
(1990) 08 OHC CK 0039
In the Orissa High Court
Case No : Criminal Appeal No. 204 of 1983

B.K. Rajakrishnan

APPELLANT

Vs

Baladev Das

RESPONDENT

Date of Decision : 17-08-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 472, 473
Employees State Insurance (General) Regulations, 1950 — Regulation 26, 29, 31
Employees State Insurance Act, 1948 — Section 39, 40, 85, 86(3)

Citation : (1990) 3 OCR 532

Hon'ble Judges : J.M. Mahapatra, J

Bench : Single Bench

Advocate : J.K. Tripathy, for the Appellant; D.K. Mohapatra, for the Respondent

Final Decision : Allowed

Judgement

J.M. Mahapatra, J.—This appeal is directed against the judgment and order dated 30-9-1982 of the learned Second Additional Sessions Judge, Cuttack acquitting the Respondent of the offence u/s 85(a) and (e) of the Employees' State Insurance Act, 1948 (for short "the Act").

2. The facts of the case briefly stated, are that the Respondent was the owner and proprietor of the establishment run under the name and style of M/s. G.B printers at Saheednagar, Bhubaneswar. The Inspector of the Directorate of S.S.I. Corporation visited the establishment of the Respondent on 12-5-1977, and found that although it was an establishment under the provisions of the Act, yet it had violated certain provisions of the Act. The Respondent did not pay the contributions within the stipulated time as required, under Sections 39 and 40 of the Act read with Regulations 29 and 31 of the Employees State Insurance (General) Regulations, 1950 (for short "the Regulation"). It was further detected that apart from failure to pay contribution for the period from 1-4-1377 to 31-12-1977, the Respondent also did not submit contribution stamps along with the return of contribution cards in Form No. 6 as required under Regulation 26 of

the Regulation within the stipulated period for these violations the Respondent was prosecuted u/s 85(a) and (e) of the Act. The learned trial Court on a consideration of the materials on record found the Respondent guilty of the offence u/s 85(a)(e) of the Act and convicted him thereunder and sentenced him to pay a fine of Rs. 150/- in default to undergo S.I. for 15 days. The Respondent was directed to pay the contribution charges and to submit the return within three months from the date of the order.

3. The learned Second Addl. Sessions Judge, Cuttack in appeal agreed with all the material findings of the trial Court, but differed on the question of limitation and found that prosecution having been launched beyond the period of limitation of six months provided in Section 86(3) of the Act, the prosecution was not maintainable. On this ground alone he set aside the conviction and allowed the appeal. Being thus aggrieved, the Regional Director, S.S.I. Corporation, Orissa, Bhubaneswar has preferred the present appeal.

4. During the hearing of the appeal, although several contentions have been raised on behalf of the Respondent to support the order of acquittal, yet I do not propose to deal with those matters, namely, whether the Respondent is an establishment under the Act, whether he was liable to pay the contribution at the material time and whether he committed the statutory violations. All these facts have been concluded by both the Courts below by the findings against the Respondent. The only question of law on which the order of acquittal is based is the bar of limitation. I would, therefore, deal only with this matter to find out if the acquittal is proper on this technical ground. Prosecution has been launched for non-payment of contribution for the period from 1-4-1977 to 31-12-1977 as would appear from the impugned judgment, as also from the prosecution report. This fact is also not disputed before me. It is also not disputed that prosecution report has been filed in Court on 17-6-1978. In computing the period of limitation of six months, the learned appellate Court found that the date of the inspection by the Inspector being on 12-5-1977 and the prosecution having been filed on 17-6-1978 it was beyond the period of limitation and as such prosecution is not maintainable.

The trial Court record reveals that the question of maintainability and limitation was agitated before the learned trial Court, and by its order dated 2-2-1979 it held that the prosecution is neither barred by limitation nor by any other legal infirmities, and as such prosecution was found to be maintainable. On the question of limitation it held that as per paragraph 6 of the complaint petition "the employer failed to pay contribution within the statutory time" limit for the period from 1-4-1977 to 31-12-1977. The offence thus relating to the period from 1-4-1977 to 31-12-1977 and the prosecution having been filed within six months from 31-12-1977 is well within time and is not barred by limitation.

