PATNA HIGH COURT

State

Vs

S.P. Bhadani

Govt., Appeal No. 1 of 1956

(Kanhaiya Singh, J.)

11.04.1958

JUDGMENT

Kanhaiya Singh, J.

1. This appeal by the State of Bihar against the acquittal of the respondents raises two important points of law for decision, first, whether under Section 14A of the Employees' Provident Funds Act, 1952 (XIX of 1952), hereinafter referred to as the Act, an officer of a company can be deemed to be guilty of an offence under the Act without proof of consent, connivance or neglect on his part, and, second, whether mens rea is a necessary constituent of the offence under paragraph 76 of the Employees' Provident Funds Scheme, 1952 thereinafter referred to as the Scheme framed by the Central Government in exercise of the powers conferred upon them by Section 5 of the said Act.

2. There are three respondents in this appeal. Respondent 3 is the Gaya Cotton and Jute Mills Ltd., respondent 1, S.P. Bhadani, is the Managing Director, and respondent 2, Prafulla Kumar Panda, is the Factory Manager and Secretary of the said mills. Admittedly, the Act was made applicable to the said mills, with the result that the workers thereof were entitled to the benefit of the provident fund created under the Act. The allegations against the respondents were that they failed to remit to the fund the employer's and the employees' share of contribution from 1st April to 31st December, 1954 that they also failed to remit the administrative charges under the Act for aforesaid period and that they also failed to submit the returns prescribed under the Scheme from 1st July to 31st December, 1954. This prosecution was launched on 28-2-1955, by Mr. B.P. Singh, I.A.S., Regional Provident Fund Commissioner and also an inspector appointed under Section 13 of the Act with the previous sanction of the Central Provident Fund Commissioner who is the authority specified in this behalf by the Central Government under Sub-Section (3) of Section 14 of the Act.

3. Paragraph 29 of the scheme fixes the rate of contributions payable both by the employer and the employee under the Scheme towards the Provident Fund. Paragraph 30 makes it obligatory upon the employer to pay in the first instance both the contributions, the employers' contribution and the members, contribution and paragraph 38 empowers him to deduct the employees'

contribution from his wages before paying the member his wages in respect of any period or part of period for which contributions are payable. Paragraph 38 further provides that the employer shall pay to the Fund both the contributions aforesaid as well as administrative charges within fifteen days of the close of every month. Again, Sub-paragraph (2) of paragraph 38 lays down that the employer shall forward to the Commissioner, within fifteen days of the close of the month, a monthly consolidated statement, in such form as the Commissioner may specify, showing recoveries made from the wages of each employee and the amount contributed by the employer in respect of each such employee. Paragraph 76 prescribes penalties for contravention of the provisions.
It lays down, inter alia, that if any person fails to pay any contribution which he is liable to pay under the Scheme, or fails or refuses to submit any return, statement or other document required by the Scheme or submits a false return, statement or other document or makes a false declaration or is guilty of contravention of or non-compliance with any other requirement of the Scheme, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both. This penalty has been prescribed pursuant to the provisions of Sub-Section (2) of Section 14 of the Act. In short the accusation against the respondents was that they had contravened the provisions of paragraph 38 and thereby committed the offence under paragraph 76 read with Section 14 of the Act.

4. There is no dispute that the contributions and the administrative charges for the relevant period were not remitted by the respondents and further that the requisite returns for the relevant period were also not submitted. The competency of this prosecution was unsuccessfully challenged in the trial Court. There is now no dispute that this prosecution was started by the Inspector appointed under Section 13 of the Act with the previous sanction of the specified authority. The defence of the respondents, in short, was that the non-payment of the prescribed contributions to the provident fund and the administrative charges was due to financial stringency of the mills, and there was on their part no willful neglect of, or criminal intention to disobey, the provisions of the Scheme.

5. The learned Magistrate held that the respondents had defaulted in remitting the prescribed contributions and submitting the requisite returns. He was of the opinion, however, that mens rea was a constituent part of the offence under paragraph 76 of the Scheme and since the prosecution had failed to move that the respondents had got a guilty mind, they had incurred no penalties prescribed by the law. In this Court Mr. Baldeva Sahay appearing for the respondents took an additional ground that the offence was not established since there was no proof of consent, connivance or neglect on the part of at least respondents 1 and 2. This contention he based on the provisions of Sub-Section (2) of Section 14A of the Act. Section 14A provides as follows :

> "Offences by companies. (1) If the person committing an offence under this Act or the Scheme made thereunder 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 this Act or the Scheme thereunder 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."

