
(1992) 11 KAR CK 0058

In the Karnataka High Court

Case No : Criminal Revision Petition No"s. 114 to 116 of 1992

G.A. Purushotham

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 20-11-1992

Acts Referred:

Constitution of India, 1950 — Article 141
Employees State Insurance Act, 1948 — Section 85

Citation : (1993) ILR (Kar) 651 : (1993) 1 KarLJ 397 : (1993) 2 LLJ 283

Hon'ble Judges : M.M. Mirdhe, J

Bench : Single Bench

Advocate : K. Sriram, for the Appellant; M. Papanna, for the Respondent

Judgement

1. These three Criminal Revision Petitions are preferred by the appellant against a common order dated March 7, 1992, passed by the Principal City Civil and Sessions Judge, Bangalore, in Criminal Appeals Nos. 81 of 1990, 5 and 6 of 1991. The learned Principal City Civil and Sessions Judge, Bangalore, dismissed Cr. A. No. 6 of 1991, whereas he allowed Cr. A. Nos. 81 of 1990 and 5 of 1991 in part. Since these three Criminal Revision Petitions are filed by the same appellant against a common order passed by the learned Principal City Civil and Sessions Judge, Metropolitan Area, Bangalore, I have heard them together and I am passing a common order in these three appeals.

2. I have heard the learned counsel for the petitioner and learned counsel for the respondent fully and perused the records of the case.

3. The respondent filed complaint against the petitioner at C.C. No. 2744 of 1988 alleging that the petitioner has not filed his returns of Employees" State Insurance Corporation in time. The respondent has also filed complaint against the petitioner at C.C. No. 1183 of 1988 alleging that the petitioner has committed offence by not making payment of contribution towards the Employees" State Insurance Fund in time. The respondent also filed complaint in C.C. No. 1192 of 1988 against the petitioner alleging that he has violated the

provisions of the Employees" - State Insurance Act by not filing returns in time. The evidence was led by the respondent and after the trial, the trial Court convicted the petitioners for offences of not filing the return within time and sentenced him to pay a fine of Rs. 300, in default to undergo S.I. for two months, and Rs. 250 as fine, in default to undergo S.I. for two months for the offence punishable u/s 85(e) of the Employees" State Insurance Act, 1948 (hereinafter referred to as "the Act"). The trial court also convicted the petitioner u/s 85(a) of the Act for not making contribution towards the Employees" State Insurance Fund in time and sentenced him to pay a fine of Rs. 500, in default to undergo S.I. for three months. In appeal, after hearing both sides, the learned Sessions Judge dismissed the appeal filed by the petitioner at Cr. A. No. 6 of 1991 confirming the conviction of the petitioner for the offence u/s 85(a) of the Act mainly on the ground that it is a continuing offence. So far as conviction of the petitioner in other two cases for having not filed the return in time is concerned the Criminal Appeals relating to the said convictions, viz., in Cr. A. Nos. 81 of 1990 and 5 of 1991 were allowed in part and the learned Session Judge, though he confirmed the conviction of the petitioner, altered the sentence and reduced it to a fine of Rs. 100 or in default to suffer S.I. for ten days.

4. Learned counsel for the petitioner contended that so far as the offences alleged in C.C. No. 2744 of 1988 and C.C. No. 1192 of 1988 are concerned the Court could not have taken cognizance of the said offence as the offence had become time-barred on the date of taking cognizance by the trial Court. In order to assess merits of the contention advanced by both sides on this point, it is necessary to note that in C.C. No. 2744 of 1988 respondent filed complaint on October 1, 1988, alleging that offence had taken place on April 30, 1988 and trial court has taken cognizance on October 31, 1988. In C.C. No. 1192 of 1988, petitioner filed complaint on April 29, 1988, alleging that offence had taken place on October 30, 1987, and the trial court took cognizance of the offence on May 29, 1988. It is not disputed in this case that the offences alleged against the petitioner in these two cases for non-filing of return in time was punishable with imprisonment extending to six months or with fine which may extend to Rs. 1,000 or both as per the law as it stood on the date of alleged commission of offence in 1988. An amendment has been introduced by Act 29 of 1989 with effect from October 20, 1989, prescribing the punishment for such an offence with an imprisonment for a term which may extend to one year or with a fine which may extend to Rs. 4,000 or with both.

