

**GUJARAT HIGH COURT**

**Hon'ble Judges:J.B.Pardiwala, J.**

Alembic Limited Versus State Of Gujarat

SPECIAL CRIMINAL APPLICATION No. 1426 of 2014 ; \*J.Date :- DECEMBER 11, 2014

- EMPLOYEES PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952 Section - 14(2A)
- EMPLOYEES PROVIDENT FUNDS SCHEME, 1952 Section - Scheme.27AA
- [CODE OF CRIMINAL PROCEDURE, 1973](#) Section - [468](#)

**Employees Provident Fund and Miscellaneous Provisions Act, 1952 - S. 14(2A) - Employees' Provident Fund Scheme, 1952 - Para 27AA - Code of Criminal Procedure, 1973 - S. 468 and 482 - quashing of criminal case - cognizance of complaints - time barred - complainant alleged that establishment committed breach of para 24(c) of the Scheme, 1952 - foundation of such allegation is that inspection was carried out by the Officer of the Department and auditor appointed by the establishment was continued for two consecutive years - respondent no. 2, the Employees Provident Fund Organization through the Enforcement Officer filed a private complaint - learned Magistrate order to take cognizance upon the complaint and ordered issue of process against the persons named in the complaint as accused - petitioners original accused filed petition seeking for quashing of the Criminal Case pending in the Court of the learned Chief Judicial Magistrate - held, if it is assumed that the same auditor for the Financial Year 2011-12 was appointed, still such appointment would be in the Financial Year 2011 to be precise in March, 2011 - in such circumstances also, the cognizance could not have been taken in August 2013 - it is not in dispute that no application u/s. 473 of the Cr.P.C. was filed by the complainant praying for extension of limitation in certain cases - Magistrate committed an error in taking cognizance upon the complaints, which were otherwise time barred - proceedings pending in the Court of the learned Chief Judicial Magistrate quashed - petitions allowed.**

**Imp.Para:** [ [15](#) ] [ [16](#) ] [ [17](#) ]

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2015 (2) LLJ 36 : 2015 (144) FLR 512

**JUDGMENT :-**

1 Rule returnable forthwith. Mr. Dabhi, the learned APP waives service of notice of rule for and on behalf of the respondent No.1State of Gujarat. Mr. N.K. Majmudar, the learned advocate has entered appearance on behalf of the respondent No.2 and waives service of notice of rule.

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2 Since the issue involved in all the captioned petitions is identical, those were heard analogously and are being disposed of by a common judgment and order. The Special Criminal Application No.1426 of 2014 is considered as the lead matter.

3 By this application, the petitioners original accused seek to invoke the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 praying for quashing of the Criminal Case No.37971 of 2013 pending in the Court of the learned Chief Judicial Magistrate, Vadodara.

4 It appears that the respondent no.2, the Employees Provident Fund Organization through the Enforcement Officer filed a private complaint in the Court of the learned Chief Judicial Magistrate, Vadodara of the offence punishable under Section 14(2A) of the Employees Provident Fund and Miscellaneous Provisions Act read with para 27AA of the Employees' Provident Fund Scheme, 1952. The learned Magistrate vide order dated 06.08.2013 took cognizance upon the complaint and ordered issue of process against the persons named in the complaint as accused.

5 The case of the respondent no.2 may be summarized as under:

5.1 The accused no.1 i.e. M/s. Alembic Limited is an establishment covered under the Act and was allotted code No.GJ/VD/BRD/1053 by the complainant. The form 5A under para 36A was submitted by the accused and therefore, the provisions of the Act are applicable to the establishment. The accused no.2 and 3 are the Director of the establishment and Chairman respectively. According to the complainant, the establishment committed breach of para 24(c) of the Scheme, 1952. The foundation of such allegation is that in the year 2009 to be precise on 04.12.2009 an inspection was carried out by the Officer of the Department and that point of time, it was noticed that the auditor appointed by the establishment was continued for two consecutive years. It appears from the document which is at Annexure 'N', Page 62 of the Department itself that the establishment was directed to change the auditor for accounting the account every two years.