The contention of Mr. Sahay is that Sub-Section (1) is subject to Sub-Section (2), and no officer of the company can be held guilty of the violation of the provision of the Scheme or the Act, unless the prosecution has established that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company. On the other hand, the learned Standing Counsel put forward the argument that Sub-Section (1) and Sub-Section (2) deal with officers of different kinds, and the requirement of the consent, connivance or neglect under Sub-Section (2) is in respect of such officers as do not come within the purview of Sub-Section (1). In my opinion, the contentions of the learned Standing Counsel are well-founded and must be accepted as correct. There is no foundation for the sweeping generalisation made by Mr. Sahay that in the absence of proof of consent, connivance or neglect no officer of the company, be he the manager or not, can be held liable for infringement of the mandatory provisions of the Scheme or the Act. On a true construction of the provisions of Sub-Section (1) and Sub-Section (2) there is no doubt that the legislature was providing for officers with varying degrees of responsibility. The defaulting company is always liable for the commission of any offence under the Act or the Scheme, and there is nothing in Section 14A to excuse the company from the penalties imposed by the law, but under Sub-Section (1) of Section 14A. apart from the company which has committed an offence under the Act and the Scheme 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, shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. All officers of the company do not come within the mischief of Sub-Section (1). The application of this Sub-Section is confined only to the officers in the immediate charge of the management of the company. If the officer concerned is not entrusted with the management of the business of the company and owes no responsibility to the company either for good or bad management, he is not covered by Sub-Section (1). If, however, where the offence under the Act or the Scheme is committed by a company, every person in charge of and responsible to the company for the conduct of its business shall be deemed to be guilty of the offence, and such officer may avoid conviction as enacted by the proviso to Sub-Section (1), namely by showing that the offence was committed without his knowledge or in spite of all due diligence exercised by him to prevent the commission of the offence. There may, however, be several other officers of the company who are not in charge of the management of the business of the company. They have different duties assigned to them. When they are not in charge of the management they cannot possibly be indicted for failure to make the necessary contributions for the simple reason that the payment of the contribution was beyond the scope of their duty. When they were not responsible for making the requisite contributions it is plain they cannot be held guilty of the contravention of the provisions of paragraph 38. They may however, be guilty if the conditions laid down in Sub-Section (2) are fulfilled. It is for such officers that Sub-Section (2) has been enacted. Where an offence has been committed by a company such officers of the company will be deemed to be liable for its commission as has consented to or connived at the commission of

the offence or its commission is attributable to any neglect on then part. It is manifest, therefore, that all the officers of the company not in direct charge of the management of the business are immune from the liability for the offence, unless they have contributed to its commission by consent, connivance or neglect. Thus Sub-Section (1) and Sub-Section (2) classify the officers of the company in two different categories and fix the degree of their responsibility for the offences. The opening words of Sub-Section (2), namely, "notwithstanding anything contained in Sub-Section (1)", emphasized by Mr. Sahay do not make Sub-Section (1) subject to Sub-Section (2). It only means that the provisions of Sub-Section (2) will have application independent of what has been laid down in Sub-Section (1). If the contentions of Mr. Sahay were correct and both the Sub-Sections apply to the officers of the company generally, it is difficult to understand why under Sub-Section (1) the legislature has particularized the officer as one responsible for the management of the business. If all officers were treated alike and none was to be deemed guilty of the offence under the Act or the Scheme unless the offence has been committed with the consent or connivance of or is attributable to any neglect on their part, then having regard to the usual legislative practice, it would have been provided more usefully in a proviso to Sub-Section (1). In my opinion, these two Sub-Sections deal with different kinds of officers. The officer of the company envisaged in Sub-Section (1) is the one who is in direct management of the affairs of the company. Wherever any offence has been committed by the company under the Act or the Scheme, such officer will also be deemed to be guilty of the offence and in his case it will not be necessary for the prosecution to prove consent, connivance or neglect on his part. Since he is in charge of the management and thus directly responsible for the remittance of the contributions to the Fund, both the company and he have been made liable under Sub-Section (1) without proof of consent, connivance or neglect on their part. The other officers covered by Sub-Section (2) cannot be deemed to be guilty of the offence committed by the company unless the prosecution further establishes that the offence was committed with the consent or connivance of such officer, be he the director, manager or secretary or any other officer of the company. Therefore, in cases falling under Sub-Section (2) the prosecution must fail, if it is not proved that the commission of the offence was due to consent, connivance or neglect of the officer concerned. Accordingly I am unable to accept as correct the contention of Mr. Sahay.

