

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**GOVERNMENT APPEAL No.1214 of 2001  
(Old No. 430 of 1987)**

Provident Fund Inspector, Dehradun

.... Appellant  
**Versus**

1. M/s Amitabh Textile Mills Ltd., Prem Nagar, Dehradun through Sri M.M. Tayal, managing Director
2. Sri M.M. Tayal, M.D./ Occupier of M/s Amitabh Textile Mills Ltd., Prem Nagar, Dehradun
3. Sri A.S. Randhawa, Factory Manger, M/s Amitabh Textile Mills, Prem Nagar, Dehradun

..... Respondents

**Dated: April 30, 2007**

**Sri Amit Bhatt, learned Additional G.A. for the State**

**HON. DHARAM VEER, J.**

This appeal has been preferred against the judgment and order dated 05.10.1981 passed by Judicial Magistrate Ist, Dehradun in Criminal Case No. 146 of 1980, State Vs. M/s Amitabh Textile Mills, Dehradun under Section 14(1A) (AB) and (B) of Employees Provident Fund & Misc. Provisions Act, 1952.

2. The prosecution story in brief is that the respondents neither deposited the amount of contribution of Provident Fund (Family Pension Fund) for its employees nor their own share for the period of December, 1977 to February, 1978 within the time prescribed i.e. within 15 days from the closure of every month. Hence, after the approval of Regional Provident Fund Commissioner, U.P. Kanpur, the complaint under Section 14 (AC) of the Provident Fund Act and as per the notification of Govt. of India issued by Labour &

Employment Department, was filed before Judicial Magistrate 1<sup>st</sup>, Dehradun.

3. The respondents have stated that the provisions of Employees Provident Fund & Misc. Provisions Act, 1952 were applicable on them. It was also stated that the disputed amount could not be deposited due to the loss in mill, strike or labourers, lock out and closure of mill due to the financial condition. The respondents have further stated that they have deposited the disputed amount but they could not deposit the same within time due to the aforesaid reasons.

4. The prosecution in order to prove its case produced P.W.1 Sri B.N. Bajpayee, Provident Fund Commissioner, who has stated that the respondents did not deposit the amount of Provident Fund for the period December, 1977 to February, 1948.

5. Thereafter, the statements of the accused persons under Section 313 of Cr.P.C. were recorded. They produced Sri Ramesh Kumar Gupta, Accountant of Amitabh Textile Mill as D.W.1 and Sri Kuldeep Dutta, Secretary, Amitabh Textile Mills as D.W.2.

6. After appreciating the evidence on record, the learned Judicial Magistrate 1<sup>st</sup>, Dehradun vide his judgment and order dated 05.10.1981 acquitted the respondents under Section 14 (1A)(AB) and (B) of Employees Provident Fund & Misc. Provisions Act, 1952. Feeling aggrieved, the appellant has come up in appeal before this Court.

7. I have heard Sri Amit Bhatt, learned Addl. G.A. for the appellant and perused the judgment passed by the Judicial Magistrate 1<sup>st</sup>, Dehradun.

8. On 15.09.2003, this Court directed for summoning the lower court record and in compliance of that order, C.J.M., Dehradun has informed that as per the report form Officer In-charge, Record Room (Criminal), District Court, Dehradun, the record of the case has been weeded out on 27.05.1982 as per rules. Learned Addl. G.A. for the state stated that the impugned order was passed on 05.10.1981 and the record of the case was weeded out on 27.5.1982, hence the period of 25 years has now been expired and now the reconstruction of the record or retrial is not possible. In a judgment rendered by Allahabad High Court in the case of *Aziz Khan Vs. State of U.P. reported in ACC 1992 (29) 223*, it was held as under:-

***“Where record has been lost or destroyed and it is not possible to reconstruct the record, it will not be just or proper to direct the retrial of the case if a long gap has elapsed since the commission of the offence.***

9. Even otherwise, after considering all the facts and circumstances of the case, I do not find any incorrectness, illegality or impropriety in the impugned judgment and order dated 05.10.1981 passed by learned Judicial Magistrate 1<sup>st</sup>, Dehradun.

10. In view of the above, the appeal is dismissed accordingly.

**(Dharam Veer, J.)**

Rajeev Dang