

Ms Swapna Vs. State Of Karnataka

Ms Swapna Vs. State Of Karnataka

SooperKanoon Citation : sooperkanoon.com/1235383

Court : Karnataka

Decided On : May-29-2024

Judge : Suraj Govindaraj

Appeal No. : CRL.P 3188/2017

Appellant : Ms Swapna

Respondent : State Of Karnataka

Advocate for Def. : Sri. K.S. Venkataramana

Advocate for Pet/Ap. : Sri. P. Prasanna Kumar

Judgement :

- 1 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE29H DAY OF MAY, 2024 R BEFORE THE HON'BLE MR JUSTICE SURAJ GOVINDARAJ CRIMINAL PETITION No.3188 OF 2017 BETWEEN:

1. MS. SWAPNA D/O MR.MUNIRAJU, AGED26YEARS, SECRETARY, SRI BALAJI EDUCATIONAL CHARITABLE TRUST, 8, KEREGUDDADAHALLI, ABBIGERE, CHIKKABANAWARA MAIN ROAD, BENGALURU - 560 090 RESIDING AT NO.18, LAKE VIEW DEFENCE COLONY, SHETTYHALLI,

BENGALURU-560 015.

2. SRI. B.R.RAMESH S/O MR.RAMAKRISHNA, AGED 60 YEARS, FOUNDER TRUSTEE, SRI BALAJI EDUCATIONAL CHARITABLE TRUST, 8, KEREGUDDADAHALLI, ABBIGERE, CHIKKABANAWARA MAIN ROAD, BENGALURU-560 090 RESIDING AT NO.334, SRI. NIKAT, M.S.R. ROAD, MATHIKERE, - 2 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 BENGALURU - 560 054. PETITIONERS (BY SRI. P. PRASANNA KUMAR, ADVOCATE FOR SRI. M. PARTHA , ADVOCATE) AND:

1. STATE OF KARNATAKA BY SOLADEVANAHALLI POLICE STATION, YESHWANTHPUR SUB-DIVISION, BENGALURU CITY, REPRESENTED BY ITS STATE PUBLIC PROSECUTOR, HIGH COURT BUILDING, DR. B.R.AMBEDKAR VEEDHI, BENGALURU - 560 001.

2. MR.ABDUL KHADAR MAILOORI AGED MAJOR, ENFORCEMENT OFFICER, EMPLOYEES PROVIDENT FUND ORGANISATION, REGIONAL OFFICE, S(1)F, 1ST CROSS, 1ST STAGE PEENYA, BENGALURU - 560 058. RESPONDENTS (BY SRI. M.R. PATIL, HCGP FOR R1 SRI. K.S. VENKATARAMANA, ADVOCATE FOR R2) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO QUASH THE

ORDER

DATED 25.01.2017 PASSED BY THE C.J.M. RURAL COURT, BENGALURU RURAL, BENGALURU, IN C.C.NO.879/2017 THEREBY TAKING COGNIZANCE AGAINST THE PETITIONERS FOR THE ALLEGED OFFENCES PUNISHABLE UNDER SECTIONS 406 409 READ WITH SECTION 34 OF IPC AND

ORDER

ING TO REGISTER CASE AND ISSUE SUMMONS IN SO FAR AS THE SAME RELATES TO THE PETITIONERS/ACCUSED NOS.1 AND 2 THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING: - 3 - NC:

ORDER

1 The petitioners are before this Court seeking for the following reliefs: Wherefore, the petitioners humbly prays that this Honble Court may kindly be pleased to, (i) Call for relevant records; (ii) quash the order dated 25.01.2017 passed by the learned C.J.M. Rural Court, Bengaluru Rural, Bengaluru in C.C.No.879/2017 thereby taking cognizance against the petitioners for the alleged offence under Sections 406, 409 read with Section 34 of IPC, and ordering to register case and issue summons insofar as the same relates to the petitioners/accused Nos.1 and 2 and (iii) Pass such other order or orders as deemed fit in the circumstances of the case, in the interest of justice.

