

(2001) 07 MAD CK 0064

In the Madras High Court

Case No : Criminal Appeal No. 389 of 1992

Employees' State Insurance Corporation

APPELLANT

Vs

Madanagopal Lakshmi and Another

RESPONDENT

Date of Decision : 18-07-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 85, 86(1)

Citation : (2002) 3 LLJ 130 : (2001) 2 LW(Cri) 868

Hon'ble Judges : M. Karpaga Vinayagam, J

Bench : Single Bench

Advocate : V.K. Vijayaraghavan, for the Appellant;

Judgement

M. Karpaga Vinayagam, J.—Challenging the judgment of acquittal of the respondents, the Employees' State Insurance Corporation has filed this appeal.

2. The appellant filed a complaint against the respondents/accused for the offence u/s 85(a) punishable u/s 85(1) of the Employees' State Insurance Act, 1948 alleging that the respondents accused did not pay the employees' contribution charges along with the employer's share of contribution within the time stipulated.

3. Though the said case was contested by the respondents on the ground that it was barred by limitation, the trial Court upheld the contention of the prosecution that the complaint was within time. However, the trial Court acquitted the accused on the ground that the sanction granted u/s 86(1) of the Act was not a valid one. This finding has been challenged by the appellant before this Court in this appeal.

4. I heard the counsel for the appellant.

5. Despite the fact that the appeal is pending from 1992, the notice on the respondent has not yet been served. Therefore, I am inclined to dispose of the matter without hearing the respondents, since I do not want to keep the matter

pending any more for want of service of notice on the respondents.

6. On going through the records, I am of the view that the finding given by the trial Court that the sanction granted u/s 86(1) of the Employees' State Insurance Act was not valid, is not sustainable.

7. According to the prosecution, the complaint was filed on the basis of the sanction accorded to the Regional Director as required u/s 86(1) of the Employees' State Insurance Act. In the complaint itself, it is stated that the said sanction order dated January 6, 1985 was enclosed.

8. The trial Court would hold that u/s 86(1) of the Act either the Insurance Commissioner or any other officer authorised by the Director-General of the Corporation alone can file the complaint and the resolution, which is marked as Ex. P-2, authorising even the Regional Director and the Deputy Regional Director to institute any legal proceeding would not be of any help, in view of the fact that the Regional Director cannot delegate the power, which was already delegated to him by the Director-General, to the Insurance Inspector to file the complaint.

9. In my view, the trial Court has not understood the scope of Section 86(1) of the: Act. u/s 86(1), the complaint can be filed either with the sanction of the Insurance Commissioner or other officer authorised by the Director-General of the Corporation.

10. In this case, the sanction, which had been filed along with the complaint, would show that the Insurance Inspector was authorised by the Director General of the Corporation for prosecution. Without considering the said document, the trial Court merely on the basis of Ex. P-2 resolution, wrongly came to the conclusion that resolution passed by the Board would not be a valid one.

11. As a matter of fact, the resolution, which had been marked as Ex. P-2, is not the relevant document to be considered in this matter. Unfortunately, the sanction accorded for prosecution of the accused had not been marked by the prosecution. Had the prosecution been diligent enough in marking the said document, the trial Court would have considered the said aspect in the light of the sanction granted by the Director General of the Corporation u/s 86(1) of the Act.

12. Therefore, I am of the view that the sanction for prosecution of the accused accorded by the Regional Director, who was validly authorised by the Director General of | the Corporation, is perfectly valid.

13. However, I do not propose to remand the matter again for retrial, since the sanction itself had not been marked before the trial Court. So, it would be appropriate to dispose of the appeal by merely pointing out the above said illegality.

14. With the above observation, the appeal is disposed of.