5. It is well-settled principle of criminal jurisprudence that the law prescribing the punishment as it stood on the date of offence will have to be taken into consideration and not the amendment to such a law subsequent to the date of the offence. Therefore, it will have to be held that the offence alleged against the petitioners for non-filing of return was punishable with imprisonment for six months or with fine which may extend to Rs. 1000 or both. Taking this position of law regarding the sentence prescribed for such an offence on the date of the alleged offence the limitation would be one year as prescribed u/s 468(B) of the

Criminal Procedure Code. Now, it will have to be seen whether it is the date of filing of the complaint or date of taking cognizance by trial court that will have to be taken into consideration for computation of the period of limitation.

6. Learned counsel for the respondent relied upon *Basavantappa Basappa Bannihalli and Another Vs. Shankarappa Marigallappa Bannihalli*, a ruling of our High Court in which Justice K. Ramachandraiah has held that if the complaint is filed within the period of limitation and if the cognizance of the offence is taken by Magistrate after period of limitation it is not invalid.

But, the Supreme Court in *Krishna Pillai v. T.A. Rajendran* has held that the date of filing complaint cannot be taken as the date of taking cognizance. It is also laid down that taking cognizance of the offence after the period of limitation cannot be justified on the ground that the complaint was filed before the Court well within the time of limitation.

7. In *Jagannathan and Others Vs. The State*, the Supreme Court has held that when the cognizance of offences is taken beyond period of limitation prescribed u/s 468 without the prosecution having filed an application to extend period of limitation, such proceedings are liable to be quashed.

8. When confronted with the ruling of the Supreme Court in *Krishna Pillai v. T. A. Rajendran* (supra), learned counsel for the respondent submitted that it cannot be said that the Supreme Court has laid down a law in that ruling. He relied upon *O.V. Shanthakumari Vs. Kokila*, wherein a Full Bench of this Court held that under Article 141 of the Constitution of India, the "law declared" by the Supreme Court will be binding precedent not because of conclusions but in regard to ratio of principles laid down therein. It has been further held that, observations and remarks confined to precise issues cannot be said to be law declared. Under Article 141 of the Constitution of India, the judgment of the Supreme Court can be held to be law declared by the Supreme Court if it lays down a ratio or principle in respect of the position of law involved in that case.

Viewing the ruling of the Supreme Court in *Krishna Pillai v. T. A. Rajendran* (supra) it can be safely held that what the Supreme Court has held in that ruling are not observations or remarks confined to only the precise issues involved in that case. But it has laid down a ratio and a principle regarding the position of law in respect of a complaint which is filed well within the period of limitation before the Court but the cognizance of the offence is taken after the period of limitation.

Therefore, the argument of the learned counsel for the respondent that the said judgment of the Supreme Court cannot be held to be a law laid down cannot be accepted. In view of the fact that the Supreme Court has laid down the law in ruling in *Krishna Pillai v. T. A. Rajendran* (supra) the ruling given by this Court in *Basavantappa Basappa Bannihalli v. Shankarappa Marigallappa Bannihalli* (supra) cannot be said to be good law.

9. Therefore, what is required to be considered is whether the offence became time-barred on the date when the trial Court took cognizance of the offence. Since the period of limitation prescribed for the offences for not filing of the return in time is one year and taking into consideration the date of the taking of cognizance by the trial court of the offences alleged against the petitioner for not filing the returns in time it will have to be held that the offences were not time-barred. So far as other offences alleged against the petitioner for non-payment of his share of the Employees' State Insurance contribution is concerned, it is a continuing offence and the complaint was filed on April 21, 1988, and cognizance was taken on May 13, 1988. In view of the fact that the said offence is a continuing offence, there is no question of offence becoming time-barred. Therefore, it will have to be held that the complaint filed by the respondent was not barred by limitation as the cognizance of the offence for not filing the return was taken well within the period of limitation and the offences of non-payment of contribution alleged against the petitioner were continuing ones.

