The State of Maharashtra Vs. M/S. Simplex Woollen Mills and Others

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SooperKanoon Citation : sooperkanoon.com/343770

Court : Mumbai

Decided On : Feb-07-1997

Reported in : 1997CriLJ2079

Judge : D.G. Deshpande, J.

Appeal No. : Criminal Appeal No. 211 of 1985 along with Criminal Appeals Nos. 242 to 245 of 1985

Appellant : The State of Maharashtra

Respondent : M/S. Simplex Woollen Mills and Others

Advocate for Def. : M. Janardan, Adv.

Advocate for Pet/Ap. : S.R. Borulkar, A.P.P.

Judgement :

1. All these five appeals are filed by the State for enhancement of sentence awarded to the respondents-accused by the Vth Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Thane under the provisions of the Provident Funds Act in five complaint cases filed at the instance of the Provident Fund Inspector by his different orders. I heard Mr. S. R. Borulkar for the State in all those five appeals also Mr. M. Janardan, learned Advocate for the respondents in all these appeals.

2. In fact, there were six appeals filed by the State for enhancement including the present five appeals hereinbefore mentioned. The sixth appeal was Criminal Appeal No. 209 of 1985 in which I have passed order on merits on 6th Jan. 1997 after hearing Mr. Borulkar. In that appeal nobody appeared for the respondents and therefore after hearing Mr. Borulkar and after going through the record, the order on merits was passed allowing the appeal of the State.

3. On the same day i.e. 6th Jan. 1997 Mr. Borulkar made his submissions regarding the five appeals. But judgment in those appeals was deferred because Mr. Borulkar was asked to give a chart. In the meantime i.e. before the judgment in the present five appeals was delivered, learned counsel for respondents Mr. M. Janardan appeared and prayed that he be heard in the matters. Accordingly, I heard him in the present five appeals and since the appeal No. 209 of 1985 was disposed of on merits there was no question of hearing the learned counsel for the respondents in that appeal. Therefore, this order will cover the five appeals only and not my order in Criminal Appeal No. 209 of 1985.

4. The respondent No. 1 is a company and other respondents are its Directors. In appeal Nos. 211/85, 242/85, 243/85, 244/85 and 245/85 respondent Nos. 2 to 6 are the Directors and in appeal No. 245/85 Mr. P. S. Rao is joined as a Manager of respondent No. 1 Company.

5. The record and proceedings of the five appeals show that the respondents were prosecuted by the Provident Fund Inspector before the Vth Joint Civil Judge, Junior Division and Judicial Magistrate First Class, Thane for offences under the Provident Funds Act and the Scheme framed thereunder with the allegations that the respondents did not pay or deposit their contribution with the Provident Fund Commissioner and also did not deposit or pay the contribution collected by them from their employees to the Provident Funds Commissioner. In addition to this it was also alleged in the complaint that they had not filed necessary returns as required under the Provident Funds Act.

6. The accused respondents pleaded guilty before the Magistrate voluntarily but prayed for taking lenient view in the matter and therefore the Magistrate convicted them in all the five complaints but taking lenient view sentenced them in each case

to suffer S.I. till rising of the Court and pay a fine. The particulars of the convictions are as under :-

-- APPEAL DATE OF OFFENCE U/S. SENTENCE NO.SENTENCE-- 211/85 28-11-84 14(IB) r.w. 14A and S.I. till rising of14-AA of P.F. and Misc. the Court & fine of Provisions Act.Rs. 250/- i.d. R.I. for 1 month. 242/85 5-1-85 14(AA) r.w. 14A, 14AA S.I. till rising ofof P.F. Act. Court and fine of Rs. 250/-i.d.R.I. for one month. 243/85 5-1-85 14(AA) r.w. 14A, 14AA S.I. till rising of of P.F. Act. Court and fine of Rs. 250/-i.d. R.I. for one month. 244/85 5-1-85 14(AA) r.w. 14A, 14AA S.I. till rising of of P.F. Act. Court and fine of Rs. 250/-i.d.R.I. for one month.245/85 5-1-85 14(1A) r.w. 14A, 14AA S.I. till rising ofof P.F. Act. Court and fine of Rs. 250/-i.d.R.I. for one month. --

Mr. Borulkar, the learned APP for the State, contended that since I had allowed the State Appeal No. 209 of 1985 by my order dated 6th Jan. 1997 and had enhanced the sentence of the respondent Nos. 2 to 6 to three months each with fine etc. the same view was required to be taken in respect of five appeals and no departure could be made from my judgment dated 6th Jan. 1997. He also urged that in all the five matters the Magistrate committed grave error in awarding sentence of simple imprisonment till rising the Court because the Magistrate had no power firstly to award sentence lesser than the minimum prescribed and secondly no special reasons given by the Magistrate for doing so and thirdly the reasons given were grossly incorrect and unrelated to the defaults committed by the respondents. He, therefore, urged that all the accused were required to be awarded minimum sentence in all the five cases.

