

(2009) 08 PAT CK 0070

In the Patna High Court

Bimal Kumar Goddhyan @ Bimal Goddhyan, Uday Kumar Goddhyan and Binod Kumar Gaddhyam, all sons of Telu Ram Agrawal, Director Fatka Refractories Pvt. Ltd.

APPELLANT

Vs

The State of Bihar and Insurance Inspector, Employees State Insurance Corporation

RESPONDENT

Date of Decision : 07-08-2009

Acts Referred:

Employees State Insurance Act, 1948 — Section 85

Citation : (2010) 124 FLR 402 : (2009) 4 PLJR 768

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Judgement

Abhijit Sinha, J.—The three petitioners who are Directors of M/S Fatka Refractories Pvt. Ltd., Nirsa Chatti hi the District of Dhanbad and have been arrayed as accused in Complaint Case No. 163(M) of 2002, have prayed for the quashing of the order dated 19.1.2002 passed therein by the learned Chief Judicial Magistrate, Patna, whereby he has taken cognizance of offence u/s 85(a) of the Employees State Insurance Act, 1948 (hereinafter referred to as "the Act") on the basis of the complaint filed by the Insurance Inspector (Legal), Employees State Insurance Corporation, Regional Office, Dhanbad, impleaded as Opp. Party No. 2 herein.

2. The short issue which falls for consideration is whether the said complaint is maintainable before the court of the learned Chief Judicial Magistrate, Patna, and whether the cognizance taken by the said court is without jurisdiction as no part of the alleged offence under the Act took place within the jurisdiction of the learned Chief Judicial Magistrate, Patna.

3. The issue is no more res Integra in view of two decisions of this Court on similar issues, i.e. Cr.Misc. No. 20907 of 2004 (Ratan Agrawal v. The State of Bihar and Ors.) disposed of on 24.11.2005 and Cr. Misc. No. 17239 of 2004 (L.K. Khemka and Anr. v. State of Bihar and Anr.) disposed of on 20.12.2005. The

relevant portion of the latter decision may gainfully be quoted:

Mr. Shivaji Pandey assailed the order submitted that the entire amount of the employers' contribution for the aforesaid period was later deposited by the two petitioners (vide Annexure 4 series) and hence, they are not liable to be prosecuted. In my view, the submission is not well founded as a prosecution will follow the failure to deposit the amount within the statutory period. But the second point urged by Mr. Pandey is more substantial and is also supported by a recent decision of the Court. Mr. Pandey submitted that no part of the offence was committed that no part of the offence was committed within the State of Bihar and hence, the case was beyond the jurisdiction of any Court in Bihar. Mr. Pandey submitted that the establishment was situate at Bhurkunda and the amounts of the employers' contribution were required to be deposited under the provisions of the Act at the office of the Employees' State Insurance Corporation situate at Hazaribag. Even if there was any default at the part of the petitioner, that took place at Hazaribag and only a Court in Jharkhand was, therefore, competent to take cognizance of the matter.

4. Admittedly in the instant case the alleged offence took place in the district of Dhanbad in the State of Jharkhand.

5. Following the decisions in the case of Ratan Agrawal (Supra) and L.K. Khemka (Supra), this application too has to be allowed and the impugned order taking cognizance is hereby quashed.