

M.R. Joseph, Enforcement ... vs John Menezes
on 12 September, 2003

Equivalent citations: ILR 2003 KAR 4525

Bench: N Veerabhadraiah

[M.R. Joseph, Enforcement Officer, Epf vs John Menezes](#) on 12/9/2003

JUDGMENT

Veerabhadraiah, J.

1. These 3 appeals are by the Enforcement Officer, Employees' Provident Funds, Mangalore Division being aggrieved of the common judgment passed in C.C. Nos. 22445/89, 22446/89 and 22447/89 by the learned IV Additional Munsiff and JMFC, Mangalore, DK dated 31.7.1996 acquitting the accused for the offence punishable under Section 14(1A), 14(1B) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 r/w Paragraph 76(d) of the Employees' Provident Funds Schemes 1952.

2. The brief facts of the case are as follows:

The accused Mr. John Menezes, being the proprietor of M/s. Prakash Tile Works, registered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 failed to pay Provident Funds contribution for the months of December 1988 to January 1989, failed to pay family pension for the month of December 1988 and so also failed to pay Insurance Fund contribution for the months of December 1988 to January 1989. On account of the non-payment of contribution amount, the Enforcement Officer of the Employees Provident Funds filed complaints under Section 14(1A), 14(1B) for recovery of the contribution amount for the different periods. The 3 complaints came to be registered as CC.Nos. 22445/89, 22446/89 and 22447/89. The Court after taking cognizance, secured the presence of the accused. The accusation was recorded separately in all the 3 cases. The accused pleaded not guilty and claimed to be tried. In all these 3 cases, the Enforcement Officer viz. M.R. Joseph, was examined as P.W. 1 and the documents were marked as Exts. P.1 to P.13. The statement of the accused was recorded under Section 313 Cr.P.C. The defence is one of total denial. The accused did not choose to lead any defence evidence. The learned IV Additional Munsiff and JMFC, Mangalore, acquitted the accused on the ground that the complaints filed are barred by limitation. Secondly, the sanction order is not a valid one. Thirdly, on the ground that P.W. 1 M.R. Joseph was not competent to file the complaints. It is this judgment of acquittal of the accused which is assailed in the present appeals.

3. Learned Counsel Sri Harikrishna S. Holla, for the appellant contended that the reasoning of the learned Trial Judge is erroneous and not based on facts. The offence under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is of continuation in nature which has got the effect of recurring cause of action. Therefore, the Trial Court holding that the claim is barred by limitation is erroneous. Secondly contended, though the sanction order Ext. P. 2 is produced, merely because of the reason that it does not bear the office seal and as such it is not valid is not proper when the competent officer has passed an order in accordance with the provisions of Section 14AC of the Act. He has further contended that when the complaints were filed, the Court after scrutinising the papers took cognizance as provided under Section 14AC of the Act. Therefore, the Trial Court holding that there is no valid sanction is without any force. He has lastly contended that the finding of the learned Trial Judge that P.W. 1, Mr. M.R. Joseph is not competent to file the complaints is without any ground. Therefore, prayed to set aside the finding of the Trial Judge and to allow the appeals.

4. Learned Counsel for the respondent Sri L.S. Chikkannagoudar fairly submitted that he does not press the question in so far as the limitation is concerned. However, he contended that the sanction order is bad as the author who issued the sanction order Ext.P. 2 is not examined. Therefore, Ext. P. 2 cannot be acted upon. Thirdly, contended that P.W. 1, Mr. M.R. Joseph has not produced any documents to show that he was authorised to file the complaints. Accordingly, justified the impugned order and prayed to dismiss the appeals. He however submitted, in view of the fact that the amount is very meagre and the same is deposited, prayed to drop the proceedings.

5. In the light of the submissions, the points for consideration that arise are as follows:

1. Whether the sanction order Ext.P. 2 is vitiated for want of seal of the office?

2. Whether the complaints are barred by limitation?

3. Whether the complainant is not duly authorised to file the complaints?

4. What order?

6. It is an admitted fact that the accused Mr. John Menezes is the proprietor of M/s. Prakash Tile Works, Mangalore. From the document Ext.P. 5, it shows the return is submitted by the proprietor to the Regional Commissioner. So also Exts.P.6 and P.7 are the statements of contribution submitted by the accused to the Employees' Provident Fund Authority. It is further seen that on account of the non-payment of contribution in respect of provident fund and family pension that a show cause notice has been issued as per Ext.P. 8, Ext.P. 6 and Ext.P. 7 respectively. Thereafter, the Commissioner for the

