

## **N.K. Jain And Others vs C.K.Shah And Others on 26 March, 1991**

**Equivalent citations: 1991 AIR 1289, 1991 SCR (1) 938, AIR 1991 SUPREME COURT 1289, 1991 (2) SCC 495, 1991 AIR SCW 960, 1991 LAB. I. C. 1013, 1991 (2) COM LJ 43 SC, 1991 (2) CURCRIJ 96, 1991 SCC(CRI) 328, 1991 CRILR(SC MAH GUJ) 363, (1991) 2 COM LJ 43, 1991 (2) JT 53, (1991) 2 JT 52.2 (SC), 1991 SCC (L&S) 656, (1991) 79 FJR 242, (1991) 2 GUJ LR 910, (1991) 62 FACLR 657, (1991) 2 LAB LN 443, (1991) MAD LJ(CRI) 487, (1991) 2 RECCRIR 141, (1991) 5 CORLA 335, (1991) 2 CRIMES 94, (1991) 2 CURLR 85**

**Author: S.R. Pandian**

**Bench: S.R. Pandian**

PETITIONER:

N.K. JAIN AND OTHERS

Vs.

RESPONDENT:

C.K.SHAH AND OTHERS

DATE OF JUDGMENT 26/03/1991

BENCH:

REDDY, K. JAYACHANDRA (J)

BENCH:

REDDY, K. JAYACHANDRA (J)

PANDIAN, S.R. (J)

CITATION:

1991 AIR 1289                      1991 SCR (1) 938

1991 SCC (2) 495                JT 1991 (2) 52

1991 SCALE (1) 519

ACT:

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 Employees Provident Funds Scheme, 1952: Ss. 5, 6, 14, 17, - Schedule 11 Notification dated 17.10.1957 Paragraph 76-Establishments exempted under s. 17-Employers' scheme for contribution of provident fund-Employers' failure to contribute-Whether amounts to contravention of s. 6 and attracts prosecution under s. 14 or mere cancellation of exemption under s. 17(4) s. 17(1) (a)-Exemption from operation of 1952 Scheme granted subject to certain conditions- Violation of conditions-Whether attracts s.14(2A)-Nature and Purpose of exemption explained. Ss.

17(4)-Cancellation of exemption granted under s. 17(1)-Whether amounts to 'penalty' as contemplated by expression "if no other penalty is elsewhere provided by or under this Act" occurring in s. 14(2A). Ss. 2, 2(c), 2(h), 2(1)-Expression "unless the context otherwise requires"-Scope of.-Words "contribution" "fund" "scheme"-Whether applicable to a provident fund scheme instituted by an exempted establishment.

Interpretation of Statutes: Penal statutes-Construction of- Context in which the words are used is also important-Statute must be read as a whole-Words to be interpreted to achieve legislative purpose.

Code of Criminal Procedure, 1973: Chapter XX-Trial of summons cases-Complaints for offences punishable under ss. 14(1A) and 14(2A) of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 pending-Prima facie case against the accused not ruled out-Applications for acquittal and dropping of proceedings-Maintainability of.

Words & Phrases: 'Penalty' - Meaning of.

#### HEADNOTE:

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was enacted with a view to provide for institution of provident fund for employees in factories and other establishments and was made applicable to every establishment which came within the meaning of

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'factory'. The Central Government under s. 5 of the Act, framed the Employees' Provident Fund Scheme in 1952 for establishment of provident funds for the employees of the establishments governed by the Act. Management of such establishments had to contribute to the provident fund of its employees in accordance with S. 6. Contravention or default in complying with s. 6. was punishable under s 14. Under S. 17 the appropriate government was empowered to grant exemption from the operation of the 1952 Scheme provided the concerned establishment had Instituted its own provident fund scheme and the rules in this respect were not less favourable than those specified in s. 6 and the employees were also in the enjoyment of other provident fund benefits. The Act underwent major amendments in 1971 and thereafter.

The appellants were in the management of an establishment governed by the Act. By a notification dated 17.10.1957 the Central Government granted exemption under s. 17 to, the said establishment subject to the conditions specified in Schedule II, to the notification. Condition no. 1 was to the effect that the factory was to have a provident fund scheme in force, the rules of which with respect to the rates of contribution should not be less favourable than those specified in s. 6 of the Act and the

employees should also be in the enjoyment of other provident fund benefits provided under the Act. Consequently the 1952 Scheme did not apply to the company as it created a trust and the management was making contributions of provident fund to the said trust. In September/October, 1975, the Inspector Provident Fund filed complaints that the appellants being incharge of the management of the establishment failed to pay contributions to the provident fund trust in 1974 and thereby committed offences punishable under ss. 14(1A), 14(2), 14(2A), 14A(1), 14A(2), of the Act and Paragraph 76 of the 1952 Scheme, the appellants also received notice dated 15.9.1975 threatening to cancel the exemption granted under s. 17. In September 1975 the company was closed and liquidation proceedings were initiated.

The appellant filed applications before the Metropolitan Magistrate, before whom the complaints were pending, contending that s. 6 of the Act was not applicable to establishments exempted under s. 17, and no proceedings under s. 14 could be initiated against them; and prayed for their acquittal and for dropping of the proceedings. The application were rejected.

The appellants thereupon filed revision applications which were dismissed by the Addl. Sessions Judge, holding that s. 6 covered all the establishments including the exempted one; that even an exempted

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establishment was required to make full contribution to the provident fund as provided by s. 6 and failure to pay contributions amounted to contravention of s. 6 and attracted s. 14(1A); and that since the conditions, subject to which exemption was granted under s. 17 were violated, s. 14(2A) was also attracted.

In appeal to this Court, it was contended by the appellants that since the establishment was exempted under s. 17, it was governed neither by the 1952 Scheme nor by s. 6 of the Act; that cancellation of exemption under s. 17(4) was a penalty provided by or under the Act; that if the word 'contribution' was construed strictly as defined in s. 2, failure by an exempted establishment in not paying provident fund contributions to the trust was not a contravention of s. 6; and that before the introduction of s. 17(1A) by the Amendment Act 33 of 1988 the penal provisions including s. 14(1A) and 14(2A) were not applicable to establishment exempted under s. 17.

On the questions whether: (1) for contravention of the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, criminal proceedings could be instituted under s. 14 of the Act against an establishment exempted under s. 17; and (2) failure by the establishment in question to pay the provident fund contributions to the trust attracted the prosecution or only warranted cancellation of the exemption under s. 17(4).

Disposing of the appeals, this Court,

HELD: 1.1 An exempted establishment has to provide for its employees the benefits which are in no way less favourable than those provided under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Employees' Provident Fund Scheme 1952. Under s. 17 the appropriate government may by notification and subject to such conditions as may be specified in the said notification, exempt an establishment from operation of the 1952 Scheme if it is satisfied that the establishment makes contribution to the provident fund, which can be called a provident fund scheme of its own, and the rules governing such scheme are not less favourable than those specified in s. 6. [953A-c]

1.2 Contravention or non-compliance of any of the conditions, subject to which exemption was granted under s. 17 is punishable under s. 14(2A) if no other penalty is elsewhere provided by or under the Act. The essentials of the provisions are that there should be a contravention

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or default in complying with the provisions of the Act or any of the conditions subject to which exemption was granted under s. 17; and that there should be no other penalty elsewhere provided by or under the Act for such contravention or non-compliance. [954F-G]

1.3 In the instant case, the default in making the provident fund contributions to the trust by the company amounted to contravention of the rules; and consequently condition no.1 mentioned in Schedule II to the notification dated 17.10.1957, subject to which the exemption was granted, was clearly violated. [956D-E]

