



ईपीएफओ, मुख्य कार्यालय
श्रम एवं रोज़गार मंत्रालय, भारत सरकार
भविष्य निधि भवन, 14, भीकाजी कामा प्लेस, नई दिल्ली 110066



EPFO, HEAD OFFICE
MINISTRY OF LABOUR & EMPLOYMENT, GOVERNMENT OF INDIA
BHAVISHYA NIDHI BHAWAN, 14, BHIKAJI CAMA PLACE, NEW DELHI 110066

www.epfindia.gov.in

File No: LC-2(1082)2019/DL/

Dated: 20.09.2022

To

10629

20 SEP 2022

All Addl. CPFCs Zones

All RPFC-I/RPFC-II/APFC Regional Offices/District Offices

Subject: Supreme Court judgement in SLP No. 3737 of 2019 titled as Provident Fund Inspector Vs Aimil Pharmaceuticals limited & ors –reg

Sir/Madam,

Please find enclosed herewith a copy of the judgement of Hon'ble Supreme Court of India in SLP No. 3737 of 2019, dated 05.08.2022.

2. In the instant matter, Hon'ble Supreme Court of India has quashed and set aside the common judgement and order dated 12.07.2018 passed by the High Court of Delhi in CRLMC Nos. 2322/2016, 2326/2016, 2327/2016, 2328/2016, 2329/2016, 2330/2016, 2331/2016, 2332/2016, 2333/2016, 2334/2016, 2335/2016 and 2336/2016. The Hon'ble High Court, by the said orders had quashed the criminal proceedings filed by EPFO against the delinquent establishments *inter alia* on the grounds that -

- I. the officer (RPFC –II), who granted sanction to lodge the prosecution has no authority and
- II. the complaint was pre-mature.

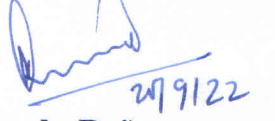
3. Hon'ble Supreme Court, in the order, has reaffirmed its earlier ruling that the question of legality and validity of sanction has to be raised in the course of trial. In view of this, the Hon'ble Supreme Court has held that the High Court erred in quashing and setting aside the criminal proceedings on the aforesaid grounds.

4. The judgement may be placed on record in all similar matters pending for adjudication before other Courts on the basis of the order passed by the Apex Court.

(This issues with the approval of ACC(HQ)(Legal))

Encl: The Hon'ble Supreme Court Judgment dated 05.08.2022.

Yours faithfully,



27/9/22

(Navendu Rai)
Regional PF Commissioner-I Legal

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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL Nos. _____ OF 2022
(@ Special Leave Petition (CrI) Nos.3737-3748 of 2019)**

**PROVIDENT FUND INSPECTOR . . . APPELLANT
VERSUS**

M/S AIMIL PHARMACEUTICALS (I) LTD. & ORS. ETC.RESPONDENTS

O R D E R

Leave granted.

As common question of law and facts arise in these group of appeals, we dispose of all these appeals by this common order.

Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 12.07.2018 passed by the High Court of Delhi in CRLMC Nos. 2322/2016, 2326/2016, 2327/2016, 2328/2016, 2329/2016, 2330/2016, 2331/2016, 2332/2016, 2333/2016, 2334/2016, 2335/2016 and 2336/2016 by which the High Court in exercise of powers under Section 482 of the Code of Criminal Procedure, 1973 (Cr.PC) has quashed the entire criminal proceedings which were initiated against the respondents for the offences under Sections 14(1A) and 14 (1B) of the Employees' Provident Fund Act, the original complainant has preferred the present appeals.

We have heard Shri K.M. Nataraj, learned ASG appearing on behalf of the appellant/original complainant and Shri A.K. Singla, learned Senior Advocate appearing on behalf of the respondents/original accused.

Contd..

By the impugned common judgment and order, the High Court in exercise of powers under Section 482 Cr.PC has quashed the criminal proceedings for the aforesaid offences *inter alia* on the grounds that (1) the officer, who granted sanction to lodge the prosecution has no authority and (2) that the complaint was pre-mature.

As observed and held by this Court in the case of *Dinesh Kumar Vs. Chairman, Airport Authority of India and Another (2012) 1 SCC 532* the question of legality and validity of sanction has to be raised in the course of trial. It is observed and held that invalidity of sanction where sanction order exists, can be raised on diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorized or competent to grant such sanction. It is observed that the above grounds of invalidity or illegality of sanction can always be raised in the course of trial. In paragraphs 9 and 10 it is observed and held as under-

“9. While drawing a distinction between the absence of sanction and invalidity of the sanction, this Court in *Parkash Singh Badal* expressed in no uncertain terms that the question of absence of sanction could be raised at the inception and threshold by an aggrieved person. However, where sanction order exists, but its legality and validity is put in question, such issue has to be raised in the course of trial. Of course, in *Parkash Singh Badal*, this Court referred to invalidity of sanction on account of non-application of mind.

