(2000) 01 KAR CK 0069

In the Karnataka High Court

Case No : Criminal Appeal No. 783 of 1994

Employees'' State Insurance Corporation, Bangalore — APPELLANT

Vs

P.S. Sreekantadatta — RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 378 (4), 468 (2) (c), 472, 473
Employees State Insurance Act, 1948 — Section 85 (e), 85 A

Citation : (2000) 86 FLR 89 : (2000) ILR (Kar) 1498 : (2000) 2 KarLJ 549 : (2000) 2 LLJ 102

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : Sri M. Papanna, for the Appellant; Sri P.S. Dinesh Kumar, for the Respondent

Judgement

1. This appeal u/s 378(4) of the Code of Criminal Procedure is directed against the dismissal of the complaint filed u/s 200 of the Code of Criminal Procedure (Cr. P.C., for short).

2. The complaint filed by the appellant against the accused is an offence punishable under Sections 85(e) and 85-A of the Employees'' State Insurance Act, 1948 (the ''Act'' for short).

3. It is the case of the appellant that the Employees State Insurance Corporation is a statutory body established'' u/s 3(1) of the State Insurance Act of 1948. The complainant, namely, the Insurance Inspector, Regional Office, Employees'' State Insurance Corporation, is a public servant in terms of Section 21 of the I.P.C. and Section 93 of the Act. He is authorised to act and appear and to make application and to initiate criminal proceedings on behalf of the E.S.I. Corporation and to represent it in Courts of law by resolution of the Corporation duly published in the Gazette of India, Part III dated 17-8-1951.

4. It is further alleged that the accused is a proprietor and the employer of the

factory called M/s. Leo Footwear Company, situated at A. 154(a), II Stage, Peenya Industrial Area, Bangalore - 560 058. He is in charge of and control over the affairs of the said factory. The factory is covered under the provisions of the E.S.I. Act, having Code No. 53/5957/23. He is therefore, required to comply with the provisions of the Act, rules and regulations. It is also alleged that the accused has been convicted by the Court for violation of non-submission of returns for the contribution period ended March 1991, u/s 85(e)(ii) of the Act and has been sentenced to pay a fine of Rs. 350A in default to undergo simple imprisonment for 35 days, vide its judgment dated 15-5-1992 in C.C. No. 176 of 1992. The fine was paid by the accused on the same day. It is further contended that as per Section 2 of the amended Act 29 of 1989, which came into force on 20-9-1989, the said factory is governed by the said Act u/s 1(6) of the Act. The accused, though convicted earlier, has deliberately violated the provisions of the Act and has not submitted the return of contribution for the wage period ended on September 1991, thereby committed an offence punishable u/s 85-A of the Act.

5. The Joint Regional Director, who is the Chief Executive of the Regional Office of the Karnataka Region of the Employees'' State Insurance Corporation, has been authorised by the Corporation to sanction prosecution u/s 86(1) of the Act, in pursuance of the powers delegated to him by the Director General of the Corporation. The Joint Regional Director has accorded sanction to prosecute the accused and, therefore, prays the Court to try the accused and punish for the offence in accordance with law.

6. In pursuance of the summons issued, the accused entered appearance through an Advocate. The Trial Court has framed the following accusation:

"It is alleged that you being the Proprietor and Principal employer of M/s. Footwear Company and establishment covered under the ESI Act and the Code No. 53/5957/23 has been allotted under the provisions of ESI Act and in terms of sub-section 17 of Section 2 of the Act and you having day-to-day control over the affairs of the said factory. You are convicted by this Court for the same offence for non-submission of returns u/s 85(e)(ii) of ESI Act for the period ended 31-3-1991 in C.C. No. 176 of 1992. That in spite of conviction, the accused has failed to submit the return in Form No. 6 for the contribution period ended on 30-9-1991 as required u/s 44(i) read with Regulation 26 of ESI (General) Regulations, 1950 and thereby committed an offence punishable u/s 85(e) and u/s 85-A of ESI Act".

The accusation was read over and explained to him who pleaded not guilty. The complainant got himself examined as P.W. 1 and got marked three documents and closed his case. When examined u/s 313 of the Cr. P.C., the accused has denied the evidence let in by the complainant. However, he has not let in any defence evidence.

7. The learned Magistrate has dismissed the complaint mainly on the premise

that the complaint is barred by limitation.

8. Sri M. Papanna, the learned Senior Counsel has contended that the Trial Court is not right in holding that the complaint is barred by limitation and that finding itself is an error in law and that the Trial Court has failed to see that the complaint is u/s 85(e) and 85-A of the Act and that the punishment for the offence under the latter section is two years and a fine of Rs. 5,000/- and that the period of limitation in filing the complaint is three years u/s 468(2)(c) of the Cr. P.C., and therefore, the complaint is well within limitation. He has further contended that the provisions like ESI Act must be interpreted liberally in such a manner so as to make it workable and not to defeat the very purpose and object of the Act, and therefore, prays this Court to set aside the judgment, convict the accused as prayed.

9. Sri Dinesh Kumar, the learned Counsel for the respondent contended that the offence u/s 85(e) of the Act is punishable for one year or with fine; since the complaint is filed after one year, it is barred by limitation, as rightly held by the Trial Judge.

10. Insofar as the other allegations made in the complaint are concerned, the learned Counsel has not seriously disputed that the respondent''s establishment was covered on the relevant date under the ESI Act, in view of the amended provisions of Section 1(6) of the Act. The learned Counsel has seriously disputed the contravention of Section 85(e) of the Act committed by the respondent.

11. The two questions which arise for consideration in this appeal are:

1. Whether the respondent has contravened the provisions of Section 85(e) of the ESI Act?

2. Whether he was convicted and sentenced for the said offence previously? If so, whether he is liable for enhanced punishment u/s 85-A of the Act?