2.1 In common parlance the word 'penalty' is understood to mean: a legal or official punishment such as a term of imprisonment. In some contexts it is also understood to mean some other form of punishment such as fine or forfeiture for not fulfilling a contract. But in gathering the meaning of this word, the context in which it is used is significant. [956G-H; 957A]

2.2 Section 14 of the Act dealing with penalties shows that every contravention or non-compliance mentioned in each of the sub-sections is punishable with imprisonment and/or fine; and for some offences minimum punishment is also made compulsory. The penalties mentioned in this connection would indicate that the Legislature envisaged that a penalty should necessarily mean imprisonment or at least imposition of fine. Having regard to the object underlying the Act, the expression 'penalty' in the context in which it is used in s.14 including s. 14(2A), only connotes imposition of imprisonment or fine. [957A-B]

3.1 It is true that all the penal statutes should be construed strictly and the court must see that the thing charged as an offence is within the plain meaning of the words used, but it must also be borne in mind that the

context in which the words are used is important. The legislative purpose must be noted and the statute must be read as a whole. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation and s. 14 including ss. 14(2A) and 17 are part of it: and they should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved. [963B-D]

M/S International Ore and Fertilizers (India) Pvt. Ltd. v. Employees' State Insurance Corporation, AIR 1988 SC 79, relied on.

Seaford Court Estates Ltd. v. Asher, [1949] 2 All E.R. 155, referred to.

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3.2 Taking into consideration the object underlying the Act and on reading ss. 14 and 17 In full, it becomes clear that cancellation of exemption does not amount to a penalty within the meaning of s. 14(2A). It cannot be said that mere cancellation of an exemption granted under s.17 amounts to a penalty particularly expected to be stringent as contemplated under s. 14. [963C; 957E]

State of Uttar Pradesh through the Provident Fund Inspector, U.P. v. Lala Ram Gopal Gupta and three Others, [1973] Allahabad Law journal 355, approved.

3.3. Notwithstanding the exemption granted, the appropriate government does not lose its hold over the scheme framed by the establishment, and there are built-in safeguards like s. 17(4) to protect the interests of the employees. Section 17 is a self-contained provision dealing with the power to grant exemption and the consequent obligation. The exemption is granted for getting better benefits and to ensure their continuance for the employees with a view to avoiding duplication in framing a scheme by the appropriate government on the lines as framed by the establishment itself and the purpose of the exemption is only to ensure such a scheme better than the one under s. 6. The procedural aspect of s. 17(4) provides for cancellation of such exemption by which only the privilege granted is being withdrawn by an executive order. Such a cancellation does not penalise the management and consequently does not result in any punishment that is normally allowed in respect of an offence. [960A-B; 961B-C]

Mohmedalli and Others v. Union of India and Another, [1963] Suppl. 1 SCR 993, relied on.

3.4 So far as unexempted establishments are concerned, there are several other penal provisions like ss. 14(1), 14(2) and 14AA and also in particular Paragraph 76 of the 1952 Scheme. There are other legal provisions also which apply to unexempted establishments. Therefore under the Amendment Act No. 33 of 1988 the Legislature wanted to make as far as possible these existing legal and penal provisions which are applicable to unexempted establishments, applicable also to exempted establishments. That does not mean that there were no penal provisions earlier applicable

to exempted establishments. [971E-F]

4. The subject matter and the context in which a particular word is used are of great importance and it is axiomatic that the object underlying the Act must always be kept in view in construing the con-

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text in which a particular word is used. The concept which prompted the legislature to enact this welfare law should also be borne in mind in interpreting the provisions' Due weight ought to be given to the words "unless the context otherwise requires" occurring in s. 2, which show that restricted meaning in the definitions should not be applied; and the words 'contribution', 'scheme', 'fund' occurring in the said section should in the "context" be otherwise interpreted as to apply to a private scheme also and if there is a default in "contribution" by the exempted establishment, the same amounts to contravention of s. 6 punishable under s. 14(1a). [968G-H; 969A; 970D-F]

Commissioner of Expenditure-Tax, Gujarat, Ahmedabad v. Darshan Surendra Parekh, [1968] 2 SCR 589; Bennet Coleman & Co. (P) Ltd. v. Punya Priya Das Gupta, [1970] 1 SCR 181; Organo Chemical Industries and Another v. Union of India and Others, [1979] 4 SCC 573; Kanwar Singh v. Delhi Administration, [1965] 1 SCR 7; State of Gujarat v. Chaturbhuj Maganlal and Another, [1976] 3 SCR 1076 and Vanguard Fire & Gen. Ins Co. v. Fraser & Ross, AIR 1960 SC 971, relied on.

Parekh cotton Mills (P) Ltd. v. State of Bombay, [1957] 2 LLJ 490, referred to.

5. Sections 14(1A) and 14(2A) of the Act are attracted to the facts in the instant case and it cannot be said that there is no prima facie case; and consequently the accused cannot claim acquittal even before the conclusion of the trial under Chapter XX Cr.P.C. dealing with trial of summons cases. [972G-H; 973A]

Besides ss. 14A(1) and 14A(2) of the Act, not being applicable, s. 14(2) dealing with family pension scheme and insurance scheme is not relevant in the instant case. Similarly Paragraph 76 of the 1952 Scheme is also not attracted as the establishment in question is exempted from operation of the said scheme. [953G-H; 954A; 973A]

R. v. Smith, [1862] Le & Ca 131; People ex rel Risso v. Randall, 58 N.Y. 2d 265, 268 Misc. 1057; City of Fort Wayne v. Bishop, 92 N.E. 2d 544, 547, 228 Ind. 304; City of Cincinnati v. Wright, 67 N.E. 2d 358. 361, 77 Ohio App. 261; R. v. Clyne, ex p. Harrap (1941) VLR 200 at 201; Tolaram v. State of Bombay, AIR 1954 SC 496; S.K. Gupta and Another v. K.P. Jain and Another, [1979] 3 SCC 54; State Bank of India etc. v. Yogendra Kumar Srivastava and Others etc. [1987] 3 SCC 10; Knightbridge Estates Trust Ltd. v. Byrne and Others, [1940] 2 All

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E.R. 401 and National Buildings Construction Corporation v.

Pritam Singh Gill and Others, [1973] 1 SCR 40, referred to.

Collins English Dictionary, Butterworths' Words and Phrases, Legally defined 3rd Edn. page 345, Principles of Statutory Interpretation by G.P. Singh Fourth Edition, 1988, referred to.

**JUDGMENT:**

**CRIMINAL APPELLATE JURISDICTION:** Criminal Appeal No.647-48 of 1979.

From the Judgment and Order dated the 9.3.1979 of the Additional Sessions Judge, Ahmedabad in Crl. Revision Application Nos. 356 & 357 of 1978.

P. Chidambram, A.T. Patra, S.R. Aggarwal Ms. Monika Mohil and Ms.Bina Gupta for the Appellants.

S.K. Dholakia, and Anip Sachthey for the Respondents. The Judgment of the Court was delivered by K.JAYACHANDRA REDDY, J. The question of general importance that arises in these three appeals is whether criminal proceedings can be instituted under Section 14 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ('Act' for short) against an establishment exempted under Section 17 of the Act for the contravention of the provisions of Section 6 of the Act?

