaid Act the offence u/s 405, Indian Penal Code, may be invoked. The argument of the Petitioner's lawyer is that in the absence of any mens rea there cannot be any criminal offence on the basis of

any deeming provision.

7. "Explanation" to a statutory provision generally explains a particular provision in the main section. It may sometimes serve as an interpretation clause also. As an interpretation clause it not only explains the main provision but may also add to its meaning. In such a case it is a localised definition, that is, a definition utilised for a particular section. Explanations 1 and 2 to Section 405, Indian Penal Code, actually introduce a new definition of criminal breach of trust in relation to the violation of the provisions of certain Acts. The stringent provisions of punishment in those Acts with a view to ensuring strict compliance with the otherwise innocuous directions are congruously relevant to such measures. From that point of view a deeming provision constituting an otherwise defined offence is perfectly legal.

8. Mr. Maitra has extensively argued that the absence of any fraudulent intention in the action of the accused has robbed the offence of criminal breach of trust of its most essential ingredient. I have already discussed how this element of the offence has been introduced by a deeming provision in the Explanation to Section 405 of the Indian Penal Code. Naturally the absence of any active mens rea in the attributed, offence may be questioned and it has accordingly been argued that no charge u/s 406, Indian Penal Code, could be brought against the accused in this case. The modern trend of legislation has, however, introduced a new concept of social offence in the context of socioeconomic change in the society. Many legislations have been enacted absolutely prohibiting an act thereby giving a clear indication that the mens rea is not a constituent of the offence. The following observations of the L.C.J. in *Young husband v. Luftig* (1949) 2 K.B. 354 will clearly indicate how the doctrine of mens rea has been shaped in the scheme of modern legislation.

Actus non facit reum nisi mens sit rea is a cardinal doctrine of the criminal law. No doubt the Legislature can create offences which consist solely in doing an act whatever the intention or state of mind of the actor may be...of late years the Courts have been so accustomed to dealing with a host of offences created by regulations and orders independent of guilty intention that it is desirable to emphasize that such cases should be regarded as exceptions to the rule that a person cannot be convicted of a crime unless it is shown not only that he has committed a forbidden act or default but also that a wrongful intention or blameworthy condition of mind can be imputed, to him.

9. The stringent provisions regarding the punishment provided in the Acts mentioned in Exceptions 1 and 2 to Section 405, Indian Penal Code, however, imply an imputed knowledge that a guilty intention is implicit in the violation of the otherwise innocuous provisions of those Acts. The charge u/s 406, Indian Penal Code, does not, therefore, suffer from any infirmity.

10. Lastly the question of delay. Delay, in disposal of criminal cases has undoubtedly grown into a menacing problem and in spite of the provisions of Section 309 of the

Code of Criminal Procedure relating to speedy disposal of a case by a trial Court or Section 483 of the Code relating to superintendence of the High Court in this regard, things have not improved much. Delay occurs due to many factors, sometimes for the dilatory practice of the parties or their lawyers and sometimes under circumstances beyond the control of the Court. The grounds of delay have, however, not been analysed by the parties in this case and I am not inclined to quash the proceeding in the Magistrate's Court on this ground alone.

11. In the result, this revisional application fails. As the disposal of the case has already been delayed, the trial Court is directed to dispose of the same as expeditiously as possible. The said Court shall consider the submissions made by the accused regarding the delayed payment of the dues and dispose of the case according to law.