Regional Provident Fund, Mangalore viz., Sri G. Raghunathan has passed the orders as required under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as per Ext.P. 9, Ext.P. 7 and Ext. P. 8 respectively. The said orders have been duly communicated which is evidenced from the acknowledgments Exts. P. 10, Ext.P. 8 and P. 9 respectively in the concerned C.C. numbers. These facts clearly establish the fact that the accused failed to remit the contributions due as required under Section 6 of the Act. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, provides for initiation of criminal proceedings against the defaulters in respect of non-payment of the contribution as required under Section 14 of the Act. To file a complaint, the provisions of Section 14AC has to be complied with which reads as under:

"14AC. Cognizance and trial of offences: No Court shall take cognizance of any offence punishable under this Act, the Scheme or the Pension Scheme or the Insurance Scheme except on a report in writing of the facts constituting each offence made with the previous sanction of the Central Provident Fund Commissioner or such other Officer as may be authorised by the Central Government, by notification in the Official Gazette in this behalf, by an Inspector appointed under Section 13.

(2) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act or Scheme or the Pension Scheme or the Insurance Scheme.:

7. This makes clear that in order to take cognizance for the offence under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, it should be accompanied with a report in writing and it should be accompanied with the previous sanction of the Central Government. It is only if the requirements of Section 14AC are complied with, the Court gets jurisdiction to take cognizance and proceed further.

8. In the present case when the petition came to be filed, the Court has taken cognizance after verifying the sanction order and proceeded with the matter. It is in the evidence of P.W. 1 that he was working as an Enforcement Officer in the office of the Provident Fund during the period 4.7.1986 to 30.6.1990. The documents produced Exts. P. 1 to P.10 are not disputed. It is also not in dispute, the accused filing returns regarding the contribution payable and also regarding the order passed determining the contribution payable under Section 7A of the Act. It is Sri G. Raghunathan, the Regional Provident Fund Commissioner, who has determined the contribution payable under Section 7A of the Act. The said order is also not disputed. It has clearly come in the evidence of P.W.1, that the Regional Provident Fund Commissioner viz., Sri G. Raghunathan issued the sanction order by virtue of the powers conferred under Section 14AC of the Act. The order bears No. KN PF SRO ENF I MLR II 489 dated 19.9.1989. This pertains to recovery of the Provident Fund contribution amounting to Rs. 1,696/- for the month of December 1988 which is liable to be paid on or before 15.1.1989. So also another sanction Order dated

19.9.1989 in C.C. No. 22446/ 89 which pertains to recovery of contribution of family pension amounting to Rs. 197/- for the month of December, 1988. The 3rd sanction orders also dated 19.9.1989 in respect of recovery of contribution of family deposit linked insurance amounting to Rs. 106/- for the month of December 1988. On going through these 3 sanction orders, the Regional Provident Fund Commissioner has applied his mind and has issued separate orders granting sanction for recovery of the amount. The amounts mentioned in these sanction orders are the amounts determined under Section 7A of the Act which are produced in these cases. Those orders are also passed by Sri G. Raghunathan and the same are also not disputed. It is no doubt true that Ext. P. 2 in these 3 cases does not bear the seal of the office of the Provident Fund. But the fact remains that from the other documents produced it is not in dispute that the accused is the proprietor of M/s. Prakash Tile Works and he is respectively due and not paid the contribution. It is in respect of those items, separate orders issuing sanction is granted. Under these circumstances, the non-examination of Sri G. Raghunathan, the Regional Provident Fund Commissioner does not go to the root of the case. So also, it is not fatal to the case of the prosecution. It is no doubt true that P.W. 1 has not stated the name of the person who issued the sanction order. But that itself will not vitiate the proceedings. It is settled principle of law that each case has to be examined on its own facts and circumstances. Therefore, the mere fact that the sanction order Ext.P. 2 in these cases does not bear the seal of the office does not go to the root of the case. Therefore, the submission of the learned Counsel that the sanction order is not valid is without any merit.

9. Now coming to the question of limitation is concerned it is clear from Section 472 Cr.P.C. which reads as follows:

"472. Continuing offence: In the case of a continuing offence a fresh period of limitation shall begin to run at every moment of the time during which the offence continues."

10. Continuing Offence is one which is susceptible of continuance and is distinguishable from the one which is committed once and for all. It is one of those offences which arises out of a failure to obey or comply with a rule or its requirement and which involves a penalty, the liability for which continues until the rule or its requirement is obeyed or complied with. As long as the accused remains without paying the contribution amount it is a continuing offence as the employees are entitled for the benefit of Provident Fund and family fund and other benefits at the end of their service. Therefore, the non-payment of the contribution amount is a continuing offence. Therefore, the question of limitation does not arise.

