

(1999) 03 KAR CK 0016
In the Karnataka High Court
Case No : Criminal Appeal No. 498 of 1993

Employees" State Insurance Corporation, Bangalore	APPELLANT
Vs	
M.P. Mohammed Ali	RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 256 (1), 313, 468 (2) (b), 472
Employees State Insurance Act, 1948 — Section 40 (1), 85 (a)

Citation : (1999) 1 ALD(Cri) 856 : (1999) 2 ALT(Cri) 456 : (1999) CriLJ 3082 :
(1999) ILR (Kar) 2701 : (1999) 5 KarLJ 642 : (1999) 2 LLJ 911 : (2000) 1
RCR(Criminal) 684

Hon'ble Judges : S.R. Bannurmath, J

Bench : Single Bench

Advocate : Sri M. Papanna, for the Appellant; Sri J. Mahabala Shetty, for the Respondent

Judgement

S.R. Bannurmath, J.—This appeal is filed by the Employees" State Insurance Corporation challenging the judgment of acquittal dated 30-6-1993 passed by the Special Court for Economic Offences, Bangalore, in C.C. No. 1098 of 1992 acquitting the respondent of the offence u/s 85(e)(ii) of the Employees State Insurance Act, 1948 (hereinafter referred to as the "Act"),

2. The brief facts are: The respondent is the proprietor of M/s. Grand National Hotel, N.R. Road, Bangalore. The establishment of the respondent is governed by the Act. As per Section 40(1) of the Act read with Regulations 31 and 26 of the Employees" State Insurance (General) Regulations, 1950 (hereinafter referred to as the "regulations"), the respondent was required to pay contributions of both employers and employees within 21 days following the last date of calendar month (for the period ending 30-9-1991) and submit the return of the contributions in Form 6 within 42 days of the end of the contribution period to the Employees" State Insurance Corporation (hereinafter referred to as the "Corporation"). As the accused has failed to submit the return of the contribution on or before 11-11-1991, it amounted to commission of offence as per the

provisions of sub-section (a) of Section 85 of the Act. Hence, the appellant filed a private complaint u/s 200 of the Criminal Procedure Code before the Court below, after complying with the mandatory requirements like show-cause notice and sanction. On appearance of the parties in the case, evidence of P.Ws. 1 and 2, who are Insurance Inspectors, was adduced on behalf of the complainant. Total denial was the defence. On appreciation of the contentions raised and the evidence, the Trial Court framed the following points for consideration, viz., (1) whether the complaint is barred by limitation, and (2) whether the complainant has proved the guilt of the accused. On Point No. 1 the Court has held that the complaint filed is for the offence u/s 85(e)(ii) of the Act and the punishment for the offence is with imprisonment for a term which may extend to one year or with fine which may extend to Rs. 4,000/-, the limitation for taking cognizance of the offence would be governed by the provisions u/s 468(2)(b), Criminal Procedure Code. The Special Court further held that the offence alleged to have been committed on 11-11-1991, as the same was the last date for submitting report and, therefore, the complaint should have been filed before 10-11-1992. No doubt the complaint was filed on that day. But, the cognizance of the offence was taken on 16-11-1992, i.e., six days after the limitation period and as such the Court below held that the complaint is barred by limitation. Only on this point, the Court below acquitted the accused u/s 256(1), Criminal Procedure Code. Hence the present appeal.

3. Smt. Geetha, learned Counsel for the appellant, vehemently contended that the finding of the Court below is illegal and erroneous one and that the offence of the present nature is a continuing offence and as such the period of limitation should not have been construed strictly, especially, when the provisions of the Act are of beneficial and welfare measure for the employees. She further submitted that there was no fault or delay on the part of the appellant/complainant in filing the complaint which is admittedly within one year. Unfortunately, she contended, the delay is on the part of the Court in taking cognizance within the period of limitation for which the complainant could not be found fault with. Further she contended that taking into consideration the beneficial legislation, the power and jurisdiction of the Court u/s 473, Criminal Procedure Code ought to have been exercised and the delay, if any, which in the present case is very small, i.e., of six days, ought to have been condoned and the matter ought to have been decided on merit.

