
(2005) 03 CAL CK 0014
In the Calcutta High Court
Case No : Criminal R. No. 510 of 2004

Agarwal R.K.

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 28-03-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Employees State Insurance Act, 1948 — Section 2(17), 85

Citation : (2006) 3 CHN 610 : (2005) 106 FLR 508 : (2005) 3 LLJ 491

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : Amit Bhattacharya and Sandipan Ganguly, Subal Maitra, for the Appellant; R.P. Bhattacharya, for the Respondent

Judgement

S.K. Gupta, J.—This revisional application has been filed under Sections 401 and 482 of the Cr.P.C. against the order dated November 29, 2003 passed by the learned Additional Sessions Judge, 4th Fast Track Court, Calcutta in Criminal Appeal No. 78 of 2003, arising out of judgment dated November 29, 2003 passed in Case No. C/73 of 2000 by the learned Metropolitan Magistrate, 9th Court, Calcutta.

2. The case of the petitioner is that, he is one of the partners of Ralia Ram Agarwal, a partnership firm situated at Liluah within the district of Howrah having a factory at the said place of business. On January 5, 2000, a petition of complaint was filed by the E.S.I. Corporation in the Court of the learned Chief Metropolitan Magistrate, Calcutta against the said firm, the petitioner and another partner u/s 85(a) of the E.S.I. Act, 1948 on the allegation that the accused persons being the principal employers of the said firm failed to deposit the contribution for the period in between October, 1997 to December, 1997. The learned Magistrate took cognizance of the offence and after trial he was pleased to convict the accused Nos. 2 and 3 and they were sentenced to suffer S.I. for 3 months. An appeal was preferred against the said order. The learned Appellate

Court by his order dated November 29, 2003 was pleased to confirm the order of conviction and sentence as passed by the Court below against all the accused persons with the modification that the accused No. 2, who is the father of the present petitioner, to pay the fine amount only and to suffer S.I. only for a day i. e. till rising of the Court. Present petitioner has challenged the said finding of the learned Appellate Court and according to him, the learned Appellate Court was wrong in sentencing him as the principal employer of the said factory, as defined and explained u/s 2(17) of the Employees' State Insurance Act, 1948. According to the petitioner, the factory/firm should be considered to be the "principal employer" as provided in the definition of Section 2(17) of the Act for all purposes and the petitioner and other partner cannot be held liable for the alleged offences. As the decisions of both the Courts below in this respect suffer from material illegality, so the petitioner by filing this revisional application has prayed for setting aside the impugned judgment, as passed by the learned Appellate Court so far as the present petitioner is concerned.

3. I have heard the submissions of the learned advocates for both the sides. It is the admitted position that the petitioner is one of the partners of the firm in question which violated the provisions of the Employees' State Insurance Act, 1948. The allegations against the accused persons were that, they did not deposit the statutory contribution, as provided in the Act and as such are liable to be penalised. There is practically no dispute that there was non-payment of contribution as provided in the Act. For that reason, proceeding was instituted. Learned advocate for the petitioner submitted that subsequent to the institution of the present proceeding, the amount which was in default, have been paid. Learned advocate, who represents the Employees' State Insurance also, admitted the position. But, at the same time, he submitted that this contribution was paid after the violation was made and after the criminal proceeding was started. Be that as it may, the fact remains that the offenders have now complied with the provisions of the Act, although belatedly. It appears that the learned Courts below sentenced the 3 accused persons, viz. the firm, present petitioner and his father who are the partners of the firm in question to pay fine of Rs. 5,000/- each and also sentence of imprisonment was passed in respect of the present petitioner and his father. It is the admitted position that the father of the petitioner has paid the fine amount and he was directed to suffer imprisonment for only a day i. e. till rising of the Court and the learned Court below gave reasons for passing such an order. This order is not under challenge. The petitioner has come forward with this revisional application whereby he has challenged the ". imposition of fine of Rs. 5,000/- against him and also to suffer imprisonment for 3 months. But so far as the conviction of the petitioner is concerned, it appears that the learned Court was perfectly justified in passing such an order 1 and he acted within his jurisdiction and I find no illegality in the said order. But the learned advocate for the petitioner submits that the present petitioner and his father cannot be held to be a "principal employer" as provided in the Act. In this respect, he has cited decisions in Employees' State

Insurance Corporation Vs. S.K. Aggarwal and Others, and LK. Kanoria and Ors. v. State and Anr. 2003 CCri LR (Cal) 341. I have gone through those decisions. It appears that those decisions were in connection with a company and after considering the relevant provisions, it was held that the directors were not responsible for the default. But, so far as the case in our hand is concerned, it appears that here it is a firm in question which violated the mandatory provisions of law. The petitioner and his father are the partners of the firm and naturally they both are jointly and severally liable for any act of the said firm. As such, I am of opinion that the decision, as cited by the learned advocate for the petitioner, is not at all applicable so far as this revisional application is concerned.

4. Be that as it may, I have already pointed out that the petitioner has been sentenced to pay Rs. 5,000/- and also to suffer imprisonment for 3 months. Learned advocate for the petitioner submits that this petitioner is of very young age and is only assisting his father in connection with the business of the firm. He submits that when the father has been let off by paying the fine amount only, there cannot be any reason for depriving the petitioner who is of very young age. Learned advocates for the opposite parties did not dispute this fact that the present petitioner is of very tender age. As such, considering this fact, I am of opinion that the learned Appellate Court was not justified in making discrimination in respect of the sentence imposed against the petitioner with that of the sentence imposed upon his father. To my mind, ends of justice demands that both the petitioners should suffer equally for the offences in question. Considering all these things, I direct that the present petitioner is to pay fine of Rs. 5,000/- and to suffer imprisonment for one day i. e. till rising of the Court, as was done in case of the father of the present petitioner,

5. In the result, the revisional application succeeds in part. The order of conviction, as passed against the petitioner by the learned Appellate Court is confirmed subject to the modification that he will have to pay the fine amount and he will suffer S. I. for one day i. e. till rising of the Court. The sentence, as passed by the learned Trial Court and the learned Appellate Court, is modified to that extent. The petitioner is directed to surrender before the learned Magistrate within one month from the date of this order and if he so surrenders, then the learned Court below will take steps for execution of the sentence, as passed against him and as indicated in the body of this judgment. The revisional application is thus disposed of.

6. Send a copy of this order to the learned Court below immediately. Xerox certified copy, if applied, may be handed over to the parties on urgent basis.