
(1959) 06 AP CK 0007
In the Andhra Pradesh High Court

Employees" State Insurance Corporation	APPELLANT
Vs	
Augustus (K.)	RESPONDENT

Date of Decision : 15-06-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 234, 245, 85

Citation : (1959) 2 LLJ 264

Hon'ble Judges : Sanjeeva Rao Nayudu, J

Bench : Single Bench

Judgement

Sanjeeva Rao Nayudu, J.—This appeal is directed against the judgment and order of the Additional City Magistrate, Division No. II, City Criminal Court, Hyderabad, acquitting the respondent herein u/s 245(1) of the Code of Criminal Procedure. The appellant is the complainant in the case, viz., the Employees" State Insurance Corporation represented by its Insurance Inspector, Aziz Quareshi.

2. The only ground on which the acquittal is based is that the complaint in the case is barred by limitation because it was filed beyond six months from the last date of the expiry of the quarter in respect of which contribution had to be made, although the complaint was within six months from the last date on which the accused could have made the contribution. The learned Magistrate fell into the error of thinking that the thirty days" period given to the employer to make the contribution is a period of grace and that it should not be excluded in counting the six months" period provided by the Act. In this connexion it is necessary to look into the notification issued by the Government of India, Ministry of Labour, dated 6 February 1952, under No. SS. 121 (60), the relevant portion of which runs as follows:

In exercise of the powers conferred by Section 73A of the Employees" State Insurance Act, 1948 (XXXIV of 1948), the Central Government hereby notifies as follows:

1. The employer"s special contribution shall be payable in respect of each quarter

ending on 31 March, 30 June, 30 September and 31 December, as the case be.

2. * * * 3. The principal employer shall pay to the Corporation the employer's special contribution within thirty days from the last day of the quarter in respect of which such contribution is payable:

* * *

3. Reading Paras. 1 and 3 of the notification together, it may be seen that the employer will be within time and would have complied with the provisions of the notification if he had paid the contribution to the Corporation on 30 April in respect of the quarter ending with 31 March, 30 July in respect of the quarter ending with 30 June, 30 October in respect of the quarter ending with 30 September and 30 January in respect of quarter ending with 31 December of the previous year.

4. Section 85, Sub-section (a), of the Employees' State Insurance Act (Act XXXIV of 1948. hereinafter referred to as the Act, is as follows :

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 ... he shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

The other relevant portion that requires to be referred to is Section 86(3) of the Act:

86. Prosecutions-

* * * (3) No Court shall take cognizance 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.

Having regard to these two provisions, the point for determination is when were the offences committed In this case, i.e., when did the employer fail to pay his contribution under the Act.

5. As already pointed out, under the notification the employer would have committed no offence if he had paid the money on 30 April, 30 July, 30 October and 30 January as the case may be. The moment he allowed the thirtieth day of the particular month in question to pass without making the contribution, he commits the offence, so that the six months' period u/s 86(3) of the Act would have to be reckoned from the date the offence is committed, viz., 30 April, 30 July, 30 October and 30 day of January, Obviously, if this method of computation is adopted, and this is the only method to be adopted in this case, the complaint is within time and the learned Magistrate is therefore clearly wrong in assuming that the complaint was barred by time and could not be entertained by him.

6. I would therefore accordingly set aside the acquittal of the respondent accused 2 in this case in respect of whose acquittal alone this appeal has been

preferred and direct that the case be sent back to the Court of the Additional City Magistrate, Division No. II, Hyderabad, for taking the case back to file and hear and dispose of the same in accordance with law.

7. In this connexion, it is necessary to observe that the learned Magistrate was wrong in adverting himself to the merits of the matter when he came to the conclusion that the complaint was barred by time and as such it could not be entertained by him; and as the ground on which the acquittal is based is one of jurisdiction, the Magistrate ought not to have embarked on an enquiry or expressed an opinion on the merits of the case which, if his view were correct, would be useless as being devoid of jurisdiction. The Magistrate is directed to proceed afresh into the enquiry of the matter and dispose of the same in accordance with law.

8. One other point requires to be noticed: The learned Magistrate, in passing, observed that a single complaint was preferred for six offences committed on different dates u/s 85(a) of the Act. Apparently the ground of objection in the mind of the learned Magistrate was one arising u/s 234(1) of the Code of Criminal Procedure. Section 234(1) states that offences are of the same kind not only when they are made punishable under the same section but also when they are in fact punishable with the same amount of punishment. It may be necessary for me to observe in this connexion that offences do not become offences of the same kind merely because they are grouped under one compendious section which collects under it all the offences, punishable under the Act and the same punishment is indicated in respect of all of them as in the present case. The criterion should be whether they are punishable under the same clause of the compendious section and are characteristically of the same kind. Taking the present Act into consideration, Section 85 of the Act specifies a number of offences in different clauses. The same punishment of three months' imprisonment or a fine of Rs. 500 or both is provided. Obviously the offence u/s 85(a), viz., failing to pay the contribution which under this Act he is liable to pay, cannot be regarded in law as an offence of the same kind as that specified in Section 85, Sub-section (a), namely, failing or refusing to submit a return required by the regulations, or making a false return. The test in all such cases is the one propounded u/s 234(1) of the Code of Criminal Procedure with the modification that in place of the word "section" the word "sub-section" is used—where the various offences appear in different sub-sections of the same section, as in the Act now under consideration. In the present case there is no difficulty as all the offences in respect of which the prosecution is launched are punishable under the same sub-section, namely, Section 85(a) of the Act. More than three offences committed in the course of one year cannot be tried at one trial. The Magistrate may separate the offences and try the earlier three offences together at one trial and the later three together at another trial to avoid the possibility of misjoinder of charges and also to avoid any possible confusion to the accused, in making his defence.