

(1986) 01 PAT CK 0019

In the Patna High Court

Case No : Criminal Revision No. 671 of 1978

Employees" State Insurance Corpn.

APPELLANT

Vs

S.C. Sarkar and Others

RESPONDENT

Date of Decision : 31-01-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 85

Citation : (1994) 3 LLJ 751

Hon'ble Judges : S.S. Sandhwalia, J; Nazir Ahmad, J

Bench : Division Bench

Advocate : Sachchidanand Sahay, for the Appellant; Mahfooz Ahmed, for the Respondent

Final Decision : Allowed

Judgement

Nazir Ahmad, J.—This criminal revision application was heard on the 22nd of Nov., 1985, and was allowed at the time of hearing, vide order dated the 22nd of Nov., 1985, with a direction that the reasons will follow. Accordingly, the reasons are being given for allowing the criminal revision application.

2. This criminal revision application has been filed by the complainant-petitioner, the Regional Director, Employees State Insurance Corporation, Bihar Region, Lakhmir Bhawan, Budh Marg, Patna-1. Accused-opposite parties Nos. 1 to 4 are partners and accused-opposite party No. 5 is the Factory Manager or M/s. United Industrial Company situated in the Industrial Area, Adityapur, Jamshedpur.

3. According to the complainant-petitioner, he is a public servant within the meaning of Section 21 of the Indian Penal Code, in view of Section 93 of the Employees" State Insurance Act, 1948 (hereinafter referred to as "the Act"). It has also been asserted in the revision application that M/s. United Industrial Company is a factory having Code No. 42-1199 as defined in Sub-section (12) of Section 2 of the Act and the accused person-opposite parties are the principal employers of the aforesaid factory as defined in Sub-section (17) of Section 2 of

the Act. u/s 40 of the Act read with Sections 39 and 43 of the Act and regulation 26 of the Employees' State Insurance (General) Regulations, 1950, (hereinafter referred to as "the Regulations"), the accused-opposite parties were required to submit contribution cards duly affixed with contribution stamps within 42 days from the expiry of their respective contribution period at the Regional Headquarters of the Corporation. The accused persons did not submit their contribution cards duly affixed with contribution stamps for contribution period ended 27th Sept., 1975, by 8th Nov., 1975, and for this they were liable to be prosecuted for commission of the offence u/s 86(1) of the Act.

4. After requisite sanction to prosecute the accused persons-opposite parties, as required u/s 86(1) of the Act, the complainant-petitioner filed a complaint petition before the Chief Judicial Magistrate, Patna, on 22nd March, 1976, u/s 85 (a) and (c) of the Act on the basis of which cognizance was taken by the Chief Judicial Magistrate, Patna, and then the case was transferred to Shrimati Sumitra Kumari, Judicial Magistrate, 1st Class, Patna, for final disposal. The charges were amended u/s 85(a) on the basis of the petition filed by the complainant-petitioner. The complainant examined two witnesses to prove the case.

5. The learned Judicial Magistrate, after considering the evidence of P.Ws. 1 and 2, came to a finding on the materials on the record that the accused persons-opposite parties in spite of the show-cause notice did not submit contribution cards along with stamps within the stipulated period for the period from 31st March, 1975, to 27th Sept., 1975, or even subsequently before the Corporation. She, therefore, held all the accused-opposite parties guilty u/s 85(a) of the Act and sentenced them to pay a fine of Rs. 250 each and she also directed the accused persons to submit the contribution cards to the Corporation within two months from the date of the decision. She also ordered that if the amount of fine is realised, the complainant was to be paid Rs. 250 as compensation and in default of payment of fine, each of the accused persons wtlf undergo simple imprisonment for one week.

6. Opposite parties Nos. 1 to 4 have filed Vakalatnama in this case of Mr. Mahfooz Ahmad. Mr. Sachchidanand Sahay has appeared for the petitioner. He has argued that the learned Judicial Magistrate has not mentioned in the judgment as to why she has imposed fine only.

7. Under regulation 26 of the Regulations, every employer has to send contribution cards in respect of the employees within 42 days of the termination of the contribution period to which it relates. It is for non-compliance of the submission of the contribution cards to the Corporation that the accused persons have been convicted u/s 85(a) of the Act. The Learned Magistrate has not given a finding that the accused persons have failed to pay the employees' contribution which has been deducted from the employees' wages. Under such circumstances, it has to be held that the punishment is not covered by Clause (i) (a) of Section 85 of the Act, but it is covered by Clause fi)(b) of Section 85 of the Act. Clause (i)(b) lays down that if any person commits an offence under Clause

(a) of Section 85 of the Act, then he shall be punished with imprisonment for a term which may extend to six months in case of failure to pay the employees' contribution which has been deducted by him from the employees' wages, but it shall not be for less than one month in any other case and shall also be liable to fine which may extend to two thousand rupees. Thus, the minimum penalty provided under Clause (i)(b) of Section 85 of the Act is imprisonment for one month.

8. Mr. Sachchidanand Sahay, learned Advocate for the petitioner, has relied on the proviso to Clause (i) of Section 85 of the Act which lays down that the court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term or of fine only in lieu of imprisonment. Mr. Sachchidanand Sahay has also submitted that the learned Judicial Magistrate has given no reason in her judgment why only fine has been imposed and so there is no question of recording any adequate and special reasons. On this basis he has submitted that the accused persons-opposite parties are liable to be sentenced to imprisonment for a period of one month and the fine as imposed by the learned Judicial Magistrate should also be upheld.

9. Mr. Mahfooz Ahmad, learned Advocate for the opposite party (accused persons), has not been able to support the judgment of the learned Judicial Magistrate relating to this legal aspect. I do not find any adequate and special reason for imposing fine only in lieu of imprisonment. In such circumstances, this criminal revision application has to be allowed, which has already been allowed vide order dated 22nd Nov., 1985, and each of the accused persons-opposite parties is sentenced to undergo simple imprisonment for one month and has also to pay a fine Rs. 250 (Rupees two hundred and fifty) each, as directed by the learned Judicial Magistrate. The sentence against each of the accused persons-opposite parties is accordingly enhanced.

10. For the reasons stated above, this criminal revision application is allowed, as already ordered, vide order dated the 22nd of Nov., 1985.

S.S. Sandhawalia, C.J.

11. I agree.