10. Learned counsel for the petitioner further submitted that there is no proper cognizance of the offences taken by the trial court and, therefore, the conviction of the petitioner is liable to be set aside on this count. The Supreme Court in the case of Devarapalli Lakshminarayana Reddy and Others Vs. V. Narayana Reddy and Others, has explained as to what the expression "taking cognizance of an offence" means. It has held as follows (headnote) :

"The expression "taking cognizance of an offence" by the Magistrate has not been defined in the Code. The ways in which such cognizance can be taken are set out in clauses (a), (b) and (c) of Section 190(1). Whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of preliminary action, if any, taken, by the Magistrate. Broadly speaking, when receiving a complaint, the Magistrate applies his mind for the purposes of proceeding u/s 200 and the succeeding sections in Chapter XV of the Code of 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). If, instead of proceeding under Chapter IX, he has in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation or ordering investigation by the police u/s 156(3), he cannot be said to have taken cognizance of any offence."

11. It is a well-settled principle of law that the Magistrate must apply his mind to the complaint before taking cognizance of the offence.

It is not necessary that the Magistrate should specially mention that he has taken cognizance of the offence before proceeding with the matter. But, there should be some indication that he has applied his mind before making cognizance of the offence.

In the order sheets maintained by the trial Court pertaining to these cases the

order relating to this point is as follows :

"The complainant has filed this complaint against the accused persons noted above for an offence punishable u/s 85(e) of the Employee's State Insurance Act, 1948."

This portion is typed in pro forma. Sub-sections of Section 85 not applicable to the case are scored off and then date is mentioned and signed by the Presiding Officer. There is no indication that the Court has taken cognizance of the offence alleged against the petitioner before proceeding further in this case.

12. In view of the order passed by the Court in a mechanical manner, registering the case and issuing summons to the accused by filling up certain columns in the order and scoring off sub-sections not applicable to the particular case, it cannot be said that the Court has taken cognizance before proceeding in the case.

Learned counsel for respondent submitted that even if it is held that the Court has not indicated about the taking of cognizance before proceeding further in the case, it is a curable defect and the petitioner cannot take up this point at this point of time. He further submitted that petitioner ought to have challenged this point at the threshold itself. I am not able to accept this argument of learned counsel for the respondent for the reason that without taking cognizance of the offence the Court will not get jurisdiction to proceed in the matter. It is a matter that goes to the very root of the case and if the Court has not taken cognizance of the offence or there is no indication that it had applied its mind before taking cognizance of the offence this illegality which goes to the root of the matter cannot be regularised on the ground that the accused had not challenged the proceedings on the point of cognizance. Therefore, I have no hesitation to hold that in this case learned Presiding Officer of the Special Court for Economic Offences, Bangalore, had not taken cognizance of the offence alleged against the petitioner. On that point itself the entire proceedings are vitiated and liable to be quashed.

Learned counsel for the respondent further submitted that if the learned Presiding Officer has committed mistake in not taking cognizance of the offence in the case, the respondent cannot be penalised for that. He further submitted that a party should not suffer for the mistake committed by the Court. The party cannot be penalised or made to suffer on account of the mistake committed by Presiding Officer of the Court. If this case were to rest on this point only the Court would have set aside the impugned orders and remanded the case to the trial court. In fact, in some of the cases, where the improper taking of cognizance of the offences was challenged by the petitioners against whom violation of provisions of the Employees' State Insurance Act was alleged, this Court had remanded to trial court such cases with a direction to take cognizance of the offence in accordance with law and thereafter proceed in the said case. But, the impugned orders are challenged not only on the ground that the Presiding Officer of the Special Court for Economic Offences had not taken

