Before Aman Chaudhary, J.

DEEPINDER MANU BEDI—*Petitioner*

versus

PROVIDENT FUND INSPECTOR (ENFORCEMENT OFFICER)—*Respondent*

CRR No. 867 of 2019(O&M)

October 31, 2022

Employees' Provident Funds and Miscellaneous Provisions Act, 1952—Ss. 6, 14(1), 14(1A), 14A(1)—Petitioner convicted by Chief Judicial Magistrate for offence punishable under S.14(1A) of the Statute and sentenced to 8 months rigorous imprisonment and fine of Rs. 6000/- and in default of payment of fine to undergo RI for one month—Appeal before Additional Sessions Judge dismissed, however sentence reduced to 6 months with fine intact—present revision petition seeks reduction of quantum of sentence to less than that prescribed by Statute, by virtue of power of court under proviso to Section 14(1A) and 14(B) of the Act—grounds of protracted trial and being sole breadwinner of family—revision petition dismissed—sentence reduced to period already undergone by petitioner, subject to payment of fine.

Held, that full amount of the provident fund dues, as demanded by the Provident Fund Authorities, had already been deposited by the petitioner, as the aforesaid fact came to be noticed by the Courts below as well, while making a reference to the cross examination dated 08.08.2017 of CW1, PC Thakur, "Accused has already deposited the amount which is subject matter of present complaint. I have verified this fact from our accounts section. Now there is no dispute about the amount." The petitioner has already undergone an actual sentence of 1 month and 9 days prior to suspension of his sentence by this Court vide order dated 16.05.2019. He is 45 years old, facing the agony of protracted trial for the last 10 years. He is the sole breadwinner of his family, consisting of wife, children and a widowed mother. Considering from a wider conspectus, this Court finds it a case that warrants a lesser punishment of imposition of fine in lieu of imprisonment.

(Para 19)

Further held, that in light of the peculiarity of the facts and

circumstances of the present case and the afore referred judgments, the revision petitions are dismissed, while reducing the sentence to the period already undergone by the petitioner, subject to payment of fine.

(Para 20)

Rahul Sharma, Advocate, *for the petitioner,* in all the cases.

Sanjay Tangri, Advocate, for the respondent, in all the cases.

AMAN CHAUDHARY, J.

(1) By way of this judgment, a batch of 22 petitions shall be disposed of together, as common questions of law and facts are involved, in this *lis* between the same parties. The facts are being taken from CRR-867- 2019.

(2) Prayer in the present petition is for setting aside judgment of conviction and order of sentence dated 30.8.2017 passed by learned Chief Judicial Magistrate, Chandigarh and also the judgment dated 28.3.2019, rendered by Additional Sessions Judge, Chandigarh.

(3) Concisely, the facts are that the petitioner was incharge of an establishment of M/s Pots and Plants #530, Sector 10, Chandigarh andresponsible for its conduct of business. Therefore, he was required to depositthe Employees Provident Fund contribution in respect of the employees of the establishment every month, within 15 days of the close of the month. But despite several requests and persuasions, he did not deposit the same, on account of which, after being accorded sanction vide order dated 16.7.2012 by the Regional Provident Fund Commissioner, Punjab, a complaint dated 20.7.2012 was filed against the petitioner under Sections 6, 14(1), 14(1A) & 14A(1) of the EPFMP Act read with paras 30, 38 and 76(d) of the Employee's Provident Fund Scheme, 1952. The learned trial Court vide order dated 20.7.2012, summoned the accused-petitioner to face the trial, wherein charges were framed against him, under Sections 14A (1) read with 14(1A) and 14(1) of the EPFMP Act, to which he pleaded not guilty and claimed trial.

(4) To prove its case, complainant examined CW-1 PC Thakur, Enforcement Officer. On closing of the evidence of the complainant, a statement of the accused-petitioner was recorded under Section 313 Cr.P.C. All the incriminating material was put to the accused. He denied the allegations. In defence, he examined DW1 Abhishek Sharma, Site Head, DLF Info. City Developers, DW2 Gaurav Walia, DW3 Rajesh Kumar and DW4 Vishal Singh**.**

(5) The Chief Judicial Magistrate, Chandigarh, vide judgment dated 30.08.2017, convicted the petitioner and sentenced him to undergo rigorous imprisonment for 8 months and to pay a fine of Rs.6000/- for the offence punishable under Section 14A(1) read with Section 14(1A) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short 'the EPFMP Act') and in default of payment of fine, he was to further undergo RI for one month..