7. On the other hand, it was argued by the learned counsel for the respondents that the complainant had initially failed to establish that all the respondents were liable under the provisions of the Provident Fund Act. Because according to him, it was the responsibility of the Manager Rao to look after, to take care of the compliance of the different provisions of the Provident Fund Act. He further contended that the respondents had paid their contribution as well as the

contribution of the employees collected by them to the Provident Fund Commissioner and this fact should be taken into consideration by this Court. He also contended that plea of guilt was given by Mr. Rao and not by all the respondents and therefore non-joinder of Rao in the present appeals was a serious defect in the present appeals, for which the appeals were liable to be rejected. It was also urged by him that there are consistent views of the Supreme Court to support his contention that a company was not liable for punishment unless the complainant proves that the respondent Nos. 2 to 6 were incharge of the management of the affairs of the company. Therefore, according to him the appeals of the State were liable to be dismissed.

8. Mr. Borulkar, learned APP, in reply to these objections submitted that the appeals were filed by the State for enhancement and these were not the appeals field by the accused challenging their conviction and for this reason, according to Mr. Borulkar none of the submissions made by the learned counsel for the accused-respondents were required to be considered and/or accepted. Mr. Borulkar urged that plea of guilt was recorded by the Magistrate and all the accused had paid the fine pursuant to the sentence awarded and this clearly shows that the respondents before this Court had accepted their conviction and therefore it was not open to the respondents to point out now at this stage in the appeals filed by the State, the so called defects in the prosecution.

9. I had given my due consideration to the submissions made by Mr. Borulkar, the learned APP and Mr. Janardan. It is true that all these five appeals have been filed by the State for enhancement of sentence. However, by virtue of Section 377 Sub-section (3) in such an appeal, an accused can argue either for acquittal or for lesser sentence. As such argument of Mr. Borulkar cannot be accepted that since these are appeals of the State, accused cannot be permitted to claim dismissal of the complaint or acquittal of the accused.

10. Mr. Janardan, in this regard, contended that no case for breach of the provisions of Provident Fund Act or the scheme framed thereunder is made out in the complaint. He also contended that the complaint did not show that respondent Nos. 2 to 6 were responsible for complying with the provisions of the Provident

Fund Act. Both these arguments cannot be accepted for acquitting the accused or dismissal of the complaint because even though the accused is entitled to claim acquittal, this is a case where accused pleaded guilty to the charges and came to be convicted thereupon. This is not a case where after recording prosecution evidence the accused were convicted, therefore, the accused themselves pleaded guilty that too by filing application then both these arguments are not available to them. Mr. Rao, who filed the application was authorised by the other accused to plead guilty to the offence and secondly all the accused paid fine consequent upon their conviction. I questioned the defence counsel to ascertain whether fine imposed by the Magistrate on all the accused in all the cases was paid by them or not. Mr. Janardan could not give any reply to this querry. It is, therefore, clear that accused pleaded guilty before the Magistrate and accepted the sentence and paid the fine.

11. In Criminal Appeal No. 211 of 1985, the complaint No. 4126 is of 1984, therein Manager Rao is not a party or accused, in Criminal Appeal No. 242 of 1985 the criminal case is 6996 and 1984 there also Manager Rao is not a party or accused the same is the case in Criminal Appeal No. 243 of 1985 and Criminal Case No. 6999 of 1984, in Criminal Appeal No. 244 of 1985 and Criminal Case No. 6998 of 1984 and in Criminal Appeal No. 245 of 1985 Criminal Case No. 6997 of 1994. It will be, therefore, clear that objection of the defence counsel regarding non joinder of Manager Rao in these appeals is without any basis. It is pertinent to note that Mr. P. S. Rao, Manager has been joined as respondent No. 7 in Criminal Appeal No. 245 of 1985.

12. It was also argued by the defence counsel that respondent-accused had paid the Provident Fund contribution of the employer as well as the employees. Certain challans were produced before me by the defence counsel. Nothing can be gathered from these challans as to the period for which the payment was made and when the payment was made. At any rate, it is clear that if at all the accused-respondents had made the payment as aforesaid before the stipulated period prescribed under the Provident Fund Act firstly there would have been no prosecution and secondly there would have been no necessity to plead guilt, they could have prayed for acquittal by producing these challans before the Magistrate.

This contention of the accused regarding payments is further contradicted by the application filed by the accused. What was prayed by the accused for mercy or for taking lenient view was that their factory was closed in 1980 and not that they had made the payment.