The appellants, who are common in each of these three appeals, were connected with the management of M/S Shri Subhlaxmi Mills Ltd. (hereinafter referred to as the "said Company") an establishment governed by the Act. By a Notification dated 17th October, 1957 the Central Government in exercise of the powers under Section 17 of the Act granted exemption to the said Company subject to the conditions specified in Schedule 2 annexed to the said Notification. As a result of the said exemption the provisions of the employees' Provident Fund Scheme 1952 framed under Section 5 of the Act did not apply to the said Company which created a Trust and the management made contributions of provident fund to the said trust and admittedly the exemption continued to be in operation at all material times. In or about September/October, 1975 the Inspector of Provident Fund filed criminal complaints in the Court of the Judicial Magistrate Cambay against the appellant on the allegation that they being incharge of the management failed to pay the contributions to the provident fund trust and thereby committed offences punishable under Sections 14(1A), 14(2), 14(2A), 14A(1), 14A(2) and Paragraph 76 of the Employees' Provident Fund Scheme, 1952. The appellants also received notice dated 15th September, 1975 from the Inspector threatening to cancel the exemption granted under Section 17 of the Act. However, some time in September, 1975 the said Company's Mill had to be closed down and liquidation proceedings were initiated. The criminal complaints pursuant to an order of the High Court were transferred to the Court of the Second Metropolitan Magistrate, Ahmedabad. The respondent No. 1, the complainant was examined who in his evidence admitted that the Government of India had exempted the said Company under Section 17 of the Act and the same had not been subsequently canceled and was in existence at all material times. The appellants filed an application praying that the proceedings against them should be dropped and they should be acquitted on the ground that Section 6 of the Act was not applicable to the establishment exempted under Section 17 of the Act and therefore no

proceedings under Section 14 can be initiated against them. The learned Metropolitan Magistrate by his order dated 28th November, 1978 rejected the aforesaid application. Being aggrieved they filed three criminal revision applications in the Court of the Additional Sessions Judge, Ahmedabad who by a common order dismissed the same taking the view that Section 6 of the Act covers and attracts all the establishments including the exempted establishment. Against that order in those three revision applications, the present appeals have been filed.

Shri P. Chidambram, learned counsel for the appellants, submitted that none of the Sections of the Act mentioned in the complaints can be applied as against the appellants since the establishment in question is exempted under Section 17 of the Act and consequently is not governed by the 1952 Scheme nor by Section 6 of the Act. According to the learned counsel, the Act does not provide for prosecution in respect of any of the offences enumerated under Section 14 in case of breach by an exempted establishment in not paying the provident fund contributions to the trust and therefore no prosecution can be launched and that if at all the management of the establishment had not deposited the provident fund contributions with the trust, the Government was empowered only to cancel the exemption which also amounts to a penalty.

The learned counsel appearing on both sides addressed elaborate arguments and referred to various provisions of the Act and Employees' Provident Fund Scheme 1952 and also took us through several citations and also some passages in various text-books.

Before we proceed to consider the same, we must note some undisputed facts. The establishment in question was governed by the provisions of the Act and it was exempted under Section 17 of the Act and it had its own trust in respect of the provident fund contributions but failed to pay the provident fund contributions to the trust for some period during 1974 and thus there was a default. The controversy therefore is whether such failure attracts the prosecution or only warrants the cancellation of the exemption granted.

This Act (No. 19 of 1952) was enacted to provide for institution of provident fund for employees in factories and other establishments and is made applicable to every establishment which comes within the meaning of 'factory'. The Act underwent major amendments by Act No. 16 of 1971 and also by some amendments thereafter. We are mainly concerned with the provisions of the Act that were in force at the relevant time i.e. in 1974. Section 2 contains various definitions and commences with the words "In this Act, unless the context otherwise requires," and thereafter the definitions are enumerated. "Contribution" is defined in Section 2(c) which means a contribution payable in respect of a member under the Scheme. The words "Contribution", "employer", "employee", "factory", "fund" and "scheme" are defined in Sections 2(c), 2(e), 2(f), 2(g), 2(h) and 2(i) respectively. They read as under:

2. In this Act, unless the context otherwise requires, "2(c). "contribution" means a contribution payable in respect of a member under a Scheme (or the contribution payable in respect of an employee to whom the Insurance Scheme applies);"

"2(e) "employer" means-



(i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-

section (1) of Section 8 of the Factories Act, 1948, the named; and; person so

(ii) in relation to any other establishment, the person who, or the authority which, has the ultimate control over the affairs of the establishment and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;

"2(f) "employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment;"

"2(g) "factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power;"

"2(h) "fund" means the provident fund established under a Scheme-,"

"2(1) "scheme" means the Employees' Provident Fund Scheme framed under Section 5;"

Section 5 provides for framing a scheme which is in the following terms:

"5(1) The Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees and specify the establishments or class of establishments to which the said scheme shall apply and there shall be established, as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of this Act and the Scheme.

xx xx xx We may mention here that the Employees' Provident Fund Scheme 1952 was duly framed as provided under Section 5 and the relevant provisions of the Scheme shall be referred to at the appro-

priate stages. Section 6 is an important provision which deals with the contribution and allied matters and reads thus:

"6. The contribution which shall be paid by the employer to the Fund shall be six and a quarter per cent of the basic wages, dearness allowance and retaining allowance (if

any) for the time being payable to each of the employees (whether employed by him directly or by or through a contractor), and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires and if the Scheme makes provision therefor, be an amount not exceeding eight and one third per cent, of his basic wages, dearness allowance and retaining allowance (if any);

Provided that in its application to any establishment or class of establishments which the Central Government, after making such enquiry as it deems fit, may by notification in the Official Gazette specify this section shall be subject to the modification that for the words "six and a quarter per cent," the words "eight per cent" shall be substituted:

Provided further that where the amount of any contribution payable under this Act involves a fraction of a rupee, the Scheme may provide for the rounding off of such fraction to the nearest rupee, half of a rupee or quarter of a rupee. Explanation 1 For the purposes of this section, dearness allowance shall be deemed to include also the cash value of any food concession allowed to the employee.

Explanation 2 For the purposes of this section, "retaining allowance" means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining his services.

The next important Section is Section 14 which deals with penalties. For the purposes of the present case it would be enough if we extract the relevant provisions of Section 14 as mentioned in the complaints.

Penalties:

14(IA) 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 six months but-

(a) which 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;

(b) which shall not be less than one month, in any other case; and shall also be liable to fine which may extend to two thousand rupee;

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;"

" 14(2) Subject to the provisions of this Act, the Scheme (,the Family Pension Scheme or the Insurance Scheme) may provide that any person who contravenes, or makes default in complying,with, any of the provisions thereof shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

14(2A) Whoever contravenes or makes default in complying with any provisions of this Act or of any condition subject to which exemption was granted under Section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

14A(l) If the person committing an offence under this Act, the Scheme (the Family Pension Scheme or the Insurance Scheme) is a company, every person, who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub- section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

"14A(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act, the Scheme or the Family Pension Scheme or the Insurance Scheme has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purposes of this Section,-

(a) "company" means any body corporate and includes a firm and other association of individuals; and

(b) "director" in relation to a firm, means a partner in the firm,"

The next important Section to be noted is Section 17(1) ('a) which empowers the Government to grant exemption which is in the following terms:

"17(1) The appropriate Government may, by notification in the Official Gazette and subject to such conditions as may be specified in the notification, exempt from the operation of all or any of the provisions of any Scheme-

(a) any establishment to which this Act applies if, in the opinion of the appropriate Government.

the rules of its provident fund with respect to the rates of contribution are not less favourable than those specified in Section 6 and the employees are also in enjoyment of other provident fund benefits which on the whole are not less favourable to the employees than the benefits provided under this Act or any Scheme In relation to the employees in any other establishment of a similar character; or xx xx xx Section 17(4) provides for cancellation of such an exemption if any employer fails to comply with the conditions. The relevant provision 17(14) (a) reads thus:

" 17(4) Any exemption granted under this section may be cancelled by the authority which granted it, by order in writing, if an employer fails to comply,-

(a) in the case of an exemption granted under sub-

section (1), with any of the conditions imposed under that sub-section or with any of the provisions of sub-section xx xx xx xx xx xx Section 17(5) deals with transfer of provident fund so far contributed after such cancellation and it reads as under:

17(5) Where any exemption granted under sub- section (1), sub-section (IA), sub-section (2), sub-section (2A) or sub-section (2B) is cancelled, the amount of accumulations to the credit of every employee to whom such exemption applies, in the provident fund, the family pension fund or the insurance fund of the establishment in which he is employed shall be transferred within such time and in such manner as may be specified in the Scheme or the Family Pension Scheme or the insurance Scheme to the Credit of his account in the Fund or the Family Pension Fund or the Insurance Fund, as the case may be."

