

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NOS. 86, 90, 91, 92, 93,
94, 95, 96, 97, 99, 100, 101 & 102 of 09.**

M/s. Pushparti Packs Ltd.
Through Director and 2 Ors. .. Petitioners

Versus

Provident Fund Inspector
(Himesh Ranjan Prakash) .. Respondent.

Mr. Suraj Naik, Advocate for the petitioners.

Mr. P. P. Singh, Advocate for the respondent .

CORAM :- U. D. SALVI, J.

DATE :- 30th November, 2009.

P.C.

1. Heard. Perused the petitions and annexures thereto. Orders permitting the production of the documents at the stage of enquiry before framing of the charges in the Criminal Cases initiated upon the complaint under Section 6(A) read with Sections 14(1A), 14(AA) and 14(A) of the Employees Provident Funds and Miscellaneous Provision Fund Act, 1952 have been challenged in the present writ petitions. The petitioners are the accused No.1 M/s.

Pushparti Packs Ltd. and its Directors- Accused No.5 -Mrs. Arti Bandodkar and the accused No.6 - Vallabh Bandodkar.

2. According to the petitioners, no document was listed or relied upon in the complaints and yet the learned Trial Court had allowed production of the documents tendered by the respondent/ complainant with the application setting out no reasons for production of such documents. The applications moved for production of the documents, the petitioners state, made no prayer for production of the said documents. It is for these reasons, the petitioners submit, the impugned orders are bad in law and deserve to be set aside.

3. Learned Advocate Suraj Naik made submissions reiterating what has been stated in the petitions. Learned Advocate Singh for the respondent submitted that the copies of the documents, which were produced as a result of permission granted by Court to produce the same, have been supplied to the petitioners and the said documents are relevant to the matter in issue disclosed in the complaint; and, therefore, no prejudice has been caused to the petitioners as a result of the impugned orders. He pointed

out from the provisions in Sections 244 and 254 of the Code of Criminal Procedure that the learned Magistrate was enjoined by law to take all such evidence as may be produced in support of the prosecution in enquiry commenced after the appearance of the accused before the Court either in the warrant triable case or summons triable case instituted otherwise than on police report and it is the relevancy of such evidence, which only matters at the stage at which the cases in question in the present petitions are.

4. Admittedly, the learned Magistrate had issued process in the cases in question and in response to such process, the accused including the present petitioners had appeared before him. Issuance of process in the said cases is not under challenge in the present petitions. With supply of copies of the documents sought to be produced, the element of surprise has been removed.

5. Perusal of the copies of the complaints reveals that the accused as the Directors including the petitioners as the persons in-charge of the accused No.1 Company are being prosecuted for their failure to pay the employees' pension funds and provident fund contributions, and sanction

for such prosecution has been granted. Learned Advocate Singh for the respondent submitted that the documents sought to be produced are not foreign to the matter in issue, but are very much connected with it. According to him form No.32 at Serial No.1 of the application is for showing who is in-charge of the respondent / accused No.1 Company. Orders dated 14.05.2001 and 16.07.2001 at Serial No.2 and 3 of the application for production of documents show how the dues of the provident funds and pension funds have been assessed. Sanction letter dated 13.09.2004 in the said application, according to the learned Advocate Singh for the prosecution, has been referred to in the complaint at para 9 thereof. As regards the show cause notice dated 11.09.2003 at serial No.4 acknowledgement letter dated 16.07.2001 at serial No.6, letter from the accused dated 30.09.2003 at serial No.7, Acknowledgement Letter dated 11.09.2003 at Serial No.8, registration certificates/ slips dated 31.12.1992 at serial No.9 of the application are the part of the correspondence between the parties in reference to the matter in issue. Merit in the submissions of learned Advocate Singh for the respondent/ complainant can very well be appreciated from the copies of the said documents now placed before the Court by the petitioners.

6. The impugned orders reveal that the parties were heard and the learned Magistrate had observed that the said documents sought to be produced were relevant and no prejudice was to occasion to any of the accused in the said cases. Sections 244 and 254 of the Code require the Magistrate to take all such evidence as may be produced in support of the prosecution in course of the enquiry undertaken by him following the production of the accused before him. Only concern the Magistrate may have is regarding relevancy of the said evidence. Learned Advocate Suraj Naik for the petitioners could not point out that any of such documents produced pursuant to the impugned orders was not relevant. No merit is, therefore, seen in the present writ petitions.

7. The writ petitions are rejected at the stage of admission with no order as to costs.

U. D. SALVI, J.

SMA