13. The learned counsel for the accused relied upon certain judgments of the Supreme Court on the point that it was for the prosecution to prove that each partner was carrying on business during the relevant time. By these judgments e.g. : 1989 CriLJ2201 , Sham Sundar v. State of Haryana, the learned counsel for the accused wanted to stress that in the complaint filed before the Magistrate the Inspector of Provident Fund did not prove that all the respondent Nos. 2 to 6 were responsible for carrying on business or were incharge of the business at the relevant time. From this argument it appears that the learned counsel for the accused is not aware of Rule 36(A) of the Provident Fund Scheme which casts an obligation upon a company or a firm to file Form 5A before the Commissioner of Provident Fund disclosing the name of the persons who will be responsible to conduct the affairs of the company. When I questioned Mr. Janardan whether the company i.e. M/s. Simplex Woollen Mills had complied with these provisions, he could not give, any reply. In fact, Mr. Janardan was given sufficient time to seek instructions on all these points. It is, therefore, to be presumed that the company did not submit the necessary forms to the Commissioner of Provident Fund, consequently it lost the opportunity to fasten the liability of complying with the provisions of the Provident Fund Act and the Scheme framed thereunder on an individual. For want of all these compliances the complainant was justified in prosecuting all the respondent Nos. 2 to 6 under the said Act. The judgment of the Supreme Court, is therefore, of on help to the accused.

14. Having considered and rejected all the objections raised by the defence counsel, it require to be seen whether this is case for enhancement of sentence.

15. This order of the learned Magistrate has been challenged by the State on two legal grounds viz. that the learned Magistrate had no powers to impose punishment lessor than the one prescribed by the Act, that the Magistrate should have taken into consideration the previous conviction of the accused and should

have awarded heavy sentence and lastly, no special reasons were given by the learned Magistrate to take lenient view and award sentence which was lessor then the minimum sentence.

16. The objection of the learned APP that the Magistrate should have taken into consideration the previous convictions of the accused while imposing sentence cannot be accepted because previous convictions are neither properly proved nor accused was given an opportunity for giving their say regarding the previous convictions.

17. So far as the other submissions of the learned APP for the State are concerned, Section 14(1A) of the said Act lays dow that the employer who contravenes or makes default in complying with the provisions of Section 6 ...... shall be punished with an imprisonment which may extend to six months, but, (a) which shall not be less than three months in case of default in payment of employees' contribution which has been deducted by the employer from the employees' wages, or (b) which shall not be less than one month in any other case, and shall also be liable to pay fine which may extend to two thousand rupees.

18. In the instant case, the charge against the accused was that they had committed default not only in payment of their own contribution but also regarding the contribution of the employees which was deducted by them, and as per Schedules II, III, IV and V of the complaint, they had committed other defaults too.

19. It was therefore, contended by the learned A.P.P. for the State that the learned Magistrate had no option but to convict and sentence the accused to minimum three months R.I. and impose fine up to Rs. 2000/-. Alternatively, it was also contended by him that the Court was empowered to impose a sentence of imprisonment for a lessor term or of fine only in lieu of imprisonment, if a given case there were adquate and special reasons, which, however, the learned Judge was required to record in the judgment, and since according to the learned A.P.P. for the State, the learned Magistrate did not record any special reasons in that regard, the judgment was liable to be quashed and the accused were liable to be quashed and the accused were liable to be convicted as per the provisions of

Section 14 of the said Act.

20. I have given my anxious considerations to the submissions made. Since the accused pleaded guilty to the charges, there is no doubt that they committed default under Section 6 of the said Act. The learned Magistrate also observed that the offences were serious looking to their magnitude and as such, the learned Magistrate was bound to impose punishment which was proportionate to the gravity of the offence. At any rate, the punishment could not have been less than three months.

21. It appears that, in order to give lessor punishment, the learned Magistrate has relied upon certain fact viz. closure of the factory from 1st April, 1980 to 10th June, 1980. Prima facie and apparently the learned Magistrate made a grave error in accepting this fact for the purpose of showing leniency, because the period during which the offence is alleged to have been committed by the accused was in Feb. 1994 and as such, the closure of the factory in April to June 1980 was of no consequence and absolutely irrelevant. There is a gap of four years between the period of closure of the factory and the period when the defaults were committed. There is therefore no connection between the two periods, and the learned Magistrate therefore erred in taking into consideration the closure of factory as a fact to show leniency to the accused.

22. As rightly argued by the learned A.P.P. Mr. Borulkar for the State that, if any case, the minimum sentence of three months was required to be imposed on the accused and if the learned Magistrate wanted to impose a lessor sentence than the minimum one, then, it was incumbent upon the learned Magistrate to find out whether there were adequate and special reasons and record those adequate and special reasons in judgment.

