(1978) 09 CAL CK 0034

In the Calcutta High Court

Case No : Criminal Revision No. 65 of 1978

Arup Kumar Pal Chaudhury — APPELLANT

Vs

Satyesh Chandra Bagchi and Others — RESPONDENT

Date of Decision : 25-09-1978

Acts Referred:

Employees State Insurance (Amendment) Act, 1975 — Section 4
Employees State Insurance (General) Regulations, 1950 — Regulation 26
Employees State Insurance Act, 1948 — Section 2(17), 85

Citation : (1980) 50 CompCas 664

Hon'ble Judges : B.N. Maitra, J

Bench : Single Bench

Advocate : Durgapada Datta, for the Appellant;Tapandeb Nandi, Purnima Chowdhury, Davesh Chandra Mukherjee and Jogmaya Sengupta, for the Respondent

Judgement

B.N. Maitra, J.—The Insurance inspector has filed a petition of complaint alleging that the three accused are the managing directors of M/s. International Remedies Private Ltd., having its factory at 66/40, Parui Kutcha Road, Calcutta. The accused are principal employers within the meaning of Section 2(17) of the E.S.I. Act. The accused failed to submit the contribution cards. They were, therefore, prosecuted u/s 85(a) and (g) of the Employees'' State Insurance Act, 1948, read with Section 4(i)(b) of the Employees'' State Insurance (Amendment) Act, 1975, and for violation of Regulation 26 of the Employees'' State Insurance (General) Regulations, 1950. Hence this rule.

2. The learned advocate, appearing on behalf of the petitioner, has stated that the petition of complaint shows that M/s. International Remedies Private Ltd. is a factory. There is no averment that the directors were responsible for the supervision and control of the factory or that they are in actual possession of the contribution cards. Moreover, the petitioner who is one of the accused, tendered his resignation as director in March, 1973. After such resignation he is no more liable for any offence. The case of Mahalderam Tea Estate [1979] 49 Camp Cas

529 (Cal) has been cited to show that since there are no materials in the petition of complaint from which the Magistrate could be satisfied that the accused took part in the running of of the business of the factory, the prosecution should be quashed.

3. The learned advocate, appearing on behalf of the complainant, opposite party, has stated that the prosecution was rightly initiated.

4. The learned advocate, appearing on behalf of the opposite parties Nos. 2 and 3, supported the petitioner''s contention. But the learned advocate, appearing on behalf of the State, has stated that the prosecution was rightly initiated.

5. The question of tender of resignation cannot be considered, because in the affidavit-in-opposition it has been clearly stated that no information regarding the alleged resignation was received prior to the filing of the petition of complaint.

6. Section 2(17)(i) of the E.S.I. Act shows that the principal employer of the factory means the owner or occupier of the factory and includes the manager and the managing agent as well. The expression is wide enough to make the director, a principal employer within the meaning of Section 2(17)(f)(i) of the E.S.I. Act. Of course, in this case, a manager has been appointed. Such expression is not disjunctive in respect of a manager or director. So, if the managing agent and a manager have been appointed, then all of them will simultaneously be the principal employer within the meaning of Section 2(17) of the Act.

7. Reference may be made to the case of Bidyut Kumar Sett v. Satyesh Chandra Bagchi [1979] 49 Comp Cas 274 (Cal), at page 277, to show that there is distinction between the E.S.I. Act and the Regulations and the Employees'' Provident Funds and Family Pension Fund Act, Prevention of Food Adulteration Act and the Essential Commodities Act. Under the E.S.I. Act the company has not been made primarily liable, but under the Essential Commodities Act and similar other Acts the company has been made primarily liable and the vicarious liability has been extended to the directors and others who are concerned with the day to day running of the company''s business.

8. In that case, it has been stated that the failure to submit necessary contribution cards will not enable a director to apply for quashing the proceedings as it is within his special knowledge and an averment is not necessary in the petition of complaint that the director is in actual possession of the same.

9. Regulation 26(c) of the Act deals with the case of an employer being in possession of the contribution card. The term "employer" has been defined in Regulation 2(g) by saying that the employer means the principal employer, as defined in the Act. The definition of the words "principal employer" has already been indicated. Since the primary responsibility is of the director, who is the principal employer, the principle of Mahalderam Tea Estate''s case `has no

application to the facts of this case. Hence, the submission made on behalf of the petitioner cannot be accepted.

10 The rule is, therefore, discharged.