12. Ex, P. 1 is the certified copy of the order in C.C. No. 176 of 1992, dated 15-5-1992. A perusal of Ex. P. 1 shows that ESI Corporation, Binnypet, presented a complaint against the respondent punishable u/s 85(e)(ii) of the Act, 1948. The learned Magistrate took cognizance of the offence alleged and ordered summons to the accused, who entered appearance through his Advocate and pleaded guilty for the above said charge. The same was accepted as voluntary and he was sentenced to pay a fine of Rs. 350/- in default to suffer simple imprisonment for 35 days.

13. Ex. P. 1 proves two things, firstly that the establishment of the accused is covered under the ESI Act, and secondly that, he was convicted for contravening the provisions of Section 85(e) of the Act, which contravention provides imprisonment for a term which may extend to one year or with fine which may extend to Rs. 4,000/- or with both.

14. The contention of the learned Counsel for the respondent that the

complainant has failed to prove this question, in my opinion, has no merit.

15. It is alleged by the complainant that in spite of this conviction passed against him, he has again contravened the provisions of Section 85(e) of the Act and the punishment for such offence is provided u/s 85-A of the Act. P.W. 1-the Inspector, who is examined in support of the allegations, has asserted that the accused has not furnished his returns as required u/s 85(e) of the Act, and, therefore, he is liable to be convicted u/s 85-A of the Act.

16. The punishment provided u/s 85-A of the Act is imprisonment for a term which may extend to two years and with fine of Hs. 5,000/-. The proviso to Section 85-A further provides for enhanced punishment for subsequent failure to comply with the provisions u/s 85(a) to (g) of the Act.

17. Let me advert myself to the contention raised by the learned Counsel for the appellant and consider - whether the offence alleged against the accused is barred by time? The contention of the learned Counsel for the respondent in this behalf has no merit. His contention is that unless a complaint against the accused u/s 85(e) of the Act is filed within the period of one year, the complaint is barred by time. It is true that if it is the case of first offence u/s 85(e) of the Act, the complaint is required to be filed within the period of one year. The complaint is to punish him u/s 85-A of the Act for subsequent or second contravention of the Section 85(e) of the Act. That in fact is the position of the law. There is no difficulty at all in this case to hold that the respondent-accused, who has contravened the provisions of Section 85(e) of the Act for the second time, is liable to be punished u/s 85-A of the Act and the complaint lodged for the offence punishable u/s 85-A of the Act enjoys the limitation for more than one year as provided u/s 468(3)(c) of the Cr. P.C.

18. The learned Counsel for the appellant has also relied upon the judgment of the Apex Court in Bhagirath Kanoria and Others Vs. State of M. P., . The Apex Court was considering a similar provision of law tinder the Employees'' Provident Fund and Family Pension Fund Act. The learned Counsel for the appellant contended that even accepting the contention of the respondent that the limitation provided for the offence u/s 85(e) of the Act is one year, since it is a continuing offence, the question of limitation does not arise in view of the provisions of Section 473 of the Cr. P.C.

19. The Apex Court held in the case cited supra, that 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 for Section 468 of the Cr. P.C., cannot have any application. The offence will be governed by Section 472 of the Cr. P.C., according to which a fresh period of limitation begins to run at every moment of the time during which the offence continues.

20. Commenting upon the purport and object of the provisions of the Act in relation to the limitation, it is laid down as under:

"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. Turning to the matters before us, the offence of which the appellants are charged is the failure to pay the employer''s contribution before the due date. Considering the object and purpose of this provision, which is to ensure the welfare of workers, we find it impossible to hold that the offence is not of a continuing nature".

The Supreme Court has gone to the extent of saying that, having regard to the purpose of the Act, whether the offence is of continuing or non-continuing nature under the Act for consideration, notwithstanding anything contained in the provisions of Chapter XXXVI of the Cr. P.C., the cognizance of the offence ought to be taken after the expiry of the period of limitation, if any such period is applicable, because interest of justice so requires.

21. A similar object is contemplated under the ESI Act. The statement of objects and reasons to Act 45 of 1984 states that the ESI Act of 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury and for certain other matters in relation thereto.

22. Under the specific provisions of the Act, an employer is required to pay his contribution within the time stipulated and also to submit the return as required under the regulation. Section 85 of the Act provides for punishment for failure to pay the contributions, etc., as detailed in clauses (a) to (g) to Section 85 of the Act. Therefore, non-compliance of the statutory requirement is punishable u/s 85(i) of the ESI Act and enhanced punishment is provided u/s 85-A of the Act.

23. In this background, an offence u/s 85 (a) to (g) of the Act is a continuing offence. The offence is punishable u/s 85-A of the Act for his failure to submit his return as required u/s 85(e) of the Act for the second time. The punishment provided for the offence u/s 85-A of the Act is imprisonment for a term which may extend to two years and with fine of Rs. 5,000/-. Therefore, the complaint now filed by the appellant is well within time. The conclusion reached contrary by the Trial Judge, in my opinion, is wholly erroneous and is liable to be set aside.

24. In the result, this appeal is allowed. The respondent-accused is convicted for the offence punishable u/s 85-A of the ESI Act of 1948.

25. Section 85-A of the ESI Act provides for imprisonment for a term which may extend to two years and with fine of Rs. 5,000/-.

26. Heard the learned Counsel for the respondent-accused regarding sentence. He pleaded for taking a lenient view in the matter of punishment.

27. Having regard to the nature of the offence committed and punishment provided, the accused is sentenced to suffer simple imprisonment for a period of two months and also to pay a fine of Rs. 5,000/-, in default to suffer simple imprisonment for two months.