The only other provision to be noted before we proceed further is paragraph 76 of the 1952 Scheme the contravention of which is also mentioned in the complaints. It reads thus:

"76. Punishment for failure to pay contributions etc.-If any person-

(a) deducts or attempts to deduct from the wages or other remuneration of a member the whole or any part of the employer's contribution, or

(b) fails or refuses to submit any return, statement or other document required by this Scheme or submit a false return, statement or other document, or makes a false declaration, or

(c) obstructs any Inspector or other official appointed under the Act or this Scheme in the discharge of his duties or fails to produce any record for inspection by such Inspector or other official, or

(d) is guilty of contravention of or non-

compliance with any other requirement of this Scheme, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both. On a perusal of the above extracted provisions of the Act the following aspects to the extent relevant to the present case can be spelt out. The Management of an establishment has to contribute to the provident fund and the Government under Section 5 can frame a scheme called Employees' Provident Fund Scheme and such a scheme was framed in the year 1952. The scheme provides for the establishment of provident fund under the Act for employees of the establishments specified therein. Section 6 is the material provision and deals with contributions which may be provided under the Scheme and also prescribes the rate of contribution to the fund and that the employees' contribution should be equal to the contribution payable by the employer. Section 14 deals with the penalties and section 14(1A) lays down that an employer who contravenes, or makes default in complying with the provisions of Section 6 shall be punishable with imprisonment for a term which may extend to six months but 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. But for adequate reasons it can be less. Paragraph 76 of the Scheme also provides for punishment for failure to pay such contributions to the fund. Then we have Section 17 which provides for the exemption. As per the said Section the appropriate Government may be notification and subject to such conditions, as may be specified in the notification, exempt from the operation of all or any of the provisions of any Scheme (in the present case 1952 scheme) if the appropriate Government is satisfied that the rules of the provident fund which a particular establishment is following in the matter of contribution to the provident fund are not less favourable than those specified in Section 6 and that the employees are also in enjoyment of other provident fund benefits. In other words the exemption from the operation of the scheme is granted provided the particular establishment makes contribution as per its own rules governing the contribution to the fund, which in other words, can be called a provident fund scheme of its own are not less favourable than those specified in Section 6. Accordingly the exempted establishment has to provide for its employees the benefits which are in no way less favourable than the ones provided under the Act and the Scheme.

Now the question is whether failure to make the contribution by the exempted establishment to the provident fund as per its own rules could attract the penal provisions of Section 14? The learned Additional Sessions Judge, however, as hereinbefore mentioned, held that Section 6 covers and attracts all be establishments including the exempted establishment. Even otherwise according to him, Section 14(2A) which applies to an exempted establishment is clearly attracted inasmuch as the conditions subject to which exemption was granted under Section 17 have been violated in the instant case. The learned Additional Sessions Judge also gave a finding that Section 14(1A) also is attracted as in his view even an exempted establishment is not absolved from the liability of employer's contribution as also the employees' contribution to the provident fund and therefore by necessary implication the employer and the employees of an exempted establishment have to make

full contribution to the provident fund as required under Section 6 of the Act, and if its contribution remains unpaid it amounts to contravention of the provisions of Section 6 of the Act the thus attracts Section 14(1A).

We may point out at this stage that Section 14(2) and paragraph 76 of the Scheme are not attracted in the present case. So far as Section 14(2) is concerned it can be seen that the provision deals with the family pension scheme or the insurance scheme etc. We are not concerned, in the present case, with any such scheme. We are only concerned with the provident fund as defined under Section 2(h) of the Act. Similarly paragraph 76 of the 1952 Scheme also is not attracted because the establishment herein is admittedly exempted from the operation of the scheme. We may also mention here that similarly Sections 14A(1), 14A(2) and 14AA which are also mentioned in the complaints also are not attracted. Shri S.K. Dolakia, learned counsel appearing for the respondents, could not dispute the same. Then we are left with Sections 14(1A) and 14(2A). While it was the submission of Mr. Chidambaram, learned counsel for the appellants that even these two provisions are also not attracted, Shri Dholakia, on the other hand, submitted that both the provisions are attracted and at any rate Section 14(2A) is clearly attracted and therefore no interference is called for in these appeals.

We shall first take up the submissions in respect of Section 14(2A). This Section lays down that whoever contravenes or makes default in complying with any provisions of the Act or of any condition subject to which exemption was granted under Section 17 shall, if no other penalty is elsewhere provided by or under this Act for such contravention or non-compliance, be punishable with imprisonment and also fine mentioned therein. Firstly, it is submitted that the only contravention alleged against the appellants is that no contribution was made to the provident fund and since it is an exempted establishment, Section 6 is not attracted and therefore it must be held that there is no contravention or non-compliance of any of the provisions of the Act. In other words, the submission is that Section 6 of the Act applies only to the non-exempted establishments and covered under the statutory exemption. The learned Additional Sessions Judge, however, as already noted, has held that Section 6 applies to both exempted and non-exempted establishments. This aspect we will consider at a later stage while examining the applicability of Section 14(1A). So far Section 14(2A) is concerned, the later part of it specifically is made applicable to the exempted establishments and if there is contravention of any of the conditions subject to which exemption was granted under Section 17 and if no other penalty is elsewhere provided by or under the Act then such contravention or non-compliance is punishable. The essentials of these provisions are; (i) there should be a contravention or default in complying with the provisions of the Act, or (ii) there should be a contravention or default in complying with any of the conditions subject to which exemption was granted under Section 17, and (iii) there should be no other penalty elsewhere provided by or under the Act for such contravention or non-compliance. Only when these essentials are satisfied, the Section is attracted. The learned counsel for the appellants submitted that in the present case there is no such contra-

vention or non-compliance of any of the conditions subject to which exemption was granted. His further submission in this context is that the cancellation of an exemption as provided under Section 17(4) is a penalty provided by or under the Act for such contravention and therefore Section 14(2A)

is not attracted. To appreciate these contentions it becomes necessary to refer to the conditions subject to which the exemption under Section 17 was granted in the present case. The relevant conditions for our purposes are Conditions Nos. 1, 2(a),(b), 10 and 15 and they read as under:

"SCHEDULE-II (Conditions)

1. Every factory shall have a provident fund scheme in force the rules of which with respect to the rates of contribution shall not be less favourable than those specified in Section 6 of the Act and the employees shall also be in enjoyment of other provident fund benefits which on the whole shall not be less favourable to the employees than the benefits provided under the Act or any Scheme in relation to the employees in any other factory of a similar character and these rules shall be followed in all respects.

