

20.01.2025
Samarpita/ Mithun
Sl.7
Court No.3

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Revisional Jurisdiction
Appellate Side**

CRR 10 of 2025

**Rajinder Singh Manku
Vs.
The State of West Bengal & Anr.**

Mr. Sourav Chatterjee, Sr. Adv.,
Mr. Shatadru Lahiri
Ms. Esha Acharya,
Ms. Kanchan Jaju

.... For the petitioners,

This criminal revision has been filed for quashing of the proceedings being G.R. Case No.5770 of 2024 arising out of Banarhat Police Station Case No.325/24 dated 14th November, 2024 under Sections 316(2)/316(5) of Bharatiya Nyaya Sanhita, 2023 pending before the learned Chief Judicial Magistrate, Jalpaiguri.

On a written complaint lodged by Enforcement Officer, Regional Office, Jalpaiguri, alleging that upon inspection of Provident Fund records and scrutiny of relevant records it was observed that the employees' share as detailed in Annexure-A were deducted by the employer from the wages of the employees but the employer failed to pay those contributions to the statutory fund, an FIR was initiated under Sections 316(2)/316(5) of Bharatiya Nyaya Sanhita, 2023 registered as Banarhat Police Station Case No.325 of 2024 against the petitioner and the "Banarhat tea estate".

Mr. Sourav Chatterjee, learned Senior Advocate appearing for the petitioner, at the outset, submits that the contribution pertaining to the alleged period from May, 2023 to September, 2024, has already been deposited with the concerned department after the initiation of the FIR and, as such, the proceedings for such non deposit of the contribution of the employees under the Employees Provident Fund (*In short "EPF"*) Scheme is not sustainable in the eye of law. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Adoni Cotton Mills Ltd. and Others versus Regional Provident Fund Commissioner and Others*** reported in ***1995 Supp (4) SCC 580***. He also submits that in a proceedings like the instant one, the company is the entity liable and the petitioner being a Director of Andrew Yule & Company which owns "Banarhat tea estate" cannot be held responsible. The Director of the company is not the principal employer to be roped in a proceedings for non-deposit of the contribution of the employees under the EPF Scheme. The "Banarhat tea estate" is owned by the Andrew Yule & Company limited which is not named in FIR. In support of his contention he relies on the decision of the Hon'ble Supreme Court passed in ***Employees' State Insurance Corporation versus S.K. Aggarwal & Ors.*** reported in ***(1998) 6 SCC 288*** and a decision of this Court passed in ***Rabin Pal versus State of West Bengal & Anr.*** reported in ***2008 SCC OnLine Cal 192***. In light of his aforesaid submission he prays for stay of the proceedings.

Upon perusal of the records it is found that for non deposit of the contribution of employees to the statutory fund by the employer,

FIR has been registered against the “*Banarhat tea estate*” and Rajendra Singh Manku. Annexure A (Page 21 to 37) of the petition shows that the deposit has been made of the period from May, 2023 to September, 2024 after the initiation of the proceedings. Now, whether, the instant proceeding is sustainable upon such deposit is a matter to be decided at a later stage on hearing the opposite parties.

Be that as it may, it is a fact that Andrew Yule & Company which owns the “*Banarhat tea estate*” has not been named in the F.I.R. At this stage it would be profitable to refer to the observation of Hon’ble Supreme Court in *S.K. Aggarwal (supra)* as hereunder:

“10. Therefore, even if we read the definition of “principal employer” under the Employees’ State Insurance Act, 1948 in explanation 2 to Section 405 of the Indian Penal Code, the Directors of the Company, in the present case, would not be covered by the definition of “principal employer” when the Company itself owns the factory and is also the employer of its employees at the Head Office.

11. In any event, in the absence of any express provision in the Indian Penal Code incorporating the definition of “principal employer” in Explanation 2 to Section 405, this definition cannot be held to apply to the term “employer” in Explanation 2. As the High Court has observed, the term “employer” in Explanation 2 must be understood as in ordinary parlance. In ordinary parlance, it is the company which is the employer and not its directors, either singly or collectively.”

The aforesaid decision has also been relied in *Rabin Pal (supra)* by this Hon’ble Court. Bearing in mind the aforesaid proposition this Court finds that an arguable case has been made out on behalf of the petitioner as to whether the petitioner being the Director of Andrew Yule & Company can be held liable for non-deposit of the Contribution of the employees under the EPF Scheme.

Accordingly, the Criminal Revision is admitted.

Issue notice upon the opposite parties.

Accordingly there shall be stay of all further proceedings in G.R. Case No.5770 of 2024 arising out of Banarhat Police Station Case No.325/24 dated 14th November, 2024 under Sections 316(2)/316(5) of Bharatiya Nyaya Sanhita, 2023 pending before the learned Chief Judicial Magistrate, Jalpaiguri for a period of six weeks or until further order whichever is earlier.

Parties shall be at liberty to pray for modification, variation and/or vacating of the order upon notice to the other side.

Petitioner is directed to serve a copy of this application upon the State through learned Additional Public Prosecutor, Jalpaiguri Circuit Bench and upon all the opposite parties by Speed Post with acknowledgement due, within a week and file an affidavit of service to that effect on the next date of hearing.

Let this matter appear on the next available Circuit Bench.

(Bivas Pattanayak, J.)