
(2005) 08 RAJ CK 0057

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 160 of 2005

H.S. Bapan

APPELLANT

Vs

E.S.I. Corpn.

RESPONDENT

Date of Decision : 26-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 204, 482
Employees State Insurance Act, 1948 — Section 2(17)
Penal Code, 1860 (IPC) — Section 405, 406, 409

Citation : (2006) 1 LLJ 531 : (2006) 1 RCR(Criminal) 39 : (2005) 4 RLW 2719

Hon'ble Judges : J.P. Jain, J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant; A.S. Khangarot and S.S. Rathore, for the Respondent

Judgement

Jain, J.—This petition u/s 482 Cr.P.C. is directed against the order dated 13.1.04 passed by the Special Judge, Sati Nivaran, Rajasthan and Addl. Sessions Judge, Jaipur whereby Cr. Revision Petition filed by the petitioners has been dismissed against the order dated 17.7.02 passed by the Addl. Chief Judicial Magistrate No. 1, Jaipur City, Jaipur whereby an application filed by petitioners u/s 204 Cr.P.C. to drop the proceedings was rejected.

2. The complainant non-petitioner filed a criminal complaint against the petitioners in the Court of Chief Judicial Magistrate, Jaipur for the offence u/s 406 and 409 IPC alleging that accused No. 1 to 4 are Directors of accused No. 5 M/s. Perfect Thread Mills Ltd., Udaipur. The accused persons deducted the amount of Employees State Insurance from the salary of the employees for the period from August, 1987 to February, 1988 but did not deposit the same with the Department. The learned trial Court took cognizance against the petitioners for the offences under Sections 406 and 409 IPC.

3. During the pendency of the trial of the case the petitioners filed an application u/s 204 Cr.P.C. to the effect that Hon'ble Supreme Court in Employees State

Insurance Corporation v. S.K. Aggrawal and Ors. AIR 1988 SC 2676 has held that employees are appointed by the Company and not by the Directors, therefore, the Directors cannot be said to be the "employer" of the employees of the Company, therefore, they cannot be prosecuted in respect of offences relating to lapses on the part of the Company, therefore, they should be discharged and the proceedings against them be dropped.

4. The lower Court vide order dated 17.7.02 rejected the application of the petitioners. Being aggrieved with the same, revision petition was preferred by the petitioners before the District & Sessions Judge, Jaipur City, Jaipur which was transferred for disposal to the Court of Special Judge, Sati Nivaran, Rajasthan and Addl. Sessions Judge, Jaipur, who rejected the revision petition of the petitioners vide impugned order dated 13.7.05.

5. The learned Counsel for the petitioners has contended that as per Para 1 of the complaint Annex-2 itself it is clear that petitioners No. 1 to 4 were Directors of petitioner No. 5 Company. The matter relates to ESI contribution of the employees of the employer company. The Hon"ble Supreme Court has interpreted the definition of "employer" as defined in Section 2(17) of the ESI Act and has held that "Company" is the "employer" of the employees and not the Directors of the Company.

6. The next contention of the learned Counsel for the petitioner is that amount in dispute has already been deposited by the petitioner company. A copy of the statement of payment made to ESI Corporation dated 22.11.02 has been placed on record as Annex-1.

7. The learned Counsel for non-petitioners has contended that petitioner company failed to deposit the amount of ESI contribution and Directors being responsible officers of the company were responsible for depositing the contribution of ESI which is statutory liability.

8. I have considered the rival submissions and examined the impugned order and also the judgment of the Hon"ble Supreme Court as referred above.

9. From the statement of payment Annex-1 it is clear that amount in dispute has already been deposited by petitioners through challan. The counsel for the respondents does not dispute that payment in dispute has been paid by the petitioners.

10. In ESI Corporation v. S.K. Aggarwal supra Hon"ble the Supreme Court has considered the definition of "employer" as defined in Section 2(17) of the ESI Act. The matter was relating to offence u/s 405 IPC itself. After considering various aspects of the matter, the Hon"ble Supreme Court held as under:

Therefore, even if we read the definition of "principal employer" under the Employees' State Insurance Act, 1948 in Explanation 2 to Section 405 of the Indian Penal Code, the directors of the company, in the present case, would not be covered by the definition of "principal employer" when the company itself

owns the factory and is also the employer of its employees at the head office.

In any event, in the absence of any express provision in the Indian Penal Code incorporating the definition of "principal employer" in Explanation 2 to Section 405, this definition cannot be held to apply to the term "employer" in Explanation 2. As the High Court has observed, the term "employer" in Explanation 2 must be understood as in ordinary parlance. In ordinary parlance it is the company which is the employer and not its directors either singly or collectively."

11. In view of the above judgment of the Hon"ble Supreme Court, the petitioners Nos. 1 to 4 who are Directors of the company cannot be said to be "employer" within the definition of Section 217 of the Act for the purpose of prosecution for violation of the provisions of ESI Act. The controversy involved in the present case is fully covered by the judgment of the Hon"ble Supreme Court as referred above. It is also clear that amount in question has already been deposited by the petitioners.

12. In view of the above discussion this petition u/s 482 Cr.P.C. filed on behalf of the petitioners No. 1 to 4 is allowed and order taking cognizance and the entire proceeding pending against petitioners No. 1 to 4, in the Court of Addl. Chief Judicial Magistrate No. 1, Jaipur City, Jaipur are quashed. So far as petitioner No. 5 is concerned this Cr. Misc. Petition is dismissed. The trial Court is directed to proceed in the complaint/matter against petitioner No. 5 M/s. Perfect Thread Mills Ltd. Jaipur in accordance with the provisions of law.

13. The petition is partly allowed as indicated above.