2. The employer in relation to each factory (hereinafter referred to as the 'employer') shall within three months of the date of publication of this notification, amend the constitution of the Provident Fund maintained in respect of the factory in regard to the following matters namely:

(a) The Provident Fund shall vest in a Board of Trustees and there shall be a valid instrument in writing which adequately safeguards the interests of the employees and such instruments shall be duly registered under Section 5 of the Indian Trusts Act, 1882;

(b) the Board of Trustees shall consist of an equal number of representatives of the employees and the employer and all questions before the Board shall be decided by a majority of votes;

xx xx xx

10. The employer shall accept the past provident fund accumulations or an exempted fund and who obtains employment in his factory. Such an employee shall immediately be admitted as a member of the factory's Provident Fund. His accumulations which shall be transferred within 3 months of his joining the factory shall be credited to his account.

xx xx xx

15. Exemption granted by this notification is liable to be withdrawn by the Central Provident Fund Commissioner for breach of any of the aforesaid conditions or for any other sufficient cause which may be considered appropriate.

As per condition No. 1 the exempted factory should have a provident fund scheme in force the rules of which with respect to the rates of contribution shall not be less favourable than those specified in Section 6. This part of the condition is in conformity with the requirement under Section 17(1). The

condition proceeds to lay down that these rules shall be followed in all respects. There is no dispute that as per the rules governing the provident fund scheme of the exempted establishment in question, the contributions have to be made regularly and condition No. 1 lays down that these rules should be followed in all respects. The default in making the contribution amounts to contravention of the rules and consequently the condition No. 1, subject to which the exemption was granted, is clearly violated. That there was a violation of this condition is also made clear by the notice issued by the Regional Provident Fund Commissioner on 15.9.75. The relevant portion of the notice reads thus:

"And thus it has violated the conditions governing grant of exemption for contravention of which the offenders are liable for the cancellation of the exemption granted under Section 17 of the Employees' Provident Fund Act, 1952."

We are therefore satisfied that some of the conditions subject to which the exemption was granted have been violated. So this part of Section 14(2A) is satisfied. Now we shall see whether the cancellation under Section 17(4) is a penalty provided by or under the Act.

In the common parlance the word 'penalty' is understood to mean; a legal or official punishment such as a term of imprisonment. In some contexts it is also understood to mean some other form of punishment such as fine or forfeiture for not fulfilling a contract. But in gathering the meaning of this word, the context in which this is used is significant. In the Act, as already noted, Section 14 deals with penalties and enumerates various contraventions or non-compliances which are punishable with imprisonment. Every contravention mentioned in each of the sub-sections is punishable with imprisonment and for offences covered by Sections 14(1A), 14(1B) and 14(2A) minimum imprisonment is also made compulsory. The imposition of fine also is prescribed. The penalties mentioned in this connection would indicate that the Legislature envisaged that a penalty should necessarily mean imprisonment or atleast imposition of fine. We find from the reports that the National Commission of Labour having found that the working of the Employees' Provident Fund and Family Pension Fund Act, 1952 are not effective and that in order to check the growth of arrears penalties for defaults in payment of provident fund dues should be made more stringent and the default should be made cognizable. Accordingly it was proposed to amend the Act so as to render penal provisions more stringent and to make defaults cognizable offences and provisions were also made for compulsory imprisonment in case of non-payment of contributions and administrative and inspection charges. The provisions of the Act thereafter are suitably amended. We must bear this object and reasons in mind in examining whether a mere cancellation of the exemption granted under Section 17(4) would amount to a penalty. No doubt under Section 14(2A) one of the requirements is that "there should be no other penalty elsewhere provided by or under the Act for such contravention or non-compliance," but we are not persuaded to hold that the mere cancellation of an exemption amounts to a penalty particularly expected to be stringent as contemplated under Section 14. However, we shall proceed to consider some of the submissions made on this aspect. The learned counsel referred to certain standard books on words and phrases. In Butterworths' Words and Phrases, legally defined Third Edition page 343 the meaning of the word 'Penalty' is given as that the word 'penalty' is large enough to mean, is intended to mean, and does mean, any punishment whether by imprisonment or otherwise. Blackburn, J. in R. v. Smith, [ 1862] Le & Ca 131



at 138, observed as under:

"I consider that the word "penalty" falls to be read in a wide popular sense, . . . and I select two definitions adequately conveying that sense. The late Mr. Robertson Christie The Encyclopedia, Vol. I 1, p 204) said: "Penalty in the broad sense may be defined as any suffering in person or property by way of forfeiture, deprivation or disability, imposed as a punishment by law or judicial authority in respect of ... an act prohibited by statute." The Oxford Dictionary echoes the same wide conception by referring to "a loss, disability or disadvantage of some kind ... fixed by law for some offence.

The meaning of the word 'penalty' as given in the Collins English Dictionary, is as under:

"Penalty: 1. a legal or official punishment, such as a term of imprisonment. 2. some other form of punishment, such as a fine or forfeit for not fulfilling a contract. 3. loss, suffering, or other unfortunate result of one's own action, error, etc. 4. Sport, games etc. a handicap awarded against a player or team for illegal play, such as a free shot at goal by the opposing team, loss of points, etc. "

In addition, the learned counsel also relied on some decisions of foreign courts where the meaning of the word 'penalty' was considered. In *People ex rel Risso v. Randall*, 58 N.Y. 2d 265, 268 Misc.1057, it was held that:

"A "penalty" may refer to both criminal and civil liability, being denied as penal retribution, punishment for crime of offense, the suffering in person, rights or property which is annexed by law or judicial decision to commission of a crime or public offense. "

In *City of Fort Wayne v. Bishop*, 92 N.E. 2d 544, 547, 228 Ind. 304, it was observed as under:

"The term "penalty" embraces all consequences visited by law on heads of those who violate police regulations and extends to all penalties whether exigible by state in interest of community or by private persons in their own interest, even when statute is remedial as well as penal."

In *City of Cincinnati v. Wright*, 67 N.E.2d 358, 361, 77 Ohio App.261, it was noted that:

"The word "penalty" is not confined to punishment or crime; it has a broader meaning in law of contracts; it is used as contradistinguished from liquidated damages. It is also used to indicate the sum to be forfeited on breach of a bond. And in common parlance it expresses any disadvantage resulting from an act. The learned counsel relying on the above meanings given to the word 'penalty' submitted that a cancellation in other words a forfeiture of the right given amounts to punishment. It

is also his submission that this is a penalty provided by or under the Act inasmuch as such a cancellation is contemplated under Section 17(4) and that the word "under"

cannot but be understood to mean that it covers the cancellation of the exemption also provided under Section 17(4). In this context he relied on the meaning of the word "under" as given in Butterworths' Words and Phrases, legally defined. Third edition page 345:, which reads thus:

"In one sense every act of a body which is the creature of statute may be said to be done "under"

or by virtue of the statute creating it."

The author has extracted the observations made by O' Bryan, J. in R. D v. Clyne, ex p Harrap ( 194 1) VLR 200 at 20 1, as under:

"In another sense the acts of such a body may be said to be done .under" or by virtue of some provision granting a general jurisdiction to act in relation to a variety of matters. But the expression is also quite commonly used in relation to a particular act, when the general jurisdiction to act is assumed, to designate the more particular power to do that particular act. It is rash to attempt to substitute a different expression for the more simple and usual one used, but in this connection "under" is perhaps more aptly translated by the expression "pursuant to"

than by the phrase "by virtue of." It is necessary to have regard to the context to determine in which sense the word is used."

