

(1995) 12 CAL CK 0023
In the Calcutta High Court
Case No : Criminal Revision No. 1380 of 1990

Bishnoi K.K.

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 11-12-1995

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(17)

Citation : (1995) 3 LLJ 865

Hon'ble Judges : Suryakumar Tiwari, J

Bench : Single Bench

Advocate : Biswanath Sanyal and B.M. Set, for the Appellant; Subal Maitra, for the Respondent

Judgement

Suryakumar Tiwari, J.—This petition u/s 482 Cr.P.C. has been filed for quashing the prosecution in Case No. C/ 3655 of 1982.

2. Admittedly the petitioner is a Director of the company known as "M/s. Aluminium Manufacturing Co. Ltd." A complaint has been filed in the Court below by Employees" State Insurance Corporation through its Inspector alleging that the management of the company has not deposited contribution of the Employees" Provident Fund (Employees" State Insurance) (sic) for certain months.

3. The contention of the petitioner is that he is not one of those persons who is responsible for managing the financial affairs of the company being a nominee of the I.R.C.I. Hence he cannot be prosecuted for the alleged default. Hence the prosecution launched against him is bad in law.

4. The Supreme Court in case of Employees" State Insurance Corporation Chandigarh Vs. Gurdial Singh and Others, has laid down that where the company has a factory and the occupier of the factory had been duly named and has also a Manager, then in that case the Directors cannot be prosecuted for the violation of the provisions of Employees" State Insurance Act.

5. Section 2(17) of the Employees' State Insurance Corporation Act runs thus :

"2(17) "Principal employer" means :

(i) in a factory, the owner or occupier and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named :

(ii) in any establishment under the control of any department of any Government of India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the Department ;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment".

6. In case of Gurdial Singh (supra), the Supreme Court has laid down that in case of factories Clause (i) (ibid) alone applies and the occupier alone can be prosecuted and the Directors cannot be treated ipso facto as owners.

7. In the present case, accused No. 1 General Manager of the Company has been named, therefore, the petitioner as well as the other Directors are not liable to be prosecuted.

8. The petition is thus allowed and the prosecution of the petitioner is quashed. The trial Court is directed to pass necessary orders for dropping the proceedings against accused Nos. 2 and 3 also. With these directions the petition is disposed of.