

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.2089 OF 2004

Mr.Taher Abdul Hussain Tambawalla

and Anr. : Petitioners.

versus

The State of Maharashtra & Anr. : Respondents.

Mr.Mohan Jaykar i/byM/s.Khaitan and Jayakar for
the petitioners.

Smt.V.R.Bhosale, APP, or State/Respondent No.1.

Mr.H.V.Mehta for the Respondent No.2.

CORAM : D.G.DESHPANDE,J.

DATED : 31st July 2006.

ORAL ORDER

1. Heard the advocates for the petitioners and respondents. This petition is filed for quashing the order of issuance of process in a complaint instituted by Respondent No.2 The

Regional Provident Fund Commissioner, Mumbai (However, it appears that the name of Respondent No.2 which is added by the petitioner is Central Provident Fund Commissioner. That should be amended today only). The counsel appearing for the petitioners states that the case is about not paying Rs.22,354/- to the Regional Provident Fund Commissioner within time, even though that amount was deducted by the petitioners' employer from the salary of the workers. He says that there is delay only and no default. Therefore, in the circumstances, the prosecution should not have been launched and if it is launched it should be quashed.

2. When questioned, Mr.Mehta, the learned counsel appearing for Respondent No.2, contended that for the delay costs should be saddled upon the petitioners payable to the Department. Mr.Mehta tendered a copy of the judgment of this Court reported in **II-1993(1) Crimes 534 (Yeshwantrao Dattaji Chowgule & ors v. State)** and fairly conceded that the present petition is covered under the aforesaid judgment.

3. In view of the statement of Mr.Mehta,

this petition is allowed in terms of prayer clause (a) subject to payment of costs of Rs.2,500/- to be deposited by the petitioner with Respondent No.2 - The Regional Provident Fund Commissioner, Mumbai within four weeks from today. The petition is disposed of accordingly.

[D.G.DESHPANDE,J]