

(1997) 11 MAD CK 0148
In the Madras High Court
Case No : Civil Appeal No. 279 of 1991

Employees' State Insurance Corporation	APPELLANT
Vs	
P.N.P. Padmanabhan	RESPONDENT

Date of Decision : 26-11-1997

Acts Referred:

Employees State Insurance Act, 1948 — Section 85

Citation : (2001) 3 LLJ 1364

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Kanagaraj, J.—The above appeal is directed against the judgment, dated December 13, 1990, made in S.T.R. No. 431 of 1989 by the Court of Sub-Divisional Judicial Magistrate, Pondicherry, dismissing the complaint filed by the appellant and acquitting the respondent/accused from the charge framed u/s 85(a) of the Employees State Insurance Act, 1948 (hereinafter referred to as the Act). Aggrieved against the acquittal judgment by the trial Court, the complainant therein, i.e., the Employees' State Insurance Corporation represented by its Manager, Pondicherry, has preferred the above appeal.

2. The charge against the respondent herein as made in the complaint was that the accused, as the special officer of Ponfab is the principal employer of the said establishment is covered under the scheme of the Employees' State Insurance Act and as such, amongst other various defaults, the accused had failed to pay the contribution which he is liable to pay under the Employees' State Insurance Act for the period from August 1988 to January 1989, and as such had violated the provisions of Section 85(a) of the Act read with Regulation 31 of the General Regulations of the Employees' State Insurance. Hence, the prosecution.

3. In support of its case, the prosecution had examined P.Ws. 1 and 2, marked Exhibits P1 to P6 while the accused marked through P.W. 1 himself in the course

of the cross-examination, Exhibits D1 to D4.

4. Regarding the plea that was taken on the pan of the respondent before the trial Court initially was that the respondent was not covered under the Employees' State Insurance Act based on Exhibit P5. An order was passed by the Employees' Insurance Court in E.S.I.O.P. No. 26 of 1983, the Court below had rightly arrived at the conclusion that the respondent-company was well covered under the scheme of the Employees' State Insurance Act. Equally the lower Court had arrived at the right decision that the respondent/accused being the special officer of the establishment of Ponfab is the principal employer within the purview of the Employees' State Insurance Act and the regulations and there is no irregularity or illegality on the part of the appellant to have prosecuted him in such capacity.

5. The main question that is to be decided is whether the delayed payment offered beyond the time stipulated as laid down by the Act and Rules would attract the penal provisions of the Act, especially u/s 85(a) of the Act. Since the Court below ultimately arrived at the conclusions that delayed payment of contribution cannot be strictly brought under the purview of Section 85(a) of the Act and had ordered the acquittal of the respondent from the charge framed against him. Aggrieved, the Corporation has filed the above appeal mainly on the ground emphasizing that the trial Court ought to have held that failure to make payments within the time stipulated results in default of payment of contribution in terms of the provisions of the said Act and Regulations as laid down in *Rukmani v. Employees' State Insurance Corporation* (1990) 2 M.W.N. (Cri.) 10, following the judgment rendered in W.P. No. 2379 of 1977, dated September 28, 1979, and *Employees' State Insurance Corporation v. Alagushundaram Chettiar* 1999 III LLJ 131 (Mad). 6. A perusal of the judgment of the Court below would reveal all the pros and cons of the above aspect discussed by the learned Magistrate and giving paramount consideration for the filing of the complaint in the Court and taking cognizance of the same by the trial Court, after the payment of contributions were, however, made in a delayed manner would arrive at the conclusion saying that inasmuch as the accused had remitted the contributions before the case was taken cognizance of by the trial Court and the Corporation in accepting the same, Section 85(a) of the said Act could not be evoked to prosecute the accused. But at the same time, the Court below would also on perusal of the records and the evidence of P.Ws. 1 and 2 would brand the respondent to be a chronic defaulter even for the other periods which would justify the respondent having been taken to task by the Employees' State Insurance Corporation. The trial Court would also discredit and decry the attitude of the respondent being in the habit of making delayed payments of contribution, especially giving credence to the nature of the legislation being a welfare one and remarking thereby that the accused being a public servant and having been placed in charge of the welfare of the employees working under him, he could not be permitted to circumvent the provisions of the Employees' State Insurance Act and make belated payments. Further, ascertaining the right of the

