(1969) 03 CAL CK 0028

In the Calcutta High Court

Case No : Criminal Revn. Case No. 259 of 1968

B.M. Chatterjee APPELLANT

Vs

The State of West Bengal and Another RESPONDENT

Date of Decision : 28-03-1969

Acts Referred:

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

Citation : AIR 1970 Cal 290 : (1970) CriLJ 954

Hon'ble Judges : K.K. Mitra, J

Bench : Single Bench

Advocate : Biren Mitra and Narayan Ranjan Mukherjee, P.K. Ghose, for the Appellant; Uma Banerjee, for the Respondent

Judgement

K.K. Mitra, J.—This is a Rule directed against the order passed by a Presidency Magistrate convicting the petitioner u/s 85(a) read with Section 73-A of the Employees'' State Insurance Act (Act 34 of 1948) and also u/s 85(g) read with Section 73-E of the said Act and also u/s 85(g) read with Regulation 26 of the Employees'' State Insurance (General) Regulation, 1950. The petitioner is sentenced to pay a fine of Rs. 30/- on each of the three counts of charge and in default to suffer a simple imprisonment for one week.

2. The prosecution case is that the petitioner is a Director of M/s. Bengal Steam Laundry Private Ltd. having its factory at 42C, Richi Road, Calcutta bearing a Code No. 41/3882. The principal employer of a factory is required to make special contribution in terms of the provision of Section 73-A of the Employees'' State Insurance Act read with a Government Notification No. SS 121(60) dated 6-2-52 within 30 days of the expiry of a quarter and also to submit return in form (SC 2) u/s 73-E of the said Act read with notification No. RS-9/52B dated 16-2-52 within 45 days of the expiry of each quarter and further required to submit contribution cards within 42 days of the expiry of each contribution period under regulation 26 of the E.S.I. (General) Regulation, 1950. A complaint had

been filed u/s 86 of the State Insurance Act and the petitioner was punished in the Court of the Presidency Magistrate under Sections 85(a) and 85(g) of the Act.

3. It is not challenged that the petitioner is one of the Directors of M/s. Bengal Steam Laundry. But the contention of the petitioner is that Sri B. Roy Choudhury, another Director, used to look after the management of the concern and, therefore, he is not liable for contravention of the provisions of the State Insurance Act.

4. The complaint had been filed against the petitioner as well as against Sri B. Roy Choudhury, the Director-in- charge and both of them had been convicted as being the principal employer.

5. Section 85 of the Act renders any person punishable for contravention of the provisions of the Act. The prosecution in this case had been started against two Directors.

6. The word "principal employer" is defined in Section 2(17) of the Act which runs as follows:

"In a factory, the owner or occupier of the factory 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) (LXIII of 1948), the person so named."

7. Apparently, therefore, in a factory the owner, including the Managing Agent of such owner and also the Manager of the factory are included within the meaning of the word "principal employer". The petitioner as a Director of the limited Company is the owner. Obviously, if there be several persons in the position of Directors all are liable for contravention of the provisions of the Act and Regulation. From the side of the defence a photostat copy of the registration of resolution and agreement of the M/s. Bengal Steam Laundry Private Ltd. were filed which clearly indicates that the petitioner was one of the Directors described as a Technical Director though Sri Bhupati Roy Choudhury, another Director, who also had been convicted was placed in charge of the management of the affairs of the Company subject to the control and supervision of the Board of Directors. P.W. 4, the Manager of E.S.I. Corporation, visited the factory on 19-8-1965 and found the petitioner present there. He carried on inspection in his presence and submitted the Inspection Report (Ext. 5). The Inspection Report indicates that the petitioner was interviewed on the date of the inspection. On a plain meaning of the provisions of Section 2(17) of the Act, the petitioner, as a Director, is liable to be penalized for contraventions of the Act in the same way as any other Director and the nature of his duty in the concern is quite immaterial.

8. u/s 73-A of the Act every principal employer is liable to make special contribution and the rate of special contribution is to be notified in the Official Gazette and such contribution shall be made in the case of a factory in which the provision of chapters IV and V are in force in lieu of the employers'' contribution

payable under Chapter IV. Under notification No. 33-121(60) dated 6-2-1952 the employers'' special contribution is payable in four quarters ending on 31st March, 30th June, 30th September and 31st December. It is contended by the learned Lawyer for the petitioner that such special contribution is to be made in lieu of the contribution made under Chapter IV and not over and above that contribution. But, then there is nothing to show that any contribution had been made by this factory u/s 39 of the Act. The petitioner raised no such contention in the court below and no importance is to be given to the contention now raised in the scope of this revisional application. No doubt the principal employer of this factory did not pay the special contribution within 30 days from 30th June, 1966 and as such he is liable to be punished. It is also proved that no information and return in form No. SC 2 as prescribed under notification No. RS/9/52/A dated the 16th February, 1952 had been furnished within the prescribed time limit for 45 days from the end of the quarter. u/s 73-E of the Act the Corporation is authorised to require any principal employer to submit returns and informations in the prescribed form within a time limit. In the instant case, the time limit was fixed at 45 days of the end of the quarter. For such failure to submit the return as required by the regulation the principal employer became punishable u/s 85(e) of the Act. The petitioner is also convicted for contraventions of the provisions in Rule No. 26(c) of the Employees'' State Insurance Regulations. The provision in Rule 26 relates to submission of a return in duplicate in form No. 6 in respect to a contribution card of any person within 42 days of the termination of contribution period. Obviously, therefore, such return in form No. 6 is to be submitted only in the event of termination of contribution period in respect to any person for which the employer is in possession of a contribution card. It is contended by the learned lawyer for the petitioner that there was no necessity for submitting this return when there was no termination of contribution in respect to any workman. But such return must be submitted in the prescribed form to indicate clearly whether there had been any termination of contribution or not. In an appropriate case there may be a nil return. But, for not submitting such return in such circumstances an offence was committed in a technical sense.

9. The petitioner has been convicted under all these three counts of charge and he has been fined Rs. 30/- on each count of charge. In the facts and circumstances of this case, I find no reason to interfere with the conviction on any of the three counts of charge. As for sentence I maintain the sentence u/s 85(a)/73(A) of the Act and also u/s 85(g)/73(A) of the Act. But no separate sentence is passed u/s 85(g) of the Act read with Regulation 26 of the E.S.I. Regulation. Subject to this reduction of sentence the Rule is discharged.