4. On the other hand, Sri Mahabala Shetty, learned Counsel for the respondent, argued in support of the finding of the Court below. No doubt, u/s 468, Criminal Procedure Code limitation is prescribed for the Court for taking cognizance depending upon the punishment prescribed for the offence. But, Sections 472 and 473, Criminal Procedure Code are also relevant provisions, while considering the limitation point. Section 472, Criminal Procedure Code defines "continuing offence" and Section 473 empowers the Court to take cognizance of an offence after the expiry of the period of limitation if it is satisfied on the facts and in the circumstances of the case and also in the interest of justice. As noted, if it is a

continuing offence, the restricted period of limitation would not be applicable to such continuing offences and the limitation begins to run at every moment of the time during which the offence continues. In this regard, the observations of the Hon"ble Supreme Court in the case of Bhagirath Kanoria and Others Vs. State of M. P., are relevant to note. That is a similar case, but arising under the Employees Provident Fund and Family Pension Fund Act, 1952. The Hon"ble Supreme Court held thus:

"The offence of which the appellants are charged, namely, non-payment of the employer's contribution to the Provident Fund before the due date, is a continuing offence, and therefore, the period of limitation prescribed by Section 468 of the Code cannot have any application. The offence which is alleged against the appellants will be governed by Section 472 of the Code,"

The Apex Court further held:

"The expression "continuing offence" is not defined in the Code but that is because expressions which do not have a fixed connotation or a static import are difficult to define. The question whether a particular offence is a "continuing offence" must necessarily depend upon the language of the statute which creates that offence, the nature of the offence and, above all, the purpose which is intended to be achieved by constituting the particular act as an offence.

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Courts when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature will give due weight and consideration to the provisions contained in Section 473 of the Code. The section is in the nature of an overriding provision according to which, notwithstanding anything contained in the provisions of Chapter XXXVI of the Code, any Court may take cognizance of an offence after the expiry of the period of limitation if, inter alia, it is satisfied that it is necessary to do so in the interest of justice".

(emphasis supplied)

Coming to the facts of that case, the Hon"ble Supreme Court held as follows:

"The offence of which the appellants is charged in the failure to pay the employers contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, it is impossible to hold that the offence is not of a continuing nature. The appellants were unquestionably liable to pay their contributions to the Provident Fund before the due date and it was within their power to pay as soon after the due date had expired as they willed. The late payment could not have absolved them of their original guilt but it would have snapped the recurrence. Each day that they failed to comply with the obligation to pay their contribution to the Fund, they committed a fresh offence".

The Apex Court further held:

"The employer who has not paid his contribution or the contribution of the employees to the Provident Fund can successfully evade the penal consequences of his act by pleading the law of limitation, would be putting an incredible premium on lack of concern for the welfare of workers. Such offences must be regarded as continuing offences to which the law of limitation cannot apply".

Similarly, in the case of Gokak Patel Volkart Ltd. Vs. Dundayya Gurushiddaiah Hiremath and Others, , the Hon"ble Supreme Court has defined the word "continuing offence" and held thus:

"Continuing offence means "type of crime which is committed over a span of time" The concept of continuing offence u/s 472, Criminal Procedure Code does not wipe out the original guilt, but it keeps the contravention alive day by day. Courts when confronted with provisions which lay down a rule of limitation governing prosecutions, in cases of this nature, should give due weight and consideration to the provisions of Section 473 of the Code which is in the nature of an overriding provision".

5. On considering the aims and objects of the Act and the offence of failure to submit the return of contribution within the limitation period as prescribed under the Act in my view would also amount to continuing offence. The dicta laid down by the Hon"ble Supreme Court in Bhagirath Kanoria's case, supra, would squarely apply to the facts of the present case also. The Act (Employees' State Insurance Act) is also a beneficial legislation and the aims and objects being the welfare of the employees the Court below ought not to have acquitted the accused only on the ground of limitation. It is also to be noted that especially when the delay was only of six days and that too due to the Court's inaction in not taking cognizance immediately though the complaint is filed in time, at least the Court below ought to have exercised its jurisdiction u/s 473, Criminal Procedure Code, considered the case and passed the judgment on merits. Instead of doing so, the Court has adopted a short cut method of dismissing the case giving the benefit to the accused.

6. In view of these findings and the law pronounced by the Hon"ble Supreme Court, I am of the view that the impugned judgment of acquittal is clearly illegal one and is liable to be set aside.

7. Accordingly, this appeal is allowed and the judgment dated 30-6-1993 passed by the Presiding Officer, Special Court for Economic Offences, Bangalore, in C.C. No. 1098 of 1992 acquitting the respondent/accused of the offence is set aside. It is to be noted that since the Trial Court has not given any finding on the merits of the case, it is just and proper to remand the case to the Court below for disposal in accordance with law. Accordingly, the case is remanded to the Court below for disposal on merit. It is also to be noted that the offence is for the years 1989 to 1991 and there is no finding given by the Court below after completion of all the procedures like recording evidence of the prosecution and Section 313 statement of the accused. In view of the same, the Trial Court is directed to hear

the arguments afresh of both the complainant and the accused and dispose of the case on merits within eight weeks from the date of receipt of this order.