(6) Aggrieved against the aforesaid judgment/order, the petitioner had filed appeal before the learned Additional Sessions Judge, Chandigarh, which also came to be dismissed by the Additional Sessions Judge, Chandigarh vide judgment dated 28.03.2019. However, the order of sentence was modified to the extent that the period of sentence of the petitioner was reduced from 8 months to 6 months, however fine was ordered to remain intact.

(7) Hence, the present revision petitions.

(8) The learned counsel for the petitioner, at the very outset gives up the challenge to conviction and restricts his prayer in the present petitionsonly regarding the quantum of sentence. In that regard, the contention of the learned counsel would be that the petitioner, who is 45 years old, is the sole breadwinner of his family consisting of wife, children and a widowed mother. He is a first offender, having no criminal antecedents. The petitioner has been facing the agony of protracted trial for the last 10 years. He next contends that the *mens rea* to commit an offence is conspicuously missing inthe case, as the unit of the petitioner was closed on 01.05.2008, in view of which, he had admittedly, neither deducted any contribution from the employees nor was he required to do, as there was no employee working since the closure of his establishment. Learned counsel submits that be that as it may, during the pendency of the present criminal proceedings, the petitioner has already deposited an amount of Rs.6,31,421/- being the full amount of the provident fund dues, as demanded by the Provident Fund Authorities. He states that the petitioner has already undergone an actual sentence of 1 month and 9 days prior to suspension of his sentence by this Court vide order dated 16.05.2019. He therefore prays that by virtue of the proviso to Section 14(1A) and 14(1B) the EPFMP Act, this Court has the power to impose a sentence lesser than the prescribed by the Statute. To buttress his submission, the learned counsel relies upon the judgments passed in the cases of ***Provident***

Fund Inspector, Ludhiana *versus* ***Harjinder Singh Director***[1], ***HackbridgeHewitic and Easun Ltd.*** *versus* ***Provident Fund Inspector, Exempted-III-Divn. (Madras)***[2], ***Provident Fund Commissioner*** *versus* ***B.L. Dhacholia***[3] ***M.R. Joseph, Enforcement Officer, EPF*** *versus* ***John Menezes***[4], wherein it was held that in view of mitigating circumstances fine can be imposed in lieu of imprisonment.

(9) Conversely, while opposing the petition, the learned counsel for the respondent submits that the learned Courts below after appreciating every aspect of the matter have rightly convicted and sentenced the petitioner, he, thus prays for the dismissal of the present petitions.

(10) In so far as the restricted prayer of the learned counsel for the petitioner is concerned, he has argued that the Appellate Court has already considered the pleas of the petitioner with regard to reduction of a sentence and has reduced the same from 8 months to 6 months in each of the cases, which is the minimum sentence prescribed by the statute. Hence, he prayed that the sentence awarded to the petitioner should be maintained.

(11) Heard.

(12) Though the learned counsel for the petitioner has not challenged the conviction recorded by the Courts below, however, from the judgments passed by the Courts below, it is apparent that the trial Court had convicted and sentenced the petitioner based on the evidence. The Appellate Court had affirmed the said judgment of conviction keeping in view theaims and objects of the Act, while the order of sentenced was modified by reducing the same from eight months to six months, in view of the prayer made by the petitioner, on account of mitigating circumstances. This Court does not find any illegality or perversity in the impugned judgments/order passed by the Courts below.

(13) As regards the prayer made by the learned counsel for the petitioner qua the reduction in the quantum of sentence is concerned, it is at first, apposite to refer to Section 14(1A) and Section 14(1B) of the EPFMP Act, which reads thus:-

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[1] 1983 (2) R.C.R.(Crl.) 131(P&H)
[2] 1992 CriLJ 303
[3] 1985(2) LLN 447(Del)
[4] ILR 2003 (4) Kar 4525

14 Penalties. —

(1) Whoever, for the purpose of avoiding any payment to be made by himself under this Act [16] [,theScheme [17] [the [18] [Pension] Scheme or the Insurance Scheme]] or of enabling any other person to avoid such payment, knowingly makes or causes to be made any false statement or false representation shall be punishable with imprisonment for a term which may extend to [19] [one year, or with fine of five thousand rupees, or with both].