6 Mr. K.S. Nanavati, the learned senior advocate appearing on behalf of the petitioners submitted that the criminal case deserves to be quashed on a neat question of law. According to Mr. Nanavati even if the entire case of the complainant is accepted to be true, the learned Magistrate committed an error in taking cognizance upon a time barred complaint. Mr. Nanavati has drawn my attention to Section 14(2A), which provides that such contravention is punishable with imprisonment which may extend to six months, but which shall not be less than one month and shall also be liable to fine which may extend to five thousand rupees.

7 Mr. Nanavati submits that considering the quantum of punishment provided under Section 14(2A), the cognizance ought to have been taken by the learned Magistrate within one year from the date of commission of the offence. Mr. Nanavati has placed reliance on section 468 of the Code. Mr. Nanavati has given the particulars of each of the complaint in a tabular form, the same is reproduced herein below.

<i>Sr. No.</i>	<i>Particulars</i>
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1	<p>Alembic Limited Special Criminal Application No.1426 of 2014</p> <p>Date of inspection: 03.12.2009 and 04.12.2009 (pg.62)</p> <p>Year of alleged offence:2008-2009</p> <p>Punishment of alleged offence: One month minimum</p> <p>Imprisonment upto six months and/or fine upto Rs.5000/-</p>
2	<p>Bhailal Amin General Hospital Special Criminal Application No.1543 of 2014</p> <p>Date of inspection: 22.12.2009 and 23.12.2009 (pg.43)</p> <p>Year of alleged offence: 2008-2009</p> <p>Punishment of alleged offence: One month minimum</p> <p>Imprisonment upto six months and/or fine upto Rs.5000/-</p>
3	<p>Paushak Limited Special Criminal Application No.1546 of 2014</p> <p>Date of inspection: 03.11.2010, 01.12.2010 and 06.12.2010 (pg.40)</p> <p>Year of alleged offence:2008-2009</p> <p>Punishment of alleged offence: Onemonth minimum</p> <p>Imprisonment upto six months and/or fine upto Rs.5000/-</p>
4	<p>Shreno Limited Special Criminal Application No.1547 of 2014</p> <p>Date of inspection: 10.11.2009 and 11.11.2009 (pg.42)</p> <p>Year of alleged offence:2008-2009</p> <p>Punishment of alleged offence: One month minimum</p> <p>Imprisonment upto six months and/or fine upto Rs.5000/-</p>
5	<p>Pragati Sahakari Bank Ltd. Special Criminal Application No.3017 of 2014</p> <p>Date of inspection:29.11.2010</p> <p>Year of alleged offence:2008-2009</p> <p>Punishment of alleged offence: One month minimum</p> <p>Imprisonment upto six months and/or fine upto Rs.5000/-</p>

**8** On the otherhand, these petitions are opposed by Mr. N.K. Majmudar, the learned advocate appearing on behalf of the Department. Mr. Majmudar would submit that no error not to speak any error of law could be said to have been committed by the learned Magistrate in taking cognizance upon the complaint. According to Mr. Majmudar, the contention as regard the period of limitation should fail because Section 24(c) provides that, 'not only the same auditors should not be appointed for two consecutive years and not more than two years in a block of six years.' In such circumstances referred to above, Mr. Majmudar prays there be no merit in these petitions, they be rejected.

**9** Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the complaints were time barred on the date, when, the cognizance was taken by the learned Magistrate.

**10** Before advertng to the rival contentions canvassed on either sides, I may look into the some of the relevant provisions of the Act as well as the Scheme. Para24(c) of the Scheme, 1952 reads as under:

"24(c) The same auditors should not be appointed for two consecutive years and not more than two years in a block of six years."

Para27AA of the Scheme, 1952 reads as under:

"27AA. Terms and conditions of exemption All exemptions already granted or to be granted hereafter under section 17 of the Act or under paragraph 27A of the scheme shall be subject to the terms and conditions as given in the Appendix A."