cognizance of the offence before proceeding further in the case, but also that there was no valid sanction for prosecution of the petitioner. It is not disputed in this case that, for the prosecution of the petitioner, a sanction is necessary. The sanction order is produced in this case and in C.C. No. 1183 of 1988, the sanction order is in a cyclostyled form. The material that is not applicable to the case has been scored off. The name of the petitioner is typed and then the Regional Director has signed it. In the two other orders of sanction, the sanction order is the typed one and in that also name of the petitioner is specially typed and the portions not applicable have been scored out in C.C. No. 2744 of 1988 and in C.C. No. 1192 of 1988 only the name of the petitioner is added. The date is mentioned and thereafter the Regional Director has signed it. In this order even the words "has/had" have remained unsecured off. In *State of Karnataka v. M. Siddaramesh* ILR (1977) Kar 1419, it has been held that previous sanction by a proper authority is sine qua non for filing the complaint. It has also been held further in that ruling that it is necessary to show by the Prosecuting Authority that the attention of the sanctioning authority was brought to bear upon the facts of the prosecution case and that the authority applied its mind to it and then came to the conclusion that sanctions should or should not be granted. In *Mohd. Iqbal Ahmed Vs. State of Andhra Pradesh*, it has been held as follows (headnote) :

"It is incumbent on the prosecution to prove that a valid sanction has been granted by the sanctioning authority after it was satisfied that a case for sanction has been made out constituting the offence. This should be done in two ways : either (1) by producing the original sanction which itself contains the facts constituting the offence and the grounds of satisfaction; and (2) by adducing evidence aliened to show the facts placed before the sanctioning authority and the satisfaction arrived at by it. Any case instituted without a proper sanction must fail because this being a proper sanction must fail because this being a manifest defect in the prosecution, the entire proceedings are rendered void ab initio.

What the Court has to see is whether or not the sanctioning authority at the time of giving sanction was aware of the facts constituting the offence and applied its mind to the same : any subsequent fact which may come into existence after the grant of sanction is wholly irrelevant. The grant of sanction is not an idle formality or an acrimonious exercise but a solemn and sacrosanct act which affords protection to the Government servants against frivolous prosecutions and must, therefore, be strictly complied with before any prosecution can be launched against the public servant concerned. It will not be correct to say that in view of the presumption which is to be drawn u/s 4, even if no facts are mentioned in the resolution of the sanctioning authority it must be presumed that the sanctioning authority was satisfied that the prosecution against the accused should be launched on the basis of the presumption that the accused had received a bribe. In the first place, there is no question of the presumption being available to the sanctioning authority because at that stage the occasion

for drawing a presumption never arises since there is no case in the Court. Secondly, the presumption does not arise automatically but only on proof of certain circumstances, that is to say, where it is proved by evidence in the Court that the money said to have been paid to the accused was actually recovered from his possession. It is only then that the Court may presume the amount received would be deemed to be an illegal gratification. The question of sanction arises before the proceedings come to the Court and the question of drawing the presumption, therefore, does not arise at this stage. The prosecution cannot be given a chance to produce the materials in the appeal before the Supreme Court to satisfy that the sanctioning authority had duly applied its mind to the facts constituting the offence. In a criminal case the Supreme Court or for that matter any Court should not ordinarily direct fresh evidence to fill up a lacuna deliberately left by the prosecution."

13. A perusal of the sanction orders in these cases goes to show that they have been passed by the Regional Director in a mechanical manner without application of mind to the facts of the case. What is done in these orders is that some pro forma has been used and some details have been either filled up or scored off as per the requirements of the particulars of the case. By a mere look at these sanction orders it will have to be inferred that the Regional Director has passed these sanction orders in a mechanical manner without applying his mind. Therefore, such a sanction cannot be said to be a valid sanction to initiate prosecution against the petitioner. In the words of the Supreme Court, the entire proceedings will be void ab initio, if proper sanction is not there as required by law. In these cases there is no proper sanction as required by law to initiate proceedings against the petitioner.

14. Hence, the entire proceedings culminating in the conviction of the petitioner are void ab initio.

For the reasons discussed above, I proceed pass the following order :

15. Petitions are allowed.

16. The judgments of the Courts below are set aside and the petitioner is acquitted of the offences with which he has been charged and he is set at liberty and his bail bonds shall stand cancelled.

17. The petitioner is entitled to refund of find, if any, he has paid in the Court below.