(1A) An employer who contravenes, or makes default in complying with, the provisions of section 6 or clause (a) of sub-section (3) of section 17 in so far as it relates to the payment of inspection charges, or paragraph 38 of the Scheme in so far as it relates to the payment of administrative charges, shall be punishable with imprisonment for a term which may extend to [21] [three years], but—

(a) which shall not be less than [22] [one year and fine of ten thousand rupees] in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages;

(b) which shall not be less than six months and a fine of five thousand rupees, in any other case]: [24] [***] **Provided that the court may, for any adequate andspecial reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesserterm [25]** [***].]

(1B) An employer who contravenes, or makes default in complying with, the provisions of section 6C, or clause

(a) of sub-section (3A) of section 17 in so far as it relates to the payment of inspection charges, shall be punishable with imprisonment for a term which may extend to [27] [one year] but which shall not be less than [28] [six months] and shall also be liable to fine which may extend to [29] [five thousand rupees]: **Provided that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term [25] [***].**

(14) In view of the aforesaid, it may be expedient to make a

reference to the judgments cited before this Court with regard to the prayer made.

(15) In the case of ***Harjinder Singh Director*** *(supra)*, the trial Courthad not imposed on the accused the minimum sentence prescribed under Section 14(1)(A) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, instead, the accused had been sentenced to pay a fine of Rs.1000/- by relying upon the proviso, which was upheld by the High Court. Para relevant to the present case reads thus:

> "Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment." Accordingly, this Court, while dismissing the revision petition filed by the Provident Fund Inspector, Ludhiana, held as under:
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> "5. The expression "adequate and special reasons" is often employed by the Legislature now, where it steps in to circumscribe or fetter the discretion of the Court in the matter of sentence. The Court is then left with some discretion but within the limited sphere kept open by the Legislature but the extent of the limited sphere to my mind cannot, be uniform. In every statute, in which the aforesaid expression comes to be employed, it takes colour from the scheme of the Act, the purpose which is sought to be rectified. For instance, the Prevention of Corruption Act is an Act for the more effective prevention of bribery and corruption as the preamble puts it. Similarly the Prevention of Food Adulteration Act is an Act to make provisions for prevention of adulteration in food as put by its preamble. These statutes are preventive in nature and deal with the curbing of the misdeeds of corruption and food adulteration. Parallel is the objects sought to be achieved in both the statutes, one to keep the public service, clean and the other to keep edible food clean and wholesome; both essential for a healthy society.
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> However, the Act which is presently being dealt with is an Act to provide for the institution of provident fund for employees in factories and other establishments. As its preamble goes there is nothing preventive about it. But rather there is a positive direction to fulfill timely

obligations at the pain of suffering penalties as provided in section 14 and other sections. In other words the present Act says; "do this thing", whereas the other statutes afore dealt with say "do not do this". The approach of one is positive whereas that of the other is negative. This is one of the reasons which weighs withme to come to hold the view, as it presently advises, that the expression "adequate and special reasons" in the context of the present Act may not be singular to the accused and the facts and circumstances of the case may also be not singular. Contradistinctive the words "adequate and special reasons" in the context, as it seems to me, would rest somewhere between total singularity and total generality, and of course their outcome would rest somewhere between total singularity and total generality, and of course their outcome would be special to the facts and circumstances of the case.

6. Reverting back to the facts of the present case, the Court not only took into account that the provident fund had been paid, though belatedly, but the accused had even not produced any evidence when he offered to do so and had even not contested the case on merits. In the facts and circumstances of the case a little plea bargaining emerges at its forefront. And if the Court, on the fair stand adopted by the accused opts for giving him a lenient treatment then obviously it tends to be special and adequate to the accused of the particular case. Viewed from a broad conspectus, in the context of the concept of provident fund maintenance, I do not think that the trial Magistrate in passing the sentence of fine only, in any way exceeded his jurisdiction or that there was nothing special about this case or the accused which did not warrant a lesser punishment. Thus, I hold that the order of the learned Magistrate does not require any interference in revision."

