IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2975 of 2001

M/S BIRLA JUTE MILLS "WORKERS" PROVIDENT FUND TRUST & ORS.
VS.
K.K. SEN CHOWDHURY

For the Petitioners	: Mr. Sandipan Ganguly, Sr. Adv. Mr. Arindam Sen, Adv. Mr. Gobinda Chowdhury, Adv. Mr. Sourav Basu, Adv.
For the Opposite Party	: Mr. Anil Kumar Gupta, Adv.
Hearing concluded on	: 4th October, 2023
Judgement on	: 19th October, 2023

Siddhartha Roy Chowdhury, J.:

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 filed by the petitioners challenging the legality of the proceeding in Complaint Case No. 20 of 2001 pending before the learned Additional Chief Judicial Magistrate, Alipore under Section 14(2A) and 14A(1) of the Employees' Provident Fund and Miscellaneous Provident Fund Act, 1952, along with orders passed therein by the learned Court.

2. Briefly stated, One Sri K.K. Sen Chowdhury, Provident Fund Inspector E.P.F.O. Regional Office, W.B. filed a petition of complaint for prosecution of offence committed under Section 14(2A) and 14A

(1) of the Employees' Provident Fund and Miscellaneous Provident Fund Act, 1952 (hereinafter referred to as the 'said Act'), for alleged contravention of notification issued by Government of India, Ministry of Labour read with Section 17 (1A)(d)(III) of the said Act. It is contended that the accused person at all material time were persons in charge of the Board of Trustees who were responsible to it for conduct of its business and in discharge of such responsibility they took part in running of its fund. It is alleged further that those accused persons failed to invest provident fund monies with the stipulated time for the month of November, 1998 to January, 1999. The amount available for investment but not invested for the month of November, 1998 was Rs. 1,28,49,958.12/-, for December, 1998 was Rs. 1,17,10,703.04/-, for January, 1999 was Rs. 43,27,538.68/- and thus they have committed offence under Section 14 (2) and 14 (A1) of the said Act. It is contended further that the sanction of the above prosecution was granted by Regional Commissioner, West Bengal on 1st February, 2000.

3. Learned Additional Chief Judicial Magistrate, Alipore took cognizance of the offence on 14th February, 2001. Summon was issued upon the accused persons. Some of them surrendered to the jurisdiction of learned Trial Court and admitted on bail and against the absentee accused persons, warrant of arrest was issued.

4. Mr. Sandipan Ganguly, learned Senior Counsel for the petitioners submits that complaint case as formed is not maintainable inasmuch as learned Trial Court took cognizance in breach of the provision of

Section 468 of the Code of Criminal Procedure. It is contended by Mr. Ganguly that the offence alleged to have committed by the accused persons is punishable with imprisonment for six months. Therefore, Section 468 of the Code of Criminal Procedure prescribes that cognizance of the alleged offence could not have been taken beyond one year. Admittedly sanction for prosecution was granted on 1st February, 2000 and/or petition of complaint was filed on 14th February, 2001 beyond the prescribed period of limitation as laid down under Sub-Section 2(b) of Section 468 of the Code of Criminal Procedure. It is further submitted by Mr. Ganguly that learned Trial Court failed to apply its judicial mind while taking cognizance which is evident from the first order passed in the proceeding being Complaint Case No. C-21 of 2001. Learned Trial Court put his signature under a rubber stamp impression, in violation of the provision of Rule 183 as laid down under the criminal rules and order of the High Court at Calcutta which says :-

> *"Rule 183 – Orders requiring the exercise of judicial discretion and the final order shall be recorded by Magistrate in his own hand or typed by him, others may be recorded under his discretion by the Bench Clerk."*

5. It is further submitted by Mr. Ganguly that Section 14A of the said Act provides for vicarious liability and the provision is in pari-materia with the provision as laid down under Article 141 of the Negotiable Instrument Act. The word 'company' used in Section 14A of the said Act means in body corporate, includes a firm and other association of individuals. This proceeding was initiated against the trust by

treating the same as company and the trustees as the officers of the company. Section 141 of the N.I. Act envisages that director of a company who was not in charge of or responsible for the conduct of the business of the company will not be held liable for any offence committed by the company. Under these provisions the liability does not arise on the basis of mere holding the designation or office in the company. It is to be proved that the person was responsible and in charge of the conduct of the business at the relevant point of time. It would be travesty of justice to drag any director who may not even be connected with the issue in question, in absence of any material to demonstrate such involvement.

6. Refuting such contention of Mr. Ganguly, Mr. Anil Kumar Gupta, learned Counsel representing the opposite party submits that the offence committed under Section 14 of the said Act is a continuing offence. Therefore, provision of Section 468 of the Code of Criminal Procedure cannot be pressed into service; rather it would be governed under Section 472 of the Code of Criminal Procedure.

7. To buttress his point Mr. Gupta, learned Counsel for the opposite party places his reliance upon the judgement in ***BHAGIRATH KANORIA & ORS. VS. STATE OF M.P.*** reported in **(1984) 4 SCC 222** wherein it is held :-

> *"19. The question whether a particular offence is a continuing offence must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence. Turning to the matters before us, the offence of which the appellants are*

charged is the failure to pay the employer's contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature. The appellant were unquestionably liable to pay their contribution to the Provident Fund before the due date and it was within their power to pay it, as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the fund, they committed a fresh offence. It is putting an incredible premium on lack of concern for the welfare of workers to hold that the employer who has not paid contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation. Such offences must be regarded as continuing offences, to which the law of limitation cannot apply."