23. The impugned judgment which is a one page order does not give any special and adequate reasons which prevailed upon the learned Magistrate for imposing sentence which was lessor than the minimum one. As observe by me above, the reason given by the learned Magistrate, namely the closure of the factory in 1980, are in fact no reasons as they are totally irrelevant to the period in question.

24. Alternatively it was argued by the learned counsel for the accused that considering the fact that the accused Rao was the Manager who was responsible for the payment, that the accused were misled by prepermission that they would be awarded minimum sentence, the matter should be remanded back to the trial court by setting aside the order of conviction. However, the learned A.P.P. vehemently opposed this prayer on the ground that these appeals were filed by the State for enhancement. Even if the appeals were to be rejected the conviction would remain the same and there was no scope for setting aside the conviction ad remanding matters to the trial Court. This objection of the learned A.P.P. is perfectly legal because if the State fails there will be no enhancement of sentence but there cannot be setting aside of conviction and remanding of the matter to the trial Court as the conviction is found proper. As such, the prayer of the learned counsel for the accused cannot be accepted.

25. Considering from every angle and any angle, the impugned judgment suffers from grave illegalities and the same is therefore liable to be set aside. Since the accused pleaded guilty before the learned Magistrate, the only thing that remains is a quantum of sentence to be awarded. The Act as it stood in 1984, prescribed minimum sentence of three months and fine which may extend to Rs. 2,000/-. The learned A.P.P. for the State rightly contended that this minimum sentence is required to be awarded to the accused.

26. For all these reasons the appeals of the State are required to be allowed for enhancement. However, so far as Appeal No. 243 of 1985 is concerned the alleged breach is only in respect of not submitting returns within time and therefore the offence is punishable under Section 14 Sub-section (2) for which the Court can impose sentence upto six months or with fine which may extend to Rs. 2,000/-. It is not compulsory to award sentence of imprisonment. Since the accused are sentenced to imprisonment in all these other appeals, I do not propose to impose sentence on the accused in this particular appeal. I find fine would be sufficient, and therefore, I pass the following order :-

ORDER

IN APPEAL NO. 211 OF 1985 :

Appeal is allowed. The impugned judgment is set aside to the extent of punishment. The accused numbers 2 to 6 are convicted under Section 14(1A) of the said Act and are sentenced to suffer S.I. for three months each and are sentenced to pay fine of Rs. 2,000/- each.

Accused No.1 is convicted and, sentenced to pay a fine of Rs. 2,000/-. Accused Nos. 2 to 6 to surrender to Thane police within three weeks of this order and pay enhanced fine within three weeks of this order.

IN APPEAL NO. 242 OF 1985 :

Appeal is allowed. The impugned judgment is set aside to the extent of punishment. The accused numbers 2 to 6 are convicted under Section 14(1A) of the said Act and are sentenced to suffer S.I. for three months each and are sentenced to pay fine of Rs. 2,000/- each.

Accused No. 1 is convicted and sentenced to pay a fine of Rs. 2,000/-. Accused Nos. 2 to 6 to surrender to Thane police within three weeks of this order and pay enhanced fine within three weeks of this order.

IN APPEAL NO. 243 OF 1985 :

Appeal is allowed. The accused are sentenced to pay a fine of Rs. 1,000/- each in addition to the S.I. till rising of the Court.

IN APPEAL NO. 244 OF 1985 :

Appeal is allowed. The impugned judgment is set aside to the extent of punishment. The accused numbers 2 to 6 are convicted under Section 14(1A) of the said Act and are sentenced to suffer S.I. for three months each and are sentenced to pay fine of Rs. 2,000/- each.

Accused No. 1 is convicted and sentenced to pay a fine of Rs. 2,000/-. Accused Nos. 2 to 6 to surrender to Thane police within three weeks of this order and pay enhanced fine within three weeks of this order.

IN APPEAL NO. 245 OF 1985 :

Appeal is allowed. The impugned judgment is set aside to the extent of punishment. The accused numbers 2 to 6 are convicted under Section 14(1A) of the said Act and are sentenced to suffer S.I. for three months each and are sentenced to pay fine of Rs. 2,000/- each.

Accused No. 1 is convicted and sentenced to pay a fine of Rs. 2,000/- accused Nos. 2 to 6 to surrender to Thane police within three weeks to this order and pay enhanced fine within three weeks of this order.

Substantive sentences of simple imprisonment in all these five appeals and also in Criminal Appeal No. 209 of 1985 will run concurrently.

Accused are given four weeks' time to surrender themselves to Thane police for undergoing sentence.

27. Order accordingly.