Corporation to proceed against the accused establishment to recover the fine for such belated payment as contemplated under the Act, the Court below could ultimately end up with a mild reprimand and a piece of advice to the accused towards rectification of the habit of effecting delayed payment regarding the Employees' State Insurance contributions and ultimately passing the order acquitting the respondent from the charges levelled against him.

7. Learned counsel for the appellant, Sri. P.N. Prakash, would argue on the sole legal point stating that delayed payment of contribution is nothing but denial of the same since it is not only relevant that the contributions should be made but also the employers are expected to make the contributions in time and the delayed payment of contributions would amount to an offence punishable u/s 85(a) of the Employees' State Insurance Act. Learned counsel also cited two judgments; the first one reported in *Rukmini v. Employees' State Insurance Corporation* (supra), and the second one in *Employees' State Insurance Corporation v. Alagushundaram Chettiar* (supra). Both the above judgments would hold that it is quite clear that failure to make payment of contributions within the specific period can give rise to prosecution irrespective of the fact that the amount has been subsequently paid.

8. In the second judgment cited supra, even though the above remark has been passed holding the accused guilty of making delayed payment of contributions, still, on a reading of the entire judgment, I am able to see that the learned Judge ultimately dismissed the appeal preferred by the Employees' State Insurance Corporation on the ground that the offence related to the period of the year 1986 and since nearly nine years have lapsed and in view of the long lapse of time, the learned Judge could see no purpose to interfere with the judgment of the trial Court and dismissed the appeal before it.

9. The same analogy applies to this case also, since this is a case relating to the period of the year 1988 and even regarding the subject-matter of the above appeal, nine years have lapsed now and this Court in many of its judgments had already held that the delay in prosecution would only result in prosecution of the accused, in which circumstance a punishment inflicted is quite unnecessary and that the punishment as contemplated, by laws is unwarranted. Hence, on such grounds, I am unable to hold the respondent/accused guilty of any offence committed and even the judgment cited by learned counsel for the appellant is not pinpointed to the facts of this case in the sense that those judgments have been delivered only with regard to the delayed payments of contributions effected by the accused. But here, even though such delay is present, still the point considered by the learned Magistrate was taking cognizance of the complaint after the delayed payments made on the part of the accused and accepted by the Employees' State Insurance Corporation. If at all under such circumstances any case could have been entertained on the part of the lower Court, it should have been only for the offence committed temporarily and Section 85(a) could not be attracted directly, since no other appropriate section

for temporary failure of payment is available. The appellant has registered a case u/s 85(a) giving interpretation for the ingredients of the section in his own way.

10. Moreover, one is able to see any such delayed payments especially, in view of certain materials available in this case that there had been even, after the lapse of the appointed time, certain correspondences have taken place between the respondent accused and the Employees' State Insurance Corporation, and hence, the commission of offence and the cognizance of the same could not be filed so pointedly and also the criminal intention or motive on the part of the respondent/accused is absolutely lacking and under such circumstances, for a delay said to have occurred in the payments of contributions made, it is highly doubtful whether the accused could be convicted, especially in view of the failure to bring in the wilful negligence or intentional delay on the part of the prosecution. Under such circumstances, the accused definitely becomes entitled to the benefit of doubt and on this score and other reasons adduced by the Court below, it is a fit case for acquittal, as rightly arrived at by the Court below and I see no reason to interfere with and to disturb the acquittal judgment rendered by the Court below.

11. In the result, the above appeal stands dismissed and the judgment, dated December 13, 1990, by the Court of Sub-Divisional Judicial Magistrate, Pondicherry, made in S.T.R. No. 431 of 1989 is hereby confirmed.