

(2003) 07 KAR CK 0087

In the Karnataka High Court

Case No : Criminal Revision Petition No"s. 1326 and 1327 of 2002

Employees" State Insurance Corporation

APPELLANT

Vs

A.K. Abdul Samad and Others

RESPONDENT

Date of Decision : 11-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Employees State Insurance Act, 1948 — Section 85, 85 (i) (a)

Citation : (2003) CriLJ 4149 : (2003) 6 KarLJ 208 : (2004) 1 LLJ 643

Hon'ble Judges : Rajendra Prasad, J

Bench : Single Bench

Advocate : M. Papanna, for the Appellant;

Final Decision : Dismissed

Judgement

Rajendra Prasad, J.—Both these revision petitions involve common questions of facts and law. Parties are common in both the cases and common arguments have been advanced by the learned Counsel for revision petitioner. Hence, both the cases are being disposed of by the following common order.

2. Both these criminal revision petitions filed u/s 397 read with Section 401 of the Cr. P.C. by the revision petitioner are directed against the orders dated 27-8-2002 in C.C. Nos. 1280 and 1281 of 1999 on the file of the Special Court for Economic Offences, Bangalore, wherein the learned Judge had recorded a finding of conviction so far as A-1 is concerned and had sentenced him to undergo imprisonment till the raising of the Court and also to pay a fine of Rs. 1,000/-, in default, to suffer simple imprisonment for 15 days for each of the offences u/s 85(i)(a) of the ESI Act ("the Act", for short), particularly questioning the quantum of sentence imposed on the accused.

3. In both the cases, R-1 and R-3 had been served and are not represented and R-2 has been deleted vide orders of this Court dated 17-6-2003.

4. The Court has heard the arguments of Sri M. Papanna, learned Counsel for the

revision petitioner, who strenuously contended that the material on record clearly shows that the orders impugned in the revision petitions are illegal and improper so far as imposition of sentence is concerned. The learned Magistrate had not at all taken into consideration the Statutory provisions while imposing the sentence and had erred in relying upon a judgment of this Court in *Employees' State Insurance Corporation, Bangalore Vs. Veerabhadrapa*, The learned Counsel further contended that the sentence to be imposed always be either minimum or the maximum sentence. However, whenever, the learned Magistrate chooses to award lesser sentence having regard to the facts and circumstances of the case, the lesser sentence cannot be less than the minimum prescribed. The learned Single Judge had also not taken this aspect into consideration and had awarded lesser sentence, which is totally illegal and incorrect. He also contended that in view of the statutory provisions, the said decision is opposed to the settled principles of law and that in view of the ratio laid down in the decision in *A.R. Antulay Vs. R.S. Nayak and Another*, the judgment of the learned Single Judge is per incuriam. The learned Counsel also contended that the statute has prescribed maximum and minimum sentences to be imposed and the Court is required to record adequate and special reasons in case of imposition of lesser sentence and as per the submission of the learned Counsel, the phrase "lesser term" as provided in proviso to Section 85 of the Act means that the sentence should not be less than the minimum prescribed in the statute. The learned Counsel also contended that in view of the statutory provisions, the learned Magistrate ought not to have relied upon the said decision while imposing the sentence and as such the matter requires interference of this Court. Hence, the learned Counsel prayed for allowing the revision petitions and to pass appropriate sentences or to remand the cases to the Trial Court for imposition of appropriate sentences in the cases.

5. The Court has carefully perused the material on record and has given its anxious thoughts over the rival contentions raised at the Bar.

6. From the material on record, it is seen that the ESI Corporation had filed two private complaints against the respondents-accused for the offence u/s 85(i)(a) of the Act and the same came to be registered in C.C. Nos. 1280 and 1281 of 1999. In the first complaint, the main allegations were that the accused had failed to pay the contributions for the period from October 1998 to December 1998 and in the second complaint, it was alleged that the accused had not paid the contribution from January 1999. After full dressed trial, the learned Magistrate had recorded a finding of conviction of A-1 and after hearing the accused on the question of sentence, he directed A-1 to undergo imprisonment till the rising of the Court and also to pay fine of Rs. 1,000/-, in default, to suffer simple imprisonment for 15 days for each of the said offences. Feeling aggrieved by the quantum of sentence imposed, the ESI Corporation has come up before this Court with the instant revision petitions.