Sec.14(2A) of the E.P.F. Act, reads as under:

"Sec.14(2A) Whoever contravenes or makes default in complying with any provision of this Act or of any condition subject to which exemption was granted under section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or noncompliance, be punishable with imprisonment which may extend to [six months, but which shall not be less than one month, and shall also be liable to fine which may extend to five thousand rupees]."

Section468 of the Code reads as under:

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in subsection (2), after the expiry of the period of limitation.

(2) The period of limitation shall be

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

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(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]

**11** Section 468 of the Cr.P.C. provides that no Court shall take cognizance of an offence of the category specified in Subsection (2) after the expiry of the period of limitation. Section 468(2)(b) provides that the period of limitation shall be one year, if the offence is punishable with imprisonment for a term not exceeding one year.

**12** The averments made in the complaint as contained in Para 6 are as under:

"(6) That as per provision mentioned in the revised condition number 24(c) mentioned under Para 27AA of the Employees' Provident Fund Scheme, 1952 (herein after referred to as Scheme) stipulates "the same auditor should not be appointed for two consecutive years and not more than two years in a block of six years". But in the instant case the accused have failed to comply the above mentioned condition and hence, the accused persons are liable for prosecution under section 14(2A) of the Employees Provident Fund and Miscellaneous Act, 1952 read with para 27AA of the Employees' Provident Fund Scheme, 1952."

**13** It is fairly submitted by Mr. Majmudar, the learned advocate appearing on behalf of the Department that the complaint was filed for the contravention alleged to have been committed in the year 2009. At the same time, Mr. Majmudar made an attempt to place reliance on the averments made in the showcause notice dated 01.07.2013 issued to the petitioners wherein it has been stated as under:

"AND WHEREAS it is noticed that during the pending application for grant of exemption, M/s. Alembic Limited PF Trust has appointed M/s. V.H. Gandhi & Co. as Auditor for three consecutive Financial Years 200607 & 200708 & 200809 and again appointed same Auditor for Financial Year 201112 and violated the condition No.24(c) of the said grant of exemption mentioned in the Para 27AA of the Employees' Provident Funds Scheme, 1952."

**14** Mr. Majmudar fairly conceded that so far as the averments relating to appointment of the same auditor for the Financial Year 201112 is concerned, are not therein in the complaint.

**15** Be that as it may, let me assume for the moment that the same auditor for the Financial Year 201112 was appointed, still such appointment would be in the Financial Year 2011 to be precise in March, 2011. In such circumstances also, in my opinion, the cognizance could not have been taken in August 2013.

**16** In light of what has been observed above, I am left with no other option but to take the view that the Magistrate committed an error in taking cognizance upon the complaints, which were otherwise time barred. It is not in dispute that no application under Section 473 of the Cr.P.C. was filed by the complainant praying for extension of limitation in certain cases.

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17 In the result, these petitions are allowed. The further proceedings of Criminal Case No.37971 of 2013 pending in the Court of the learned Chief Judicial Magistrate, Vadodara are hereby ordered to be quashed. For the selfsame reason, the other complaints should also fail and consequently, the proceedings of Criminal Cases stated below, which are pending in the Court of the learned Chief Judicial Magistrate, Vadodara are hereby ordered to be quashed.

<i>Sr.No.</i>	<i>Special Criminal Application</i>	<i>Criminal Case</i>
1	SCR.A No.1543 of 2014	Criminal Case No.37972 of 2013 pending in the Court of the learned Chief Judicial Magistrate, Vadodara.
2	<a href="#">SCR.A No.1546</a> of 2014 [REDACTED]	Criminal Case No.37970 of 2013 pending in the Court of the learned Chief Judicial Magistrate, Vadodara.
3	<a href="#">SCR.A No.1547</a> of 2014	Criminal Case No.37973 of 2013 pending in the Court of the learned Chief Judicial Magistrate, Vadodara.
4	<a href="#">SCR.A No.3071</a> of 2014	Criminal Case No.25122 of 2013 pending in the Court of the learned Chief Judicial Magistrate, Vadodara.

Rule is made absolute in all cases. Direct service is permitted.

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