(emphasis supplied) It therefore cannot be gainsaid that the context in which these words are used is significant. At this juncture we may also note that the scheme or rules framed by a company in respect of the provident fund of the employees are meant to be duly complied with. The exemption under- Section 17 is incorporated in the Act for getting better benefits for the employees and the same is granted with a view to avoiding duplication that is to say for framing a scheme by the appropriate Government on the lines as framed by the establishment itself and such an exemption is meant to ensure to the employees the continuance of the benefits and the purpose of the exemption is only to ensure such a scheme better than the one under Section 6 of the Act. It must also be noted that notwithstanding the exemption granted under Section 17 of the Act the appropriate Government does not lose its hold over the scheme framed by the establishment and there are built-in safeguards in Section 17 itself to protect the interests of the employees and Section 17(14) is one such safeguards. In Mohmedalli and Others v. Union of India and another, [1963] Suppl. I SCR 993; it is held that:

"It would appear from the terms of the relevant portion of s. 17 that the exemption to be granted by the appropriate Government is not in the nature of completely absolving the establishments from all liability to provide the facilities contemplated by the Act. The exemptions are to be granted by the appropriate Government only if

in its opinion the exempted establishment has provisions made for provident fund, in terms at least equal, if not more favourable, to its employees. In other words the exemption is with a view to avoiding duplication and permitting the employees concerned the benefit of the preexisting scheme, which presumably has been working satisfactorily, so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which at least is not in terms less favourable to them. As the whole scheme of provident fund is intended for the benefit of employees, s. 17 only saves pre existing schemes of provident fund pertaining to particular establishments. "

(emphasis supplied) Having examined the scope of Section 14(2A) in this background, we find it difficult to agree with the learned counsel that the cancellation of the exemption granted under Section 17(4) amounts to a penalty under Act within the meaning of Section 14(12A).

We may also note that Section 14(2A) was introduced in the year 1953 by Act No. 37 of 1953 whereas sub-section 4 of Section 17 was introduced in the year 1963 by the amendment Act No. 28 of 1963, nearly ten years later. This only shows that the cancellation is not meant to be treated as one of the penalties and the reasonable inference is, particularly having regard to the object underlying the Act, that the expression 'penalty' in the context in which it is used particu-

larly in Section 14 including Section 14(2A) only connotes imposition of imprisonment or fine. The cancellation as provided under Section 17(4) is only consequential and also rather procedural meant to be applied to the exemption granted under Section 17(1) in case of noncompliance of the conditions subject to which such exemption was granted. A close perusal of Section 17 and its various sub-sections would clearly indicate that it is a self-contained provision dealing with the power to grant exemption and the consequent obligations and the procedural aspects and Section 17(4) is a built-in provision providing for cancellation of such exemption in case of contravention or noncompliance of the conditions. By a cancellation of the exemption only the privilege granted is being withdrawn by an executive order. Suffice it to say that such a cancellation does not penalise the management and consequently does not result in any punishment that is normally awarded in respect of an offence. In State of Uttar Pradesh through the Provident Fund Inspector, U.P. v. Lala Ram Gopal Gupta and three Others, [1973] Allahabad Law Journal 355 a Division Bench considered this very question and held that the cancellation of exemption in accordance with Section 17(4)(a) does not involve imposition of a penalty within the meaning of Section 14(12A) of the Act. In our view the Division Bench of the Allahabad High Court rightly held that cancellation under Section 17(4)(a) is not an alternative penalty for failure to comply with the conditions subject to which the exemption was granted and if the Parliament had contemplated that the cancellation of the exemption amounted to penalty within the meaning of Section 14(2A) it was purposeless to provide for any similar penalty under Section 14(2A). It is thus clear that if the contention of the learned counsel is to be accepted then Section 14(2A) would become otiose and redundant.

The learned counsel submitted that these being penal provisions should be interpreted strictly and if so interpreted the cancellation of exemption under Section 17(4) cannot but be a penalty under the Act. The learned author Justice G.P. Singh in his book Principles of Statutory Interpretation Fourth

Edition 1988, has stated the general principles regarding the construction of penal statutes as follows:

"Clear language is now needed to create a crime ..... If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction and if there are two reasonable constructions we must give the more lenient one."

In *Tolaram v. State of Bombay*, AIR 1954 SC 496. Mahajan, C.J. observed as under:

"If two possible and reasonable constructions can be put upon a penal provision, the court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty. It is not competent to the court to stretch the meaning of an expression used by the legislature in order to carry out the intention of the legislature. "

The learned author Justice G.P. Singh after extracting the principles laid down by the Supreme Court as well as by the English courts summed up the principles in the following manner:

"The content of the rule and its limits, in the sense now understood, may be summed up in the following propositions:

(1) If the prohibitory words in their known signification cover only some class of persons or some well-defined activity, their import cannot be extended to cover other persons or other activity on considerations of policy or object of the statute.

(2) If the prohibitory words are reasonably capable of having a wider as also a narrower meaning and if there is no clear indication in the statute or in its policy or object that the words were used in the wider sense, they would be given the narrower meaning.

(3) When the prohibitory words are equally open to two constructions, one of which covers the subject and the other does not, the benefit of construction will be given to the subject. (4) If the prohibitory words in their known signification bear a wider meaning which also fits in with the object or policy of the statute, the words will receive that wider meaning and their import will not be restricted even if in some other context they can bear a narrower meaning. (5) If the literal reading of the prohibitory words produces an unintelligible or non-sensual result. but the statute read as a whole gives out its meaning clearly, effect will be given to that meaning by curing a mere defect in phraseology.

Relying on the aforesaid principles governing the construction of the penal statute Shri P. Chidambram, learned counsel for the appellants submitted that the provisions of Section 14(2A) and Section 17(4) should reasonably be construed and if so construed Section 14(2A) becomes

inapplicable to the facts of the case on hand. It is true that all the penal statutes should be construed strictly and the court must see that the thing charged as an offence is within the plain meaning of the words used but it must also be borne in mind that the context in which the words are used is important. The legislative purpose must be noted and the statute must be read as a whole. In our view taking into consideration the object underlying the Act and on reading Sections 14 and 17 in full, it becomes clear that cancellation of the exemption granted does not amount to a penalty within the meaning of Section 14(2A). As already noted these provisions which form part of the Act, which is a welfare legislation are meant to ensure the employees the continuance of the benefits of the provident fund. They should be interpreted in such a way so that the purpose of the legislation is allowed to be achieved (vide M/s International Ore and Fertilizers (India) Pvt. Ltd. v.

Employees' State Insurance Corporation, AIR 1988 SC

79. In *Seaford Court Estates Ltd. v. Asher*, [ 1949] 2 All E R 155, Lord Denning, L.J. observed:

"The English language is not an instrument of mathematical precision. Our literature would be much poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity. It would certainly save the judges trouble if the Acts of Parliament were drafted with divine prescience and perfect clarity. In the absence of it, when a defect appears, a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do so as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases.

(emphasis supplied) Therefore in a case of this nature, a purposive approach is necessary, However, in our view the interpretation of the word 'penalty' used in Section 14(2A) does not present any difficulty and cancellation is not a punishment amounting to penalty within the meaning of this Section.

Shri P. Chidambaram, however, submitted that unless the context otherwise requires, such a purposive or liberal approach need not be resorted to. He invited our attention to the opening words "unless the context otherwise requires" occurring in Section 2 which contains definitions. We may at this juncture point out that these words strictly apply to definitions and while considering the scope of Section 14(2A) we have proceeded adhering to the language of the Section. However, we shall consider

the effect of these opening words in Section 2A, at a later stage while considering the submissions of Shri Dholakia regarding the applicability of Section 14(1A).

Shri P. Chidambaram, learned counsel for the appellants, however, contended that the failure to contribute to the fund under the 1952 Scheme only is punishable as it amounts to "contravention" and that in the instant case the complaint is that the management failed to contribute to the fund maintained by the establishment itself and such a failure is not punishable and the word "contribution" must be construed strictly as defined under Section 2 and not otherwise as the context does not otherwise require. Similar words occur in Section 2 of the Companies Act and in *S. K. Gupta and Another v. K. P. Jain and Another*, [1979] 3 SCC 54 wherein it is held as under:

"Where in a definition section of a statute a word is defined to mean a certain thing, wherever that word is used in that statute, it shall mean what is stated in the definitions unless the context otherwise requires. But where the definition is an inclusive definition, the word not only bears its ordinary, popular and natural sense whenever that would be applicable but it also bears its extended statutory meaning.