6. Next, it has been contended by Mr. Sahay that the respondents were all along willing to remit the necessary contributions to the Fund and in fact had remitted contributions in the past, but due to financial stringency of the Gaya Cotton and Jute Mills Ltd., they could not manage to make the necessary contributions. It was urged that in the circumstances there was no criminal intention on their part to violate the provisions of the Act or the Scheme. In other words, there was no mens rea on the part of the respondent. It is a well-established principle of the criminal law that ordinarily speaking a crime is not committed if the mind of the person doing the act in question be innocent; that is to say, "the intent and act must both concur to constitute the crime." As observed by the Privy Council in *Srinivas Mall v. Emperor*[1]

> "it is of the utmost importance for the protection of the liberty of the subject that the Court should always bear in mind that, unless the statute, either clearly or by necessary implication, rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind."

This is no doubt the general rule, but it is not of universal application. The question whether

criminal intent is or is not a necessary element of the offence depends upon the subject-matter of the enactment and the various circumstances that may make the one construction or the other reasonable or unreasonable. The following passages from Crawford's Statutory Construction, 1940 Ed., Section 275 at p. 555, may be usefully reproduced :

> "In the first place, the legislature has the power to define a criminal offence so that the existence of an intent to commit the offence is not necessary. Consequently, under a statute denouncing as crimes acts mala in se, a criminal intent is an essential element of the offence, but where the statute denounces as crimes acts mala prohibita, they are in the nature of police regulations, or are intended to protect the public or to promote the general welfare, a criminal intent is not a necessary clement, unless so declared by the legislature in apt words.

Although prim a facie and as a general rule there must be a mind at fault before there can be a crime, it is not an inflexible rule, and a statute may relate to such subject-matter and may be so framed as to make an act criminal whether there has been any intention to break the law or otherwise to do wrong or not. There is a large body of municipal law in the present day, which is so conceived. By-laws are constantly made regulating the width of thoroughfares, the height of buildings, the thickness of walls, and a variety of other matters necessary for the general welfare, health, or convenience, and such by-laws are enforced by the sanction of penalties, and the breach of them constitutes an offence and is a criminal matter. In such cases it would, generally speaking, be no answer to proceedings for infringement of the by-law that the person committing it had *bona fide* made an accidental miscalculation or an erroneous measurement. The acts are properly construed as imposing the penalty when the act is done, no matter how innocently, and in such a case the substance of the enactment is that a man shall take care that the statutory direction is obeyed, and that if he fails to do so he does it at his peril." It is, therefore, to be seen what was the main object of this legislation. Obviously enough, it is a social legislation designed to promote the welfare of the employees. All that the Act and the Scheme framed thereunder provide is that the employer shall make contribution at the prescribed rate to the provident fund, and the employee also will contribute an equal amount. But, in
the first instance, both these contributions have to be remitted by the employer to the Fund, the contribution payable by a particular employee to be recovered from his wages for the corresponding period. The payment of the contribution is mandatory under the Scheme, and no exception has been provided for avoidance of these payments by a company to which the Act has been made applicable. This is a mandate of the statute which has to be complied with. Where there is an unqualified mandatory direction for the doing of an act, calculated to cater for the welfare of the people the question of mens rea, in my opinion, does not arise. If that were the necessary element of the offence, it is plain that the entire scheme will be rendered nugatory and a large number of employees will be deprived of the benefit of this benevolent legislation. When the Act and the Scheme are considered together, I do not think that wherever there is a wrongful act of the sort envisaged in the Scheme or the Act, the Court must take into consideration the intention and the motive of the party in committing it. In my opinion, the offence in such cases is complete when there has been default on the part of the employer in remitting the contribution, and the absence of criminal intention is not an answer to the charge, although it may in appropriate cases be a matter for mitigation of the penalties that may be imposed. This is quite apparent from the provision of the Act itself. It is instructive to compare the provisions of Sub-

Section (1) and Sub-Section (2) of Section 14. They provide as follows :

> "(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act or under any Scheme or of enabling any other person to avoid such payment knowingly makes or caused to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."
> "(2) A Scheme framed under this Act may provide that any person who contravenes or makes default in complying with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