(16) In the case of ***HackbridgeHewitic and Easun Ltd.*** *(supra),* the Madras High Court has observed as under:

"Though the fact, that the obligations and liabilities for payment of the employees' provident fund contributions and other dues had been entirely discharged by the petitioners pursuant to the agreement or arrangement entered into by them with the Provident Fund Commissioner, may not by

itself exonerate them from the penal consequences flowing from the tentacles of Section 14 of the 1952 Act, yet it cannot be stated that such a circumstance cannot at all be construed as a mitigating orameliorating circumstance to be taken into consideration by the court below, in case it comes to the conclusion that the petitioners are guilty on the evidence adduced, in the matter of award of sentence. No doubt true it is that the minimum punishment provided under Section 14 of the 1952 Act in case of default in payment of employees' contribution is three months. There is also a proviso appended thereunder, giving the power to the court for special reasons to be recorded in the judgment, for imposition of sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment. There cannot be a better case than the one on hand providing for plethora of special reasons to be considered as mitigating circumstances to consider the case of the petitioners very leniently in the matter of award of punishment, in the sense of imposition of a nominal fine only in case they are found guilty."

(17) In the case of ***B.L. Dhacholia*** *(supra)*, the Delhi High Court observed as under:

"The next contention of the learned counsel for the petitioner is that the learned Additional Sessions Judge was not justified in awarding sub-minimum sentence to respondent No 1. Under section 14(1A), the contravention or the provisions of the Act including default in complying with the provisions of section 6 and paragraph 38 of the scheme shall be punishable for imprisonment for a term which may extend to six months; but it shall not be less than three months in case of default in payment of the employees' contribution which has been deducted by the employer from the employees' wages. Besides that, he can also be sentenced to fine. However, there is a proviso to the said sub-section which empowers the Court, for any adequate and special reasons to be recorded in the judgment, to imposea sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment. The learned Additional Sessions Judge has, in the instant case, given reasons for awarding a sentence of fine only. He has observed that he was proved to have been responsible for the affairs of the

company with effect from 2nd January, 1976 and not earlier. The deposit in question could have been made even on 1st January, 1976 although last date for the same was 15th January, 1976. So, in any case, it was his responsibility to check up whether the contribution towards provident fund has been duly made or not. So having regard to this special circumstance, he reduced the sentence imposed by the Trial Court to a fine of Rs 100 only in each of the two cases. I do not think that having regard to the reasons assigned by the learned Additional Sessions Judge for awarding sub-minimum sentence, any interference by this Court is called for."

(18) Similarly, the Karnataka High Court in the case of ***John Menezes*** *(supra)* held as under:

"16. Heard the learned Counsel in so far as the sentence is concerned. It is brought to the notice of the Court that subsequently the accused has paid the contribution amount and the same is a belated payment. Therefore, the learned Counsel submits that as the proceedings are of the year 1989, a lenient view may be taken and further proceedings be dropped. Learned Counsel for the appellant submitted that the contribution amount is paid subsequently and the same is a belated payment.

17. Considering the submissions of the learned Counsel and also in the light of the decision of the Supreme Court in the case of ADONI COTTON MILLS LTD AND ORS. v. REGIONAL PROVIDENTFUND COMMISSIONER AND ORS., 1996 SCC (L and S 201) in view of the belated payment and as the proceedings are of the year 1989, I feel that it is not a fit case to impose any sentence of imprisonment. However, the accused is sentenced to pay a fine of Rs.50/- each in all these 3 appeals."

(19) As has been stated by on behalf of the petitioner that incontrovertibly, an amount of Rs.6,31,421/-, being the full amount of the provident fund dues, as demanded by the Provident Fund Authorities, had already been deposited by the petitioner, as the aforesaid fact came to be noticed by the Courts below as well, while making a reference to the cross examination dated 08.08.2017 of CW1, PC Thakur, "Accused has already deposited the amount which is

subject matter of present complaint. I have verified this fact from our accounts section. Now there is no dispute about the amount." The petitioner has already undergone an actual sentence of 1 month and 9 days prior to suspension of his sentence by this Court vide order dated 16.05.2019. He is 45 years old, facing the agony of protracted trial for the last 10 years. He is the sole breadwinner of his family, consisting of wife, children and a widowed mother. Considering from a wider conspectus, this Court finds it a case that warrants a lesser punishment of imposition of fine in lieu of imprisonment.

(20) In light of the peculiarity of the facts and circumstances of the present case and the afore referred judgments, the revision petitions are dismissed, while reducing the sentence to the period already undergone by the petitioner, subject to payment of fine of Rs. 5,000/- in each of the cases to be paid to the Provident Fund Authorities, within a period of two months from the date of receipt of certified copy of this order, failing which, all these revision petitions would be deemed to have been dismissed, without any further reference to this Court.

(21) Disposed of accordingly.

(22) Photocopy of this order be placed on the files of the connected cases.

Divya Gurnay