
(2006) 10 BOM CK 0106
In the Bombay High Court
Case No : Criminal A. No. 17 of 2003

Employees State Insurance Corporation	APPELLANT
Vs	
Sukhdeo Tardeja and Another	RESPONDENT

Date of Decision : 16-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 468(2)
Employees State Insurance Act, 1948 — Section 45(2), 85, 85(2), 86(1), 86(3)

Citation : (2007) 1 RCR(Criminal) 894 : (2007) 3 SLJ 292

Hon'ble Judges : R.C. Chavan, J

Bench : Single Bench

Advocate : B.P. Maldhure, for the Appellant; P.S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—Employees State Insurance Corporation has preferred this appeal to challenge the acquittal of respondents for offence punishable u/s 85(2) of the Employees' State Insurance Act, 1948 (for short, "the ESI Act") by the learned Judicial Magistrate First Class, Court No. 3, Amravati, in Summary Criminal Case No. 269 of 1999.

2. The Manager of Employees' State Insurance Corporation had caused an inspection of the establishment of the respondents to be made on 12.1.1998 and 18.2.1998 after prior appointment. Record of the establishment for the months from April, 1992 to September, 1993 was sought. Record was not produced, as required under the provisions of Section 45(2) of the ESI Act. Therefore, after obtaining necessary sanction for prosecution u/s 86(1) of the ESI Act, the Manager of the Employees State Insurance Corporation filed a complaint before the learned Judicial Magistrate First Class, Amravati, on 25.5.1999.

3. After the process was issued, the respondents appeared and particulars of offence punishable u/s 85(ii) of the ESI Act were explained to them, to which they pleaded not guilty. After considering the evidence tendered at the trial, the

learned Magistrate proceeded to acquit the respondents holding among other things, that the prosecution was launched beyond the period of six months, as was required under the provisions of Section 85(ii) [Section 86(3)] of the ESI Act.

4. The learned Counsel for the petitioner submitted that the learned Magistrate had failed to see that the provisions of Section 86(3) of the ESI Act had been amended by an Amending Act No. 29 of 1989 dated 20.10.1989, whereby the words "within six months of the date on which the offence is alleged to have been committed" were omitted. Therefore, (Nov.-84) according to the learned Counsel for the petitioner, the complaint was within limitation and the accused could not have been acquitted by the learned Magistrate on this ground.

5. The learned Counsel for the respondents submitted that removal of limitation of six months prescribed under Sub-section (3) of Section 86 of the ESI Act would not mean that a complainant for an offence punishable under the ESI Act could be filed at any time. He submitted that since the said limitation prescribed under Sub-section (3) of Section 86 of the ESI Act was removed, the complaint would have to be filed within limitation prescribed u/s 468 of the Code of Criminal Procedure. He submitted that since the offence punishable u/s 85(ii) of the ESI Act is punishable with imprisonment, which may extend to one year, or with fine, which may extend to Rs. 4,000/-, or with both, the limitation u/s 468(2)(b) of the Code of Criminal Procedure would be one year. Since the offence in this case had been allegedly committed on 28.1.1998 and the complaint filed on 25.5.1999, it was hopelessly barred by limitation.

6. The contention of the learned Counsel for the appellant that the effect of removal of limitation u/s 86 of the ESI Act would be that there is no limitation for filing such a complaint, on the analogy of removal of limitation for filing claim petitions under the Motor Vehicles Act, cannot be accepted, because it is not conceivable that the Legislature authorised prosecution of a person, who committed a breach of provisions of the ESI Act, say even after hundred years, if no limitation was to be prescribed. The effect of removal of special limitation would only result in the limitation under the general law governing the cases under the ESI Act. In view of this, the learned Trial Magistrate cannot be faulted for acquitting the respondents holding that the complaint was barred by limitation.

7. The appeal is consequently dismissed.