At any rate, such expansive definition should be so construed as not cutting down the enacting provisions of an Act unless the phrase is absolutely clear in having opposite effect. "

In *State Bank of India etc. v. Yogendera Kumar Srivastava and Others etc.*, [1987] 3 SCC 10 it is observed:

"Repugnancy of the definition of any term may arise only if such definition does not agree with the subject or context of a particular provision. But, surely, any action not in conformity' with the provision of the definition clause will not render the definition of a term repugnant to the subject or context of any provision of the statute containing the term.

Relying on the above, passages, the learned counsel for the appellants further submitted that the context in which the word 'penalty' is used would show that Section 14(2A) does not necessarily require that there should be a punishment of either imprisonment or fine inasmuch as the "cancellation"

also can be a penalty within the meaning of Section 14(2A). At any rate according to the learned counsel for the appellants there is an ambiguity and that this being a penal law, the provisions should be construed strictly and necessarily the benefit of doubt, if any, should go to the accused. In view of the discussion already made by us on this aspect, this contention does not merit acceptance. In our view, there is no ambiguity as suggested by the learned counsel for the appellants. Even assuming so, in view of the object underlying the Act the context does definitely require a reasonable interpretation of Section 14(2A) so as to make it applicable also to a case of failure to contribute to

the fund as per the conditions under which the exemption was granted. Like-wise it must also be interpreted to mean that cancellation does not amount to a penalty. Therefore the submission that Section 14(2A) is not attracted does not merit acceptance.

Shri Dholakia, learned counsel for the respondents, as already noted, submitted that in addition to Section 14(2A), Section 14(A) is also attracted and the appellants are punishable under that provision for the contravention and non-compliance of Section 6 of the Act. In his submission, the words "fund" and "scheme" should be given a wider meaning and cannot be restricted merely because of their definitions as contained in Section 2. According to the learned counsel, the opening words of Section 2 namely "Unless the context otherwise requires" give a scope for a wider interpretation and they cannot be narrowly understood to mean only "fund" and "scheme" as mentioned therein. As this point has been argued in support of the applicability of Section 14(1A) we shall consider the same from that perspective. Section 2 begins with the words "In this Act, unless the context otherwise requires.". Section 2(c) defines "contribution" to mean a contribution payable in respect of a member under a Scheme Section 2(h) defines "fund" to mean the provident fund established under a Scheme and Section 2(1) defines "Scheme" to mean the Employees' Provident -Fund Scheme, framed under Section 5. Section 5 empowers the Central Government by a notification to frame a scheme and such a scheme was framed in 1952 called the Employees' Provident Fund Scheme of 1952. Section 6, as already noted, lays down that the "contribution" which shall be paid by the employer to the "Fund" shall be of the percentage mentioned therein. We shall now examine Section 14(1A). This provision was introduced in the year 1973 and specifies a penalty laying down that if an employer who contravenes or makes default in complying with the provisions of Section 6 or clause (a) of sub-section (3) of Section 18, shall be punishable with imprisonment mentioned therein. For the purpose of this case we have to see whether there is a contravention or non- compliance with the provisions of Section 6. According to Shri Dholakia the "scheme" should be interpreted liberally as to mean a scheme framed and followed by the employer himself and "fund" in that context should be taken to mean a provident fund established under such a scheme by the employer and the "contribution" should consequently mean a contribution payable by him under such a private scheme and consequently if there is a default in payment of the contribution to such a scheme it amounts to contravention of Section 6 punishable under Section 14(1A). Learned counsel for the respondents very much relied on the opening words of Section 2 namely "In this Act, unless the context otherwise requires," and urged that these words can otherwise, than as mentioned in the definitions, also be interpreted keeping in view the object of the Act. He further urged that the duties under the scheme framed under Section 5 i.e. 1952 scheme and the private scheme followed by an employer because of an exemption granted are one and the same and that if viewed from this angle, the expressions "contribution", "fund" and "scheme" can be understood to be wide enough to carry the same meanings in respect of the private scheme also and consequently failure to contribute to the fund under a private, scheme framed and operated by the employer attracts Section 14(1A).

After a careful consideration we are inclined to agree with the learned counsel for the respondents. In this context we may note a passage in *Knightsbridge Estates Trust Ltd. v. Byrne and Others*, [1940] 2 All ER 401 which reads thus:

"It is perhaps worth pointing out that the words "unless the context otherwise requires" which we find in the consolidating Act of 1929 are not to be found in the amending Act of 1928. I attribute little weight to this fact, for, in my opinion, some such words are to be implied in all statutes where the expressions which are interpreted by a definition clause are used in a number of sections with meanings sometimes of a wide, and sometimes of an obviously limited, character. On the other hand, I think due weight ought to be attributed to the words "otherwise requires" in the Companies Act, 1929, and it is incumbent on those who contend that the definition does not apply to sect. 74 to show with reasonable clearness that the context does in fact require a more limited interpretation of the word "debenture" than Sect. 380 has assigned to it."

In *National Buildings Construction Corporation v. Pritam Singh Gill and Others*, [ 1973] 1 SCR 40 this Court observed as under:

"as is usual with most of the definition sections, with the clause, "unless there is anything repugnant in the subject or context. " This clearly indicates that it is always a matter for argument whether or not this statutory definition is to apply to the word "workman" as used in the particular clause of the Act which is under consideration, for this word may both be restricted or expanded by its subject matter. The context and the subject matter in connection with which the word "workman" is used are accordingly important factors having a bearing on the question. The propriety or necessity of thus construing the word "workman" is obvious because all parts of the Act have to be in harmony with the statutory intent."

(emphasis supplied) In *Commissioner of Expenditure-Tax, Gujarat, Ahmedabad v. Darshan Surendra Parekh*, [1968] 2 SCR 589 it was observed as under:

"Undoubtedly the definitions in s. 2 of words and expressions used in the Act apply unless the context otherwise requires, and if the context in s. 4 requires that the expression "dependent" should not be given the meaning which is assigned thereto by the definition in cl. (g) of s. 2, the Court would be justified in discarding that definition. It is a settled rule of interpretation that in arriving at the true meaning which is assigned thereto by the definition in cl. (g) to be viewed isolated from its context; it must be viewed in its whole context, the title, the preamble and all the other enacting parts of the statute. It follows there from that all statutory definitions must be read subject to the qualifications expressed in the definition clauses which create them, such as "unless the context otherwise requires"; or "unless a contrary intention appears" or "if not inconsistent with the context or subject-matter."

(emphasis supplied) In *Bennett Coleman & Co. (P) Ltd. v. Punya Priya Das Gupta*, [1970] 1 SCR 181 this Court observed thus:



"But assuming that there is such a conflict as contended, we do not have to resolve that conflict for the purposes of the problem before us. The definition of s. 2 of the present Act commences with the words "In this Act unless the context otherwise requires" and provides that the definitions of the various expressions will be those that are given there. Similar qualifying expressions are also to be found in the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the C.P. & Berar Industrial Disputes Settlement Act, 1947 and certain other statutes dealing with industrial questions. It is, therefore, clear that the definitions of "a newspaper employee" and "a working journalist" have to be construed in the light of and subject to the context requiring otherwise."