11. In so far as the third contention is concerned that the Complainant is not authorised to file the complaint, the evidence of P.W.1, M.R. Joseph goes to show that he was working as Provident Fund Enforcement Officer from 4.7.1986 to 30.6.1990 in the Regional Provident Fund Office. The complainant

being the Enforcement Officer presented the complaint for the offence under Sections 14(1A)(b) and 2(a) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 r/w Paragraph 76(d) of the Employees' Provident Funds Schemes 1952. Section 14 of the Act prescribes penalties in respect of avoiding payment or contravening the provisions or default in complying with the provisions of Section 6 of the Act, whereas paragraph 76 of the Employees' Provident Funds Schemes, 1952 provides for punishment for failure to pay the contribution which reads as follows:

"76. Punishment for failure to pay contribution etc., If any person -

(a) deducts or attempts to deduct from the wages or other remuneration of a member the whole or any part of the employers' contribution, or

(b) fails or refuses to submit any return, statement or other document required by this Scheme or submits a false return, statement or other document or makes a false declaration, or

(c) obstructs any Inspector or other official appointed under the Act or this Scheme in the discharge of his duties, or fails to produce any record for inspection by such Inspector or other official, or

(d) is guilty of contravention of or non-compliance with any other requirement of this Scheme.

He shall be punishable with imprisonment which may extend to one year or with fine which may extend to four thousand rupees, or with both."

12. On a combined reading of Section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and paragraph 76 of the Employees' Provident Funds Scheme, 1952, it provides for penalties and punishments for contravention of non-compliance with the requirements of the Scheme.

13. In the present case, the proceedings were initiated on account of non-payment of contribution towards provident fund, family pension and deposit linked insurance. It is not the case of the accused that the contribution amount determined under Section 7A of the Act has been paid at the inception or subsequently before filing the complaint. That apart, in order to question the competency of the complainant Mr. M.R. Joseph, the Enforcement Officer they have not raised any such preliminary objection. Ex. P. 12, is the notification issued in the Karnataka Gazette dated 14.11.1985 which enables all the Provident Fund Officers and Enforcement Officers of the Regional Provident Fund Commissioner, Karnataka to deal with the matter. Ext.P. 13 is the certificate issued by the Assistant Provident Fund Commissioner for Regional Provident Fund Commissioner which shows that the Complainant was working as an Enforcement Office in the office of the Regional Provident Fund Commissioner, Mangalore

during the period 4.7.1986 to 30.6.1990 wherein the complaint came to be filed on 18.11.1989 on which date, he was functioning as the Enforcement Officer in the office of the Regional Provident Fund Commissioner, Mangalore. Therefore, that he is competent to present the complaint and it is not open for the accused to contend that the Complainant is not authorised to file the Complaint. It is pertinent to note that even these 3 appeals have also been preferred by the Complainant Sri M.R. Joseph in the capacity as the Enforcement Officer. It is unfortunate on the part of the learned JMFC that he has not applied his mind to the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as well as the provisions of the Employees' Provident Funds Scheme, 1952 and has proceeded on the basis that there is no sanction order or there is no authorisation to file the complaint which is not sustainable. That apart, the documents, produced by the Enforcement Officer have also not been considered in the manner required.

14. For the foregoing reasons, the common judgment of acquittal of the accused for the offence under Section 14(1A), 14(1B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 r/w Paragraph 76(d) of the Employees' Provident Funds Scheme, 1952 is liable to be set aside.

15. It is clear from the records and the evidence of P.W. 1, Mr. M.R. Joseph, that the accused has contravened the provisions of Section 14(1A), 14(1B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 r/w Paragraph 76(d) of the Employees' Provident Funds Scheme, 1952 for which he is liable to be convicted.

16. Heard the learned Counsel in so far as the sentence is concerned. It is brought to the notice of the Court that subsequently the accused has paid the contribution amount and the same is a belated payment. Therefore, the learned Counsel submits that as the proceedings are of the year 1989, a lenient view may be taken and further proceedings be dropped. Learned Counsel for the appellant submitted that the contribution amount is paid subsequently and the same is a belated payment.

17. Considering the submissions of the learned Counsel and also in the light of the decision of the Supreme Court in the case of [ADONI COTTON MILLS LTD AND ORS. v. REGIONAL PROVIDENT FUND COMMISSIONER AND ORS.](#), 1996 SCC (L and S 201) in view of the belated payment and as the proceedings are of the year 1989, I feel that it is not a fit case to impose any sentence of imprisonment. However, the accused is sentenced to pay a fine of Rs. 50/- each in all these 3 appeals.

18. Accordingly, the appeal is allowed by setting aside the Judgment of acquittal passed by the learned JMFC, Mangalore.