

(1973) 03 KAR CK 0017
In the Karnataka High Court

Employees" State Insurance Corporation	APPELLANT
Vs	
N.B. Lengde	RESPONDENT

Date of Decision : 28-03-1973

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 439
Employees State Insurance Act, 1948 — Section 86 (1)

Citation : (1974) CriLJ 228 : (1973) 1 MysLJ 363

Hon'ble Judges : Venkataswami, J

Bench : Single Bench

Judgement

Venkataswami, J.—This petition u/s 439, Cr. P. C., is by the Employees" State Insurance Corporation, and directed against an Order made by the J. M. F. C., Belgaum, in S. No, 11 of 1971, whereby he has refused to take cognizance of a complaint filed on behalf of the petitioner.

2. The ground on which he has based his Order is that by virtue of the provisions of Section 86 (1) of the Employees" State Insurance Act, 1948, hereinafter referred to as the Act, it was not competent for the Director-General to issue a general authorisation empowering the Regional Director to accord previous sanction, in regard to prosecutions instituted under the Act.

3. It seems to me that the reason given by the learned Magistrate is clearly unsustainable. The relevant Section 86(1) reads thus:

No prosecution under this Act shall be instituted except by or with the previous sanction of the Insurance Commissioner or of such other officer of the Corporation as may be authorised in this behalf by the Director-General of the Corporation.

4. It is plain from the above provision that the object underlying it is that some authority should apply its mind to the facts of the case before any prosecution is instituted on behalf of the Corporation. It is further clear that the Director-General is authorised to empower any officer of the Corporation to exercise that

right to accord previous sanction. I am unable to find any inhibition against the officers of the rank of a Regional Director being authorised by the general order issued by the Director-General in question. In the instant case, it is not in dispute that there was such a general authorisation issued by the Director-General in exercise of the power vested in him under the aforesaid subsection.

5. By such general authorisation, the object underlying that section is not in any manner defeated, because such Regional Directors would nevertheless apply their minds to the facts of the case before according or refusing prior sanction to prosecute. The purpose of the provision is amply fulfilled by the issue of an authorisation as provided for in this section. The Order, therefore, is unsustainable.

6. In the result, this petition succeeds and is allowed. The Order impugned herein is set aside. The matter will now stand remitted to the Court of the J.M.F.C., Belgaum Cantonment, for further enquiry and disposal in accordance with law.