8. Mr. Gupta, learned Counsel in order to buttress his submission further relies upon various judgements of Hon'ble Apex Court. In ***N.K. Jain & Ors. vs. C.K. Shah & Ors.*** reported in **(1991) 2 SCC 495**, issue involved in *N.K. Jain (supra)* is quite different from the issue involved in the lis at hand. In *N.K. Jain (supra)* the maintainability of the proceeding was challenged for compliance of the provision of Section 6 of the said Act which is not identical to the case under consideration.

9. The judgement in ***Rabindra Chamria & Ors. vs. Registrar of Companies, West Bengal & Ors.*** reported in **1992 Supp (2) SCC 10**, the debate was on the applicability of Section 633 of the Companies Act in a proceeding under Section 14A of the said Act. So

the judgement pronounced in *Rabindra Chamria (supra)* is of no relevance in deciding the case at hand as no one is seeking exemption or benefit under Section 633 of the Companies Act.

10. In ***Anjuman Tea Company Ltd. & Ors. vs. State of West Bengal & Ors.*** reported in **2007 SCC OnLine Cal 463**, the issue before the Co-ordinate Bench was whether non depositing the employees contribution to provident fund within due time may be quashed on subsequent deposit of the said amount wherein it is held that the said factum should be taken into consideration by the Court at the time of hearing on the point of sentence. The judgement in *Anjuman Tea Company Ltd. (supra)* is also of no help to decide the lis.

11. The prosecution is under Section 14A(1) and 14(2A) of the said Act. Section 14A enunciates :-

> *"14A Offences by companies .—*
>
> *(1) If the person committing an offence under this Act [,the Scheme or [the [Pension] Scheme or the Insurance 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-section (1), where an offence under the Act [, the Scheme or [the*

[Pension] Scheme or the Insurance 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. Explanation.—For the purposes of this section,—

(a) "company" means anybody corporate and includes a firm and other association of individuals; and (b) "director", in relation to a firm, means a partner in the firm."

12. It is rightly submitted by Mr. Ganguly, learned Senior Counsel representing the petitioner that the provision of Section 14A of the said Act provides vicarious liability of officers of an organization which is in default. The word 'company' is used in Section 14A of the said Act means in body corporate includes a firm and other association of the individual and the director as explained in the statute, in relation to a firm means a partner in the firm. It is the specific allegation made in the paragraph 3 of the petition of complaint which is a printed form that "The Accused Nos. 2 to 12 at all material time ~~was~~/were the ~~person~~/persons in charge of the ~~establishment~~ and ~~was~~/were responsible to it for the conduct of its business and in discharge of such responsibility took part in the running of its ~~business~~. ~~He~~/They ~~was~~/were thus required to comply with the provisions of the said Act and the Scheme in respect of the said ~~establishment~~. Which is accused No. 1."

13. Therefore, it appears to be a general and bald statement incorporated in the pre-printed petition of complaint borrowing words from the statute to constitute the offence under the said Act without indicating the role that could be attributed to the accused person nos. 2 to 12 to substantiate the fact that the offence alleged to have been committed, was committed with the consent or connivance of the petitioners or the offence is attributable to, any of the accused persons or they were liable for day to day functioning of the accused no. 1.

14. It goes without saying that the concept of vicarious liability is alien to the penal laws unless it is specifically mentioned in the statute. In this case the provision of Section 14A undoubtedly speaks of the vicarious liability as such law is applicable in an offence under Section 141 of the Negotiable Instrument Act. By several judicial pronouncements, it has become settled principle of law that it is not sufficient to make a bald cursory statement in a complaint that the director arrayed as an accused is in charge of and responsible to the company for the conduct of business of the company without knowing more as to the role of the director. But the complaint should spelt out as to how and in what manner the accused was in charge of or responsible to the company for the conduct of its business. This is in consonance with the strict interpretation of penal statues especially whether such statues create vicarious liability. (See ***Ashoke Mal Bafna vs. Upper India Steel Mfg. & Engg. Co. Ltd*** reported in **(2018) 14 SCC 202**, ***National Small Industries Corp. Ltd. vs.***

Harmeet Singh Paintal & Ors. reported in **(2010) 3 SCC 330** and ***S.M.S. Pharmaceuticals Ltd. vs. Neeta Bhalla*** reported in **(2005) 8 SCC 89**)

15. The impleadment of directors of the Board of Trust on the basis of a statement that they are in charge of and responsible for the conduct of the business, without knowing more does not fulfill the requirement of Section 14A of the said Act.

16. Rule 183 of the Criminal Rules and Order of the High Court at Calcutta enunciates :-

> *"Rule 183. Orders requiring the exercise of judicial discretion and the final order shall be recorded by the Magistrate in his own hand of typed by him, others may be recorded under this discretion by the Bench Clerk."*

17. Summoning of an accused in a criminal case is a serious matter and the order of the Magistrate summoning the accused must reflect that application of mind of the Magistrate to the facts of the case and law applicable thereto. (See. ***Pepsi Foods Ltd. vs. Special Judicial Magistrate*** reported in **(1998) 5 SCC 749**)

18. Here in this case learned Trial Court put his signature in the so called order which is otherwise illegible and appears to be rubber stamp impression and it was done, as rightly pointed out by Mr. Ganguly, in the breach of Rule 183 of the Criminal Rules and Orders Calcutta High Court.

19. Issuance of summon is a serious thing affecting the right of a person. Therefore, the order of learned Magistrate summoning the accused when reflects non-application of mind to the facts of the case

and the law applicable thereto, there should be no hesitation to hold that such an act learned Judicial Magistrate is an abuse of process of law.

20. Under the aforesaid circumstances, I am of the view that the criminal proceeding in Complaint Case No. 20 of 2001 should not be allowed to remain in force and in order to avert the abuse of process of law, it is expedient to invoke the provision of Section 482 of the Code of Criminal Procedure to quash the proceeding, which I accordingly do.

21. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.

22. Urgent certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)