The above passages throw a flood of light on the scope of interpretation of these opening words of Section 2 and it is clear that they must be examined in the light of the context, the title, the preamble and all the other enacting parts of the statute. Due weight ought to be given to the words "unless the context otherwise requires". The subject matter and the context in which a particular word is used are of great importance and it is axiomatic that the object underlying the Act must always be kept in view in construing the context in which a particular word is used. In the Statement of Object and Reasons of Act No. 40 of 1973 by which Section 14(IA) was introduced, it is clearly mentioned that National Commission of Labour has recommended that in order to check the growth of arrears, penalties for defaults in payment of provident fund dues should be more stringent and the default should be made cognizable. The concept which prompted the Legislature to enact this welfare law should also be borne in mind in interpretation of the provisions. Chagla, C.J. in *Prakash Cotton Mill. (P) Ltd. v. State of Bombay*, [1957]2 LLJ 490 observed as under:

"no Labour legislation, no special legislation, no economic, legislation, can be considered by a court without applying the principles of social justice in interpreting the provisions of these laws. Social justice is an objective which is embodied and enshrined in our Constitution ..... it would indeed be startling for anyone to suggest that the court should shut its eyes to social justice and consider and interpret a law as if our country had not pledged itself to bringing about social justice."

In *Organo Chemical Industries and Another v. Union of India and Others*, [ 1979] 4 SCC 573 it was observed that:

"A policy-oriented interpretation. when a welfare legislation falls for determination, especially in the context of a developing country, is sanctioned by principle and precedent and is implicit in Article 37 of the Constitution since the judicial branch is, in a sense, part of the State. So it is reasonable to assign to 'damages' a larger, fulfilling meaning.

In *Kanwar Singh v. Delhi Administration*, [1965] 1 SCR 7 it was observed as under:

"It is the duty of the court in construing a statute to give effect to the intention of the legislature. If, therefore, giving a literal meaning to a word used by the draftsman,

particularly in a penal statute, would defeat the object of the legislature, which is to suppress a mischief, the court can depart from the dictionary meaning or even the popular meaning of the word and instead give it a meaning which will advance the remedy and suppress the mischief."

In *State of Gujarat v. Chaturbhuj Maganlal and Another*, [1976] 3 SCR 1076 it was observed as under:

"It is well recognised that where the language of a statutory provision is susceptible of two interpretations, the one which promotes the object of the provision, comports best with its purpose and preserves its smooth working, should be chosen in preference to the other which introduces inconvenience and uncertainty in the working of the system. This rule will apply in full force where the provision confers ample discretion on the Government for a specific purpose to enable it to bring about an effective result."

In *Vanguard Fire & Gen. Ins. Co. v. Fraser & Ross*, AIR 1960 SC 1971 it was held that "the Court has not only to look at the words but also at the context, the collocation and the object of such words and interpret the meaning intended to be conveyed by the use of the words under the circumstances"

We feel it may not be necessary to multiply the authorities on this aspect. In this background if we examine the opening words of Section 2 namely "In this Act, unless the context otherwise, requires," then we necessarily feel that there is much in the context to show that the restricted meaning in the definitions should not be applied.

So much is about the opening words to Section 2 and it, therefore, follows that the words 'contribution', 'Scheme', 'fund' occurring in the said section should in the "context"

be otherwise interpreted as to apply to a private scheme also and if there is a default in "contribution" by the exempted establishment, the same amounts to contravention of Section 6 punishable under Section 14(1A).

Before we conclude we shall however refer to one general submission of Sri Chidambaram. He submitted that the fact that Section 17(1A) was introduced in 1988 prescribing a penalty in respect of contraventions or non-compliances committed by an exempted establishment, would go to show that Sections 14(1a) and 14(2A) were not intended to be made applicable to an exempted establishment and that cancellation of the exemption under Section 17(4) was the only prescribed penalty. He also invited our attention to the Statement of Objects and Reasons of Amendment Act No. 33 of 1988. We see no force in this submission. The mere fact that Section 17(1A) was intro-

duced in the year 1988 does not necessarily lead to an inference that Sections 14(1A) and 14(2A) were not intended to be made applicable to an exempted establishment. As stated in the foregoing paragraphs the object underlying every amendment was mainly intended to render the penal

provisions more stringent in order to check the growth of arrears and to punish the defaulters. Likewise in the Amendment Act No. 33 of 1988 also it was intended to make the existing penal provisions more stringent. This Amendment Act was passed on the recommendations of a high-level committee set up to review the working of the employees provident fund organisation and to suggest improvements. One of the recommendations was to make the existing penal provisions more stringent and also make the existing legal and penal provisions as applicable to unexempted establishments being made applicable to exempted establishments so as to check the defaults on their part. The learned counsel for the appellants very much relied on this part of Objects and Reasons and submitted that it is only by the introduction of Section 17(1A) that the exempted establishments also are brought within the purview of the penal provisions which hitherto were applicable to unexempted establishments, and therefore Sections 14(1a) and 14(2A) were hitherto inapplicable to exempted establishments. We are unable to agree that this part of the Statement of Objects and Reasons would necessarily lead to such an inference. As already discussed many aspects are common to both the types of provident fund. So far as unexempted establishments are concerned there are several other penal provisions like Sections 14(1), 14(2) and 14AA and also in particular Paragraph 76 of the 1952 Scheme. There are other legal provisions also which apply to unexempted establishments. Therefore under the Amendment Act No. 33 of 1988 the Legislature wanted to make as far as possible these existing legal and penal provisions which are applicable to unexempted establishments, applicable also to exempted establishments. That does not mean that there were no penal provisions earlier applicable to exempted establishments. Section 17(1A) is in the following terms:

" 17(1-A) Where an exemption has been granted to an establishment under clause (a) of sub-section (1),-

(a) the provisions of Sections 6, 7-A, 8 and 14-B shall, so far as may be, apply to the employer of the exempted establishment in addition to such other conditions as may be specified in the notification granting such exemption, and where such employer contravenes, or makes default in complying with any of the said provisions or conditions or any other provision of this Act, he shall be punishable under Section 14 as if the said establishment had not been exempted under the said clause (a);

(b) the employer shall establish a Board of Trustees for the administration of the provident fund consisting of such number of members as may be specified in the Scheme;

(c) the terms and conditions of service of members of the Board of Trustees shall be such as may be specified in the Scheme;

(d) the Board of Trustees constituted under clause

(b)shall-

- (i) maintain detailed accounts to show the contributions credited, withdrawals made and interest accrued in respect of each employee;
- (ii) submit such returns to the Regional Provident Fund Commissioner or any other officer as the Central Government may direct from time to time;
- (iii) invest the provident fund moneys in accordance with the directions issued by the Central Government from time to time;
- (iv) transfer, where necessary, the provident fund account of any employee; and
- (v) perform such other duties as may be specified in the Scheme.

A perusal of this Section would only go to show that some more provisions, legal and penal, are also made applicable to the exempted establishments with a view to make the penal provisions more stringent with a view to check the growth of arrears. Therefore we are unable to agree with the learned counsel that Sections 14(IA) and 14(2A) are inapplicable to exempted establishments.

From the above discussion, it emerges that atleast Sections 14(IA) and 14(2A) are attracted to the facts in the present case and therefore it cannot be said that there is no prima facie case and conse-

quently the accused cannot claim any acquittal, even before the conclusion of the trial under Chapter XX Cr- P.C. dealing with trial of summons cases. Other Sections like 14(2), 14A(1) and 14A(2) and paragraph 76 of the Employees Provident Fund Scheme 1952 will not apply to the facts of the present case. Therefore the trial court may proceed with the trial for the offences punishable under Sections 14(IA) and 14(2A) against the appellants and dispose of the matter in accordance with law. Subject to the above directions, these appeals are disposed of.

R.P.

Appeals disposed of