2. The petitioners are before this Court challenging the order of cognisance taken by the CJM Rural Court, Bengaluru Rural, Bengaluru, in C.C.No.873/2017 vide order dated 25.01.2017 for the alleged offences under Sections 406, 409 read with Section 34 of IPC.-. 4 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 3. The first petitioner is the Secretary, and the second petitioner is the Founder Trustee of Sri Balaji Educational Charitable Trust, which imparts education under the name and style of Rainbow International School and Rainbow Pre-University College.

4. On 26.08.2015, the second respondent - Enforcement Officer, issued a notice to the said School, demanding payment of Employees provident fund dues (for short EPF dues) for the period from June 2014 to January 2015 in respect of employees of the said organisation. Soon after the receipt of the said notice, the petitioner is stated to have made payments of the due amounts on 04.07.2015 for the demand period, and acknowledgement thereof has been issued by the respondent - Authority.

5. Subsequently, the second respondent re-issued an inquiry notice under Section 7A of the Employees - 5 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 Provident Funds and Miscellaneous Provisions Act, 1952 (for short EPF Act) dated 10.09.2015 as regards which the authorised representative of the petitioner appeared before the Authority and submitted necessary particulars. The second respondent initiated proceedings and passed an order directing to pay a further sum of Rs.31,758/- within 15 days vide its order dated 05.04.2016. Another proceeding was conducted on 08.08.2016, directing the Trust to deposit a sum of Rs.14,952/- towards alleged interest under Section 7Q and Rs.26,522/- towards damages under Section 14B of the EPF Act. This amount was also paid by the Trust on 23.03.2017.

6. In the interregnum, the petitioners learned that the second respondent had also lodged a complaint before the first respondent, Soladevanahalli Police Station, on 19.06.2015 for offences punishable under - 6 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 Sections 406 and 409 of the IPC. The petitioners are challenging the same before this Court.

7. Sri. P. Prasanna Kumar, learned counsel for the petitioners, submits that:

7. 1. No such complaint could have been filed since the basic ingredients of Section 406 of IPC are not satisfied. In so far as Section 409 of IPC is concerned, the contention is that no offence under Section 409 of IPC is made out. 7.2. By referring to Section 406 of IPC, he submits that the basic requirement to invoke Section 406 of IPC is an offence under Section 405, which requires the employer to have deducted the provident fund contribution from and out of the salary of the employees and retained the - 7 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 said deduction by not remitting to the EPF Authority. 7.3. In the present case, firstly, no deduction has been made by the Trust employer. The petitioners, who are the Secretary and the Founder Trustee of the Trust, cannot be held liable for any offence since no amounts have been deducted or retained by the Trust/employer. 7.4. Secondly, even the amount claimed was deposited on 04.07.2015 itself, and as such, on 09.07.2015, no amount was liable to be paid by the Trust/employer, whether deducted or not. 7.5. Lastly, it is contended that even though the complaint was filed against the Trust

and the petitioners and FIR was registered against the Trust and the petitioners. In the charge sheet, - 8 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 the Trust has been given up without the Trust, which is allegedly vested with the primary responsibility of deducting the EPF; the proceedings cannot be continued. 7.6. On these grounds, it is contended that the prosecution, which has been initiated against the petitioner, is without any merits, not supported by the applicable law and is required to be quashed.

8. Sri. K.S. Venkataramana, learned counsel for respondent No.2 would submit that:

8. 1. The inspection of books of accounts has been conducted. Form 12A report was filed on 22.05.2015, which indicates the amount recovered from the employers and the amount payable by the employer. Therefore, it is contended that this report has been accepted, - 9 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 without demur by the petitioners, and the petitioners cannot now contend that there is no amount that has been deducted or retained by the petitioners. 8.2. This report itself would be sufficient to hold that there is a deduction made, despite which no deposit has been made, which would attract the provisions of Section 406 of IPC. Hence, this court ought not to exercise its extraordinary jurisdiction to quash the proceedings.

