
(1989) 07 MP CK 0021

In the Madhya Pradesh High Court

Case No : Criminal Appeal No. 434 of 1985

Employees' State Insurance Corporation

APPELLANT

Vs

Gyanshyam Das Agarwal

RESPONDENT

Date of Decision : 21-07-1989

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(13), 2(17), 45(2), 85, 85(1)

Citation : (1989) 59 FLR 821 : (1994) 3 LLJ 507

Hon'ble Judges : V.D. Gyani, J

Bench : Single Bench

Advocate : N.C. Behl, for the Appellant; S.L. Ukas, for the Respondent

Final Decision : Allowed

Judgement

V.D. Gyani, J.

1 This is an appeal against acquittal. The accused respondent was convicted by the trial Court (Chief Judicial Magistrate, Indore) u/s 85(g) of the Employees' State Insurance Act and sentenced to pay a fine of Rs. 300 or in default to undergo one year's simple imprisonment. On appeal, the then Eighth Additional Sessions Judge, Indore, set aside conviction and acquitted the accused-respondent of the charges. The Corporation has now come in appeal against acquittal.

2. Sri Behl learned counsel for the appellant urged that the lower appellate Court erred in not considering the fact that sanction order was very much on record and the accused could not have been acquitted on that ground. Going through the impugned order, it is clear that this was the ground which mainly weighed with the learned Judge, in acquitting the accused. The other reason for acquittal assigned by the learned Judge is that the prosecution led no evidence to prove that the accused was the managing director. According to Sri Behl, both these grounds are not available, for supporting the order of acquittal. Counsel for the respondent on the other hand submitted that the sanction order must have been

duly proved before it could be acted upon. It was the view of the learned Judge, (sic) that there was no evidence adduced by the prosecution to prove that the accused was the managing director, should not be interfered with in the present appeal.

3. Few facts may also be noted. By letter, dated 2 January, 1980, exhibit D1, the Insurance Inspector P.W. Sharma, P.W. 1, visited the factory and called for inspection of the record mentioned in exhibit D1 on 22 January 1980, when he visited the press, the record was not produced to him for inspection. Thus the respondent made himself liable to prosecution u/s 85 of the Employees' State Insurance Act. Before launching prosecution, notice exhibit P1 was given to the accused calling upon him to produce the required record on 1 February 1980, at the Inspection Office. Since the accused failed to produce the record despite notice exhibit P1 to him in contravention of the provisions of Section 45(2) read with regulation 102 of the Employees' State Insurance (General) Regulations, 1950, which is an offence punishable u/s 85(g) of the Act, a complaint was filed in the Court of the Chief Judicial Magistrate, Indore, after obtaining the required sanction from the competent authority. The accused pleaded not guilty to the charge. Complaint examined himself as P.W.1. The accused also examined Ramesh Kumar as D.W.I. The trial Court found him guilty of the offence while the lower appellate Court acquitted him. The sole question that arises for consideration in this appeal is whether there was a valid sanction. The sanction order is on record as annexure 1 to the complaint. The complainant P.W.I. the Insurance Inspector stated in his evidence that he had submitted a report exhibit P3 to the Regional Director informing him that the employer failed to turn up with the record for inspection and requesting him for further necessary action. As pointed out by the learned counsel for the respondent, the witness did not refer to the sanction order. It was insisted that it must have been duly proved. Sri Behl, for the appellant urged that the sanction order being on record, and the fact that the Court on taking cognisance, there was no need for any formal proof. Reading the order as it is, it gives sufficient details of facts which weighed with the authorities according sanction for prosecution.

4. Section 86(1) of the Act governs sanction. It reads as follows:

"86(1) Prosecutions :- No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner".

There is no dispute about the fact that the sanction order is on record of the trial Court. It had been filed as annexure A to the complaint. Paragraph 7 of which contemplates a reference to the fact that the Court before whom the complaint was filed was competent to take cognisance of the offence alleged in the complaint. Taking a total view of the case, it cannot be said that the present complaint was filed without sanction. The sanction order, annexure A which is on record, is quite elaborate and makes reference to all the necessary facts constituting the offence. Learned counsel for the accused failed to point out any prejudice to him much less failure of justice. Really speaking no objection as

such was taken at the trial stage. It was only at the appellate stage that the accused came out with a plea that the sanction order was not duly proved. It is not a case where sanction order is criticised as invalid nor was it filed at a late stage, it was all along there as annexure 1 to the complaint. The only lacuna pointed out by the respondent's counsel is that it was not referred to by the Insurance Inspector in his evidence. Plain reading of Section 86(1) makes it clear that the sanction for prosecution is necessary for institution of prosecution and this sanction order was very much before the Court when the complaint was instituted. Thus there is no force in the contention advanced by the respondent's counsel, as regards sanction.

5. So far the second contention raised by the respondent's counsel is concerned, it is an admitted position that the accused respondent was a director of the company along with others. Ramesh Chandra Agarwal, D.W.I, who is none else than the son of the accused has admitted in his evidence that the accused was one of the directors, and as such he falls within the purview of principal employer as defined in Section 2(17) of the Act.

6. The learned Judge of the lower appellate Court has insisted that the accused was not proved to be managing director. Section 85(g) read with Section 45(2) of the Act clearly shows that it is not at all necessary that the person to be proceeded against should be a director or managing director of company. What the law u/s 45(2) requires is any principal or immediate employer. Both these terms have been defined under Sections 2(13) and 2(17) of the Act. They are so widely worded that they include a director. In this view of the matter there is no force in the contention raised by the learned counsel. The trial Court, regrettably enough, took a very narrow view of this provision of law. Section 85(1) speaks of a person while Section 45(2) speaks of the principal or immediate employer. Taking both these terms in the context of their definitions one cannot escape the conclusion that the insistence for proof of the fact that the accused was the managing director was uncalled for. Acquittal based on such erroneous and narrow construction, cannot be allowed to stand. It is accordingly set aside. The accused respondent is found to be guilty of the offence charged. A fine of Rs. 300 (Rupees three hundred) as imposed by the trial Court, cannot be said to be either harsh or excessive. It is accordingly maintained. However, in lieu of payment of fine, the sentence of imprisonment of one year is rather not only excessive but impermissible as well. This sentence is altered to one and half months. Bail bond is continued to operate till the fine is deposited or he undergoes the sentence in lieu of payment of fine. A month's time till 30th, August, 1989 is granted for deposit of fine.