10. In our view, invalidity of sanction where sanction order exists, can be raised on diverse
contd..

grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in *Parkash Singh Badal*, the challenge to which can always be raised in the course of trial."

Similar view has been taken by this Court in the subsequent decision in the case of *Central Bureau of Investigation and Others Vs. Pramila Virendra Kumar Agarwal and Another (2020) 17 SCC 664*.

In both the aforesaid decisions, it is observed and held that there is distinction between the absence of sanction and the defective sanction. In paragraph 11, in the case of *Central Bureau of Investigation and Others Vs. Pramila Virendra Kumar Agarwal and Another (supra)*, it is observed as under -

"11. Further the issue relating to validity of the sanction for prosecution could have been considered only during trial since essentially the conclusion reached by the High Court is with regard to the defective sanction since according to the High Court, the procedure of providing opportunity for explanation was not followed which will result in the sanction being defective. In that regard, the decision in *Dinesh Kumar vs. Chairman, Airport Authority of India*, relied upon by learned Additional Solicitor General would be relevant since it is held therein that there is a distinction between the absence of sanction and the alleged invalidity on account of non-application of mind. The absence of sanction no doubt can be agitated at the threshold but the invalidity of the sanction is to be raised during the trial. In the instant facts, admittedly there is a sanction though the accused seek to pick holes in the manner the sanction has been granted and to claim that the same is defective which is a matter to be considered in the trial."

In view of the above and for the reasons stated hereinabove, the High Court has committed a serious error in quashing and setting aside the criminal proceedings on the aforesaid grounds in exercise of powers under Section 482 Cr.PC. The impugned common judgment and order passed by the High Court quashing and setting aside the criminal proceedings on the aforesaid grounds, namely, (1) that the officer who granted sanction to lodge the prosecution has no authority and (2) that the complaint was pre-mature, is unsustainable and the same deserves to be quashed and set aside. The impugned common judgment and order passed by the High Court quashing and setting aside the respective criminal proceedings/complaints is hereby quashed and set aside. Now, the trial to proceed in accordance with law and on its own merits and on the basis of the evidence led. It goes without saying that all the defences and the contentions which may be available to the respective parties including the accused are kept open to be considered in accordance with law and on its own merits during the trial .

The present Appeals are accordingly allowed. No costs.

.....J.
[M.R. SHAH]

.....J.
[B.V. NAGARATHNA]

NEW DELHI
AUGUST 05, 2022

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) Nos. 3737-3748/2019

(Arising out of impugned final judgment and order dated 12-07-2018 in CRLMC No. 2322/2016 12-07-2018 in CRLMC No. 2326/2016 12-07-2018 in CRLMC No. 2327/2016 12-07-2018 in CRLMC No. 2328/2016 12-07-2018 in CRLMC No. 2329/2016 12-07-2018 in CRLMC No. 2330/2016 12-07-2018 in CRLMC No. 2331/2016 12-07-2018 in CRLMC No. 2332/2016 12-07-2018 in CRLMC No. 2333/2016 12-07-2018 in CRLMC No. 2334/2016 12-07-2018 in CRLMC No. 2335/2016 12-07-2018 in CRLMC No. 2336/2016 passed by the High Court of Delhi at New Delhi)

PROVIDENT FUND INSPECTOR

Petitioner(s)

VERSUS

M/S AIMIL PHARMACEUTICALS (I) LTD. & ORS.ETC.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.58230/2019-CONDONATION OF DELAY IN FILING and IA No.58232/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 05-08-2022 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.R. SHAH

HON'BLE MRS. JUSTICE B.V. NAGARATHNA

For Petitioner(s)

Mr. K.M. Nataraj, ASG
Mr. Brijesh Kumar Tamber, AOR
Ms. Bindu Das, Adv.
Sanas Bhasin, Adv.

For Respondent(s)

Mr. A.K. Singla, Sr. Adv.
Mr. Pankaj Gupta, AOR
Mr. H.D. Sharma, Adv.
Mr. S. K. Khanna, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are allowed in terms of the signed order.

Pending application(s) shall stand disposed of.

(NEETU SACHDEVA)
ASTT. REGISTRAR-cum-PS

(NISHA TRIPATHI)
ASSISTANT REGISTRAR

(signed order is placed on the file)