9. Sri. M. R. Patil, learned HCGP submits that the matter is between the petitioner and respondent No.2 and adopts the submission of respondent No.2.

10. Heard Sri. P. Prasanna Kumar, learned counsel for the petitioners, Sri. M.R. Patil, learned High Court Government Pleader for respondent No.1, Sri. K.S.-. 10 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 Venkataramana, learned counsel for respondent No.2 and perused the papers.

11. Sections 405 and 406 of IPC are reproduced hereunder for the purpose of easy reference: Section 405. Criminal breach of trust- Whoever, being in any

manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust". Section 406. Punishment for criminal breach of trust. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

12. The short point that would be required to be considered is whether Employees Provident Fund authorities can initiate proceedings under Section - 11 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 406 of IPC against an employer, who has not made a deduction of EPF as regards to his/her/its employees.

13. A perusal of explanation No.1 to Section 405 would indicate that when a person being an employer deducts the employees contribution from the wages payable to the employee for credit to a provident fund or family pension fund, the employer shall be deemed to have been entrusted with the amount of the contribution so deducted and if there is a default in the payment of such contribution to the fund in violation of the said law, such person shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law. Therefore, amounting to an offence of criminal breach of trust punishable under Section 406 of IPC.

14. In the present case, learned counsel for respondent No.2 contends on the basis of Form 12A report that the amount has been deducted. However, on - 12 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 perusal of all the documents that have been produced, it would not indicate any amount that has been deducted by the Trust or the petitioners. Hence, the question of retention of the same and, therefore, the deeming of fiction under explanation 1 of Section 405 being attracted would not arise.

15. The said deeming fiction would be attracted only if there is a deduction made by the employer and not otherwise. There is a requirement for the employer to deduct the provident fund contribution from the employees salary, and the same not being deducted may be punishable under any other statute; the authorities can, therefore, proceed under that particular provision/statute against the petitioners.

16. The authorities having proceeded against the petitioners for the offences punishable under Section 406, which relates to an offence under Section 405, unless there is a deduction made by a person who is - 13 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 an employer, the deeming fiction cannot be invoked nor could there be said to be an offence amounting to criminal breach of trust.

17. Assuming for the purposes of arguments that there is, in fact, a deduction made, which is not placed on record, the documents would indicate that on demand made by the authorities concerned, the said amounts have been paid by the employer before the police complaint was lodged. Thus, as of the date on which the complaint was lodged, there is no amount that has continued to be retained by the employer requiring the initiation of criminal proceedings for offences under Section 405 of IPC punishable under Section 406 of IPC.

18. Be that as it may, as I have observed above, in the present case, there is no deduction made by the employer even requiring adverting to the aforesaid submission.-. 14 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 19. One other submission that has been made by learned counsel for the petitioner is that the complaint has been filed against the Trust, and the Trust is not a party to the charge sheet. The Trust admittedly being the employer, the obligation of deduction being on the employer Trust and explanation to Sub- section (1) to Section 405 relating to default of the employer, the officers of a Trust be a Secretary and or the Founder Trustee cannot replace the employer in spite of the position held by them in the Trust.

20. After investigation, the police authorities, having given up the Trust/employer the question of continuation of any proceedings against the Secretary and or the Founder Trustee for alleged offences under Section 405 of IPC on the basis of the alleged deduction made by the employer not having been deposited with the provident fund authorities cannot continue. Hence, I am of the considered - 15 - NC:

2024. KHC:18170 CRL.P No.3188 of 2017 opinion on both the above grounds, the prosecution initiated is required to fail and as such, I pass the following:

ORDER

i. Criminal petition is allowed. ii. The order dated 25.01.2017 passed by the C.J.M Rural Court, Bengaluru in C.C.No.873/2017 arising out of Cr.No.246/2015 registered by the Soladevanahalli police Station is hereby quashed. Sd/- JUDGE AG

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com