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K.K. Bhargava Vs. State

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Court : Delhi

Decided On : May-13-1998

Reported in : 1998(46)DRJ110

Judge : Dalveer Bhandari, J.

Acts : Employees Provident Fund and Miscellaneous Provisions Act, 1952 - Sections 14A and 14(1A)

Appeal No. : Criminal Revision Nos. 34, 35 and 36 of 1981

Appellant : K.K. Bhargava

Respondent : State

Advocate for Def. : R.C. Chawla, Adv. and ;M.S. Butalia

Advocate for Pet/Ap. : K.K. Sud and; Kamna Vohra, Advs

Judgement :

Dalveer Bhandari, J.

1. This Judgment will dispose of all the three Criminal Revisions as the facts in all these revision petitions are identical except that there is difference in period of default. 'In these cases, the Provident Fund Inspector complained against the petitioner that the petitioner failed to. deposit the provident fund contribution by the

15th of the following months provided under paragraph 138 of the Employees Provident Fund Scheme and they have committed offences under Section 14A and 14(1A) of the Employees Provident Fund Act, 1952 read with paragraph 76D of the Employees Funds Scheme, 1952.

2. The prosecution has examined two witnesses, namely Gopal Krishan, UDC (PW-1) and Shri D.V. Soni, Provident Fund Inspector (PW-2). As regards the applicability of the provisions of the Act and the Scheme is concerned, it has been fully proved by the testimony of PW-1, wherein he had stated that the establishment is covered under the provisions of the Act and the Scheme. This fact has been even admitted by petitioner no.1 K.K. Bhargava, in his statement under Section 313 Cr.P.C.

3. Another, question which arises for consideration is whether there was delay in deposit of provident fund according to on behalf of the accused establishment paragraph 138 of the Scheme. Paragraph 138 of the Scheme provides that the employer, before paying the wages in respect of any period in which contributions are payable, deduct the employee's contribution from his wages which together with his own contribution as well as administrative charges of such person, shall pay within 15 days of the closing over every month. Petitioner no.1 has admitted in his statement underSection 313 that the payment had been made but it was late meaning thereby that there was default in making the payment of contribution within time.

4. Shri Gopal Krishan (PW-1) had admitted in his cross-examination that for the period from March, 1976 to November, 1976, the amount of Rs.28,537.60 pertaining to employees' provident fund contribution was recovered through District Collector's office. In Form 5-A against column no.13 and 14, petitioner no.1, K.K. Bhargava has been shown as the Manager and person in charge of the accused establishment. In letter Ex.DWl/A, it was made clear on the part of the accused establishment that Nakul Bhargava will be occupier-principal-employer of the factory with effect from October 27, 1975. DW-1 Jai Parkash has also stated in his examination-in-chief that the accused K.K. Bhargava came to establishment in 1976 and it has not been clarified by the accused/petitioner as to from which date

K.K.Bhargava was the person in charge and responsible for the affairs. In these circumstances, the trial court held that K.K. Bhargava was the person in charge of and person responsible to conduct the business of the establishment. There is no doubt that it is the duty of the prosecution to prove its case and to prove that the accused K.K. Bhargava was the person in charge and responsible to conduct the business of the firm and this onus has been discharged by the prosecution.

5. The learned Metropolitan Magistrate by his order dated 2nd May, 1980 arrived at the conclusion that the petitioner K.K. Bhargava was held guilty in all the three cases and sentenced to undergo S.I. for three months, and the establishment (petitioner no.2) was imposed a fine of Rs.1000/- in each case, and in default of payment of fine, he shall further suffer simple imprisonment for three months.

6. The petitioners aggrieved by the judgment of the Metropolitan Magistrate, Delhi, filed three separate appeals before the Additional Sessions Judge. By the order dated 3.2.1980, the appeals filed by the petitioner K.K. Bhargava were rejected.

7. Aggrieved by the order in appeals, the petitioners have approached this court by way of these rcvisions.

8. The learned counsel (sic) the petitioner Mr. K.K. Sud submitted that the petitioner had already undergone a part of the sentence. The petitioner admittedly joined much later and he is really not responsible for the technical offence if any committed by the establishment He further submitted that till February-March, 1977, all amount which, was due and payable had already been paid. It is submitted that even fine imposed by the court has already been paid. Learned counsel appearing for the respondents submitted that it is a continuing offence. Even after the petitioner joined the accused establishment, there was default for sometime. The fact of depositing the entire amount with fine has not been controverter even by counsel appearing for the respondents.

9. I have heard learned counsel for the parties and perused the relevant record of this case. There is no doubt that there has been delay in payment of the Employees' Provident Fund and consequently the petitioner has committed the offence. No infirmity whatsoever can be found in the judgment of the learned

Additional Sessions Judge. But the question which arises for consideration is that the incident is of the year 1976. The entire amount with fine stands paid. The petitioner K.K. Bhargava, who was nominee & Manager of the company has served out a part of thesentence.

10. In the case of B.G.Goswami V. Delhi Administration 1973 SC C 796 which has been followed later on by the recent judgments, has laid down that when the accused persons have undergone a trauma of a long and protracted criminal trial and criminal proceedings for so many years, then no useful purpose would be served by uprooting and unsettling the appellants to serve out the remaining sentence.

11. In these circumstances, in the interest of justice in my considered opinion, ends of justice shall be met if the conviction is upheld but the petitioner's sentence of imprisonment is set aside. I direct that instead of compelling the petitioner to undergo am imprisonment of three months, the total fine of Rs.3000/- in three revision petitions is increased to Rs.4500/- meaning thereby that the accused-company/petitioner no.2 shall deposit a further fine of Rs.1500/- in all these three revision petition within two months from today.

12. The revision petitions are disposed of in the aforesaid directions.

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