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(2001) 02 KAR CK 0030

In the Karnataka High Court

Case No : Criminal A. No. 419 of 1997

Employees'' State Insurance Corporation — APPELLANT

Vs

Swaroop Theatre and Others — RESPONDENT

Date of Decision : 16-02-2001

Acts Referred:
Employees State Insurance Act, 1948 — Section 44, 45 (2)

Citation : (2001) 2 KCCR 1366 : (2002) 1 LLJ 737

Hon'ble Judges : K. Sreedhar Rao, J

Bench : Single Bench

Advocate : V. Narasimha Holla, for the Appellant; Jayakumar S. Patil, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, J.—This appeal is filed by the State being aggrieved by the order of acquittal passed in C.C. 180/1992 by the III J.M.F.C. Court, Belgaum.

2. The 1st accused is the cinema theatre and accused Nos. 2 to 1 are members of the management of the theatre. According to the prosecution version, the Inspector of Employees'' State Insurance visited the talkies on May 30, 1991, June 6, 1-991, June 10, 1991 and June 21, 1991 and called for production of attendance register, wage register, account books and ledgers maintained for the period from January 1, 1987 to May 31, 1991. It is their contention that under Sections 44 and 45(2) of the Employees'' State Insurance Act 1948 (in short, referred to as ''the Act''), the Inspector has authority to enter into the premises of any establishment or factory and make enquiries about the eligibility of the establishment for compliance of the provisions of the Act. The accused persons despite issuance of sufficient opportunity, failed to produce the account books and, therefore, it is alleged that u/s 85(g) of the Act, the accused are liable to punishment if they are guilty of any contravention or non-compliance of the requirements of the Act or its rules/regulations in respect of which no special penalty is provided.

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3. It was the contention of the accused that the records summoned were not in existence. The Trial Court, after considering the oral and documentary evidence, has held that in order to make the accused guilty of the contravention of the provisions of Sections 44 and 45(2) of the Act, it is essential that the establishment/factory should have been covered by the provisions of the Act, whereupon if there is a failure on their part to produce any records, subsequent to such coverage, there would be a violation of the provisions of the Act, and in the instant case, the books of accounts sought for were for the period for which the establishment was not covered by the provisions of the Act. The accused have taken the defence that the books of accounts sought for inspection are not available as they are not in existence.

4. The short question that arises for consideration in this appeal is:''

What would be the extent of liability of the accused to preserve and to keep open for inspection the records of the previous periods anterior to the coverage of the provisions of the Act, and for what length of time the records have to be kept intact?

5. In this regard, the learned SPP failed to bring to my notice any of the provisions of the Act/Regulations regarding the extent of period of time the employer is obliged to preserve old registers and other necessary documents of the establishment of the previous years. The learned counsel for the prosecution failed to show from which date the establishment is covered by the provisions of the Act. However, as per the sanction letter, produced on behalf of the prosecution, the establishment is shown to have been covered by the provisions of the Act and a Code number is given. Obviously it appears that the documents sought for inspection are the documents which are prior to the coverage and that is the view taken by the Trial Court also in its Judgment. The manner in which the particulars of documents are called for for the purpose of inspection appears to be with the object of checking whether prior to the coverage for the periods in question, the establishment had employment strength of more than 20 to make the provisions applicable anterior to the date of coverage.

6. The provisions of Sub-section (2) of Section 45 of the Act enables the E.S.I. Corporation to make a probe to find out whether any establishment legally coverable has escaped under any false or untenable pretext. Inter alia it empowers the Inspectors to make a roving enquiry also. The obligation of the employer to maintain account books from the date of coverage is imperative. However, prior to the date of coverage, if the employment strength is more than twenty persons and if there has been any illegal suppression of material, it is open for the Corporation or its official Inspectors to make a probing enquiry and make the establishment coverable under the provisions of the Act from the date on which it becomes eligible to be covered.

7. In the instant case, it is the contention of the accused that the registers sought for are not in existence. It is only a hypothetical assumption the Inspector

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insisted (sic) on production of the registers for the previous periods ranging from the year 1987. Non-production of records for the period not covered by the provisions of the Act does not become ipso facto punishable u/s 85(g) of the - Act. The said provision pre-supposes contravention or non-compliance of any of the Acts/Rules which essentially mean that the compliance of ''he provisions of the Act/Rules would commence only from the date the Act applies to the establishment. However, it is open for the Inspector to collect independent material to show that by suppression of facts and material, the establishment has escaped coverage from its valid due date. In that behalf, there has been no attempt made by the Inspector to collect any information to show that from the year 1987, the establishment had the employee strength of twenty or more. In that view, non-production of the records by the accused previous to the date of coverage does not become contravention within the meaning of the provisions of Section 85(g) of the Act, and if there is any other independent material collected by the Inspector to show suppression of material, it would have been an offence punishable under the other provisions of Section 85 of the Act.

8. For the reasons discussed above, I do not find any merit in the appeal. Accordingly, it is dismissed. However, there is no order as to costs.

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