It will appear from the above that in order to constitute an offence under Sub-Section (1), the statement or representation must be untrue and must have been made knowingly and with the object of avoiding any payment to be made by him. Thus under Sub-Section (1) the knowledge is an essential ingredient of the offence. The statement or representation may be false, but it was not false to the knowledge of the person accused of the offence, in other words, if there was an honest and reasonable belief in the correctness of the statement or representation, even though that were false, a person will not be held guilty of the offence under Sub-Section (1) of Section 14. When Sub-Section (2) of Section 14 is read with the Scheme itself, it appears that no such condition has been laid down by the statute. On the contrary, under proviso to Sub-Section (1) of Section 14A, the onus to prove absence of knowledge has been laid on the accused. In other words it is not initially for the prosecution to prove knowledge on the part of the person committing the offence under Sub-Section (1). If, however, an offence has been committed by the company, the person in charge of and responsible to the company for the conduct of the business of the company who under Sub-Section (1) will be deemed to be guilty of the offence may successfully avoid his conviction 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. If the legislature intended that mens rea should be an essential ingredient of the offence, it must not have cast the onus on the accused to establish absence of knowledge. In other words, whenever, a company has committed an offence under the Act or the Scheme, the person in charge of and responsible to the company for the conduct of the business of the company will also be deemed to be guilty of the offence without further proof. If, however, the person so accused of the commission of the offence proves absence of knowledge on his part, he may be excused of the penalty prescribed by the law. Unless he proves absence of knowledge, he will be deemed to be guilty. Ordinarily, the mental element of most crimes is marked by one of the words, 'maliciously,' 'fraudulently,' 'negligently" or 'knowingly.' In this Act the element of knowledge in the constitution of the crime has been differently emphasised in Sub-Section (1) of Section 14 and Sub-Section (1) of Section 14A. While under the former it is for the prosecution to establish guilty knowledge, under the latter it is for the defence to prove absence of knowledge of the commission of the offence, and this one circumstance provides a surer indication that while in one case the legislation made criminal intent a part of crime, in the other it did not. This shows that, barring cases falling under Sub-Section (1) of Section 14, the legislature deliberately avoided to make criminal intent an element of the offence under the Act or the Scheme. Considering the entire Scheme and object of the Act and different provisions made therein, the

conclusion I come to is that in all cases not covered by Sub-Section (1) of Section 14, the criminal intention is not the essential element of the offences. This contention of Mr. Sahay also is without substance and must be rejected.

7. Now, applying the aforesaid principles, it is to be determined which of the respondents is guilty of the charge levelled against him. So far as respondent 3, namely, the Gaya Cotton and Jute Mills Ltd., is concerned, it is crystal clear that the company violated the mandatory provision of paragraph 38 and thereby committed an offence under paragraph 76 of the Scheme. S.P. Bhadani, respondent 1, is the Managing Director of the said mills. As a Managing Director he was certainly in charge of and was responsible to the said mills for the conduct of their business.
His case, therefore, falls under Sub-Section (1) of Section 14A, and there is no evidence on his behalf that this offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of it. Therefore, he was also guilty of the offence under paragraph 76 read with Sub-Section (1) of Section 14A of the Act.

8. I would accordingly set aside their acquittal. As regards sentence, I find that the company has accepted the responsibility and, I am told, has started making payments in instalments. Considering this circumstance and having regard to the nature of the offence and the fact that his is the first occasion for the commission of the offence and was due more to the misconception of law, I think, a sentence of fine only would meet the ends of justice in this case. I would accordingly convict them and sentence them to pay a fine of Rs. 200 each. In default of the payment of the fine, respondent I will suffer simple imprisonment for one month.

9. The case of the second respondent stands on a different footing. He is the Factory Manager. There is no evidence that as Factory Manager he was in charge of the management of the affairs of the mills concerned. Therefore, his case is covered by Sub-Section (2) of Section 14A. He cannot be held guilty of the offence unless the prosecution establishes that the offence was committed either with his consent, or with his connivance or was due to any neglect on his part. No such evidence has been adduced in this case, and it must be held, therefore, that he is not guilty of the offence. His acquittal is affirmed.

10. The appeal is accordingly allowed so far as, respondents 1 and 3 are concerned and is dismissed as regards the second respondent
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Appeal allowed in part.

Cases Referred.

[1] AIR 1947 PC 135