5. During hearing of the appeal, it has been vehemently urged before me that the period of limitation should run from the date of inspection by the Inspector (P.W. 1), who launched prosecution and not from the date of the period to which

the offence relates. In other words, it is sought to be contended that although the non-payment of the share of contribution related to the period from 1-4-1977 to 31-12-1977, yet the Inspector (P.W. 1) having visited the establishment on 12-5-1977 and having detected the violation, the period of limitation should be computed from the aforesaid date. I am unable to agree with the contention raised in this record by the learned Counsel for the Respondent. The law on the point is clear as would be noticed from Sub-section (3) of Section 86 of the Act, which is excerpted hereunder:

86 (3) x x x x

No Court shall take cognisance of any offence under this Act except on a complaint, made in writing in respect thereof, within six months of the date on which the offence is alleged to have been committed.

In this case the violation of the statutory provision with regard to non-payment of contribution is for the period from 1-4-1977 to 31-12-1977. According to the provisions of law referred to above, prosecution is required to be filed within six months of the date on which the offence is alleged to have been committed. In this case prosecution, having been admittedly filed on 17-6-1978, it cannot be said to have been barred by limitation.

6. Mr. Tripathy, learned Counsel for the Appellant has urged relying on a decision of the Supreme Court in the case of Raja Bahadur Singh v. Provident Fund Inspector and Ors. reported in AIR 1984 S.C. 1698 that the violation of the provision with regard to payment of contribution by the employer being a continuing offence, the bar of limitation would not be applicable having regard to the provision of Section 472 of the Code of Criminal Procedure. Mr. Mohapatra, learned Counsel for the Respondent, on the other hand, relying on two decisions of this Court in the cases of State, at the instance of the Inspector of Employees" Provident Fund v. Prajatantra Prachar Samiti and Anr. reported in 51 (1981) C.L.T. 79 and State Vs. Durjodhan Parida, , has contended that the offence of non-payment of contribution is not a continuing offence and as such provisions of the bar of limitation would be applicable as provided u/s 468 of the Code of Criminal Procedure. Having heard the learned Counsel on both sides and having perused the aforesaid authorities, I find that the decisions of this Court as also of the Supreme Court relate to the contravention of provisions under the Employees" Provident Funds and Miscellaneous Provisions Act, 1952. It would further appear that both the decisions of this Court have been superseded by the aforesaid decisions of the Supreme Court, in which it is clearly held that the offence of non-payment of employer"s contribution before the due date is a continuing offence, and as such the bar of limitation would not apply. Having perused the provisions of both the Employees" Provident Funds Act and Employees" State Insurance Act, I find that in the earlier statute there is no specific provision for filing of prosecution within a specified time, whereas in the later Act, Section 86(3) dealing with the prosecution of offence clearly lays down that the prosecution is to be filed within six months, failing which no cognisance

of the offence would be taken by the Court. It is also specified that the period of six months is to be reckoned from the date on which the offence is alleged to have been committed. From the foregoing discussions, I am of the view that the entire argument advanced by the learned Counsel on either side is rather academic, and the principle of law laid down by their Lordships of the Supreme Court would not in my view be applicable to the present case which deals with a different statute altogether. I am, however of the view that as the present statute is intended to ensure the welfare of workers the technical law of limitation should be very leniently viewed. I am further of the view that Section 473 of the Code of Criminal Procedure, which is extracted hereunder, should be applicable to cases of this nature and the Courts which are confronted with the provisions laying down a rule of limitation governing prosecutions should give due weight and consideration to the provisions contained in Section 473 of the Code, which reads thus:

473. Extension of period of limitation in certain cases: Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognisance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice.

7. On the aforesaid analysis, I would hold that the bar of limitation is not sustainable. I would accordingly set aside the order of acquittal passed by the learned Sessions Court and instead restore the order passed by the learned trial Court. In other words, I would uphold the conviction and maintain the sentence passed by the learned Sub-Divisional Judicial Magistrate, Sadar, Cuttack passed in his judgment and order dated 11-12-1981.

The appeal is accordingly allowed.