(2006) 11 AP CK 0098

In the Andhra Pradesh High Court

Case No : Criminal Appeal No. 1527 of 2001

Employees State Insurance Corporation APPELLANT

Vs

Gurudeep Singh and Another RESPONDENT

Date of Decision : 18-11-2006

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 31
Employees State Insurance Act, 1948 — Section 40, 85

Citation : (2007) 1 ALD(Cri) 380

Hon'ble Judges : Gopala Krishna Tamada, J

Bench : Single Bench

Advocate : B.G. Ravindra Reddy, for the Appellant; Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Gopala Krishna Tamada, J.—A short, but interesting point that falls for consideration in this appeal is as to whether the payment of contribution by the employer during the pendency of criminal proceedings can be taken into consideration to hold that the said payment is not an offence within the meaning of Section 85(a) of the Employees'' State Insurance Act, 1948 (for short, ''the Act'').

2. The case according to the complainant-appellant i.e., the Employees State Insurance Corporation, Hyderabad (for short, ''Corporation'') is that the first respondent-accused is the Proprietor of M/s. Madhusala Bar and Restaurant situated at Kachiguda and the said proprietor has not made contributions for the period from October, 1991 to September, 1992 and thus is liable for punishment as provided u/s 85(a) of the Act. The complaint filed by the appellant was numbered as C.C. No. 142 of 1999. The first respondent-accused has taken the stand that on account of the prohibition policy of the Government, the Bar licence was cancelled and thus he sustained heavy loss, but, however, he paid the amount of contribution on 18-06-2001 under Ex.D1 challan and it was not on

account of any negligence on his part in not remitting the contribution for the relevant period and requested the trial court to take a lenient view by waiving the penalty and damages on the contribution amount. The Special Judge for Economic Offences, Hyderabad, before whom the case was pending, following a judgment reported in Aravinda Parimala v. Employees'' State Insurance Corporation 1997(1) ALT (Cri.) 958 (Karn.) came to the conclusion that delayed payments do not fall within the meaning of Section 85(a) of the Act and thus acquitted the first respondent of the charge punishable u/s 85(a) of the Act, by judgment dated 20-06-2001. Against the said judgment, the Corporation filed the present criminal appeal.

3. Heard Sri B.G. Ravindra Reddy, learned Standing Counsel for State Employees Corporation. Though notice is served on the first respondent, he has not chosen to put in his appearance.

4. Introduction of a scheme of health insurance for industrial workers has been under the consideration of the Government of India for a long time. The necessity for such scheme has become more urgent in view of the condition brought about by the war. The scheme envisaged is one of compulsory state insurance providing certain benefits in the event of sickness, maternity and employment injury, injury to workmen employed in or in connection with the work in factories other than seasonal factories. The insurance fund will be mainly derived from contributions from employers and workman and the said contributions payable in respect of each workman will be based on his average wages and will be payable in the first instance by the employer. According to Section 40 of the Act the principal employer shall pay contributions in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer''s contribution and employee''s contribution. According to Regulation 31 of the Employees'' State Insurance (General) Regulations, 1950, an employer who is liable to pay contribution in respect of any employee shall pay those contributions within 21 days of the last day of the calendar month in which the contributions fall due.

5. As the very object of the payment of the contribution is for the welfare of the workman and it also thought it fit to provide certain penalties for non-payment of the said contributions and thus Section 85 of the Act is introduced in the Act, which deals with punishment for failure to pay contributions.

6. According to Section 85(a) of the Act if any person fails to pay any contribution, which under this Act is liable to pay, 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;

(ii) where he commits an offence under any of the Clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.

7. From the above it is clear that it is mandatory for the employer to pay the contribution within 21 days of the 1st day of the calendar month and if such contribution is not paid within the said period, he is liable for punishment as provided u/s 85(a) of the Act. The Karnataka High Court has taken the view that delayed payments may attract the provisions of Section 85(a) of the Act, but it does not mean that the payments can be made at any time. If such view is accepted the very purpose of introducing Section 85(a) of the Act will definitely get frustrated as the employer can at any stage of the proceedings make the contribution and come forward saying that he has not committed an offence. In fact in the said judgment, which was referred to by the trial court, the facts are entirely different. It was a case where the contributions were not paid in time but paid at a later date before prosecution was launched. As the said payments were not in time and are delayed the Karnataka High Court has taken the view that delayed payments would not come within the purview of Section 85(a) of the Act. In fact, in the said judgment, it was also observed that "if the petitioners have not made any payment at all or by the time the complaint was made by the respondent if there was non payment, then only Section 85(a) of the Act is applicable". Definitely such a view is permissible but not a view taken by the trail court in the instant case. Here it was only after launching the prosecution in the year 1999, the payments were made on 18-06-2001 and the first respondent-accused pleaded mercy and the trial court accepted the same and gave finding that he is not guilty of the offence punishable u/s 85(a) of the Act. In my considered view the said approach of the trial court is wholly illegal.

8. When once this court comes to the conclusion that the first respondent-accused is also guilty of an offence punishable u/s 85(a) of the Act, there is a minimum sentence. If the appellant had deducted contribution from the employees wages and has not paid to the Corporation then the minimum sentence is one year and also a fine of Rs. 10,000/-. In all other cases, the minimum sentence is six months and also to pay a fine of Rs. 5,000/-. However, as the alleged offence is relating to the year 1991 and also as it is stated by the first respondent-accused that his Bar licence was cancelled and he could not pay the contribution in time on account of heavy loss he incurred, this court is of the view that the said minimum sentence of imprisonment can be dispensed with.

9. Accordingly, the criminal appeal is allowed and the first respondent- accused is found guilty of the offence punishable u/s 85(a) of the Act, in addition to the finding arrived at by the trial court and accordingly the first respondent-accused

is sentenced to pay a fine of Rs. 5,000/- in default to suffer simple imprisonment for a period of three months.