7. From the material on record, it is seen that the question that arises before this

Court for consideration falls into a very narrow compass. According to the learned Counsel for revision petitioner, the lower Court ought to have imposed minimum sentence prescribed under the statute and the learned Judge ought not to have followed the decision of the learned Single Judge (referred supra), as the said judgment is per incuriam. Now, this Court will have to make an exercise to see as to whether the orders impugned are in any way illegal and improper so as to call for interference by this Court and also whether the judgment of the learned Single Judge could in any way be stated as, per incuriam.

8. For better appreciation of the facts in issue, it is necessary to quote the relevant portion of the provision of Section 85 of the Act:

"85. Punishment for failure to pay contributions, etc.-If any person-

(a) fails to pay any contribution which under this Act he is liable to pay, or

xxx xxx xxx

he shall be punishable-

(i) where he commits an offence under Clause (a), with imprisonment for a term which may extend to three years but-

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:

Provided 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;

xxx xxx xxx"

9. It is settled principle of law that the Courts of law should always interpret the legislative provisions strictly in giving effect to the object and spirit of the legislation. In other words, the Court should always interpret the law keeping in mind the intent of the legislature. The learned Counsel for revision petitioner has contended as stated above and if his contention were to be accepted, in the opinion of this Court, there would not have been any scope for the legislature introducing proviso to the said provision. In other words, the proviso empowers and vests discretion in the concerned Court to impose a sentence less than the minimum prescribed in the statute on giving adequate and special reasons for doing so. Possibly, in the absence of any proviso, as detailed above, the Court had no discretion at all and was duty-bound to impose a sentence as provided in Clause (a) or Clause (b) of Section 85 and in view of that event, there was absolutely no need for introduction of proviso to Section 85 as stated above. In the absence of the said proviso, the contention of the learned Counsel for revision petitioner could have been well-accepted and this Court could have

interpreted the law as now sought to be. In the light of the said proviso, the Court cannot afford to accept the argument of the learned Counsel for revision petitioner in this behalf.

10. At the cost of repetition, it should be mentioned that the Court will have to read the entire provision in conjunction and not in isolation. In this regard, it is also necessary to mention that in a decision of the Apex Court rendered in the case of State of Andhra Pradesh Vs. S.R. Rangadamappa, it has been held that where the statute prescribes minimum sentence and does not provide for any exceptions or vests the Court with any discretion to award a sentence below the prescribed minimum under any special circumstances, the Court cannot reduce the sentence to less than the minimum permissible. The ratio laid down in the said decision makes it crystal clear that the Court is bound to impose the sentence which is minimum permissible in the absence of any proviso or exception. But, in the cases on hand, the said statutory provision postulates a proviso as detailed supra. Taking cue from the decision of the Apex Court, in view of the said statutory provisions and the settled principles of law, it is clear that the contention of the learned Counsel for revision petitioner that the Court should have imposed minimum sentence and there was no discretion vested in the Magistrate for imposing lesser sentence is unacceptable. In the light of these, in the opinion of this Court, the judgment of the learned Single Judge is in consonance with the settled law and cannot be stated to be per incuriam, as contended by the learned Counsel.

11. In the cases on hand, patently, the accused had paid the contribution during pendency of the complaint before the Trial Court. The learned Magistrate had considered this aspect and placing reliance on the ratio laid down by this Court in the decision of Veerabhadrapa, supra, has imposed the sentences as detailed supra. Having regard to the facts and circumstances of the case, in the opinion of this Court, the sentences imposed cannot be stated to be inadequate and moreover, there is no patent error or illegality committed by the Magistrate in exercising his discretion in this behalf. In addition, it is also necessary to mention that by settled principles of law, it is clear that the revisional powers of this Court are not only limited in its scope but also discretionary.

12. Taking into consideration the facts and circumstances of the case, in the opinion of this Court, the orders impugned in these revision petitions are legal and proper and the same do not call for any interference by this Court.

13. For the foregoing reasons, both the revision petitions are dismissed and the orders impugned are hereby confirmed.