courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 13/09/2026

(1997) 07 MAD CK 0014

In the Madras High Court

Case No : Criminal A. No. 1091 of 1989

Inspector, employees State Insurance; Corporation, Madras — APPELLANT

Vs

V. Nagarathinam and 2 others — RESPONDENT

Date of Decision : 22-07-1997

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (1999) 1 LW(Cri) 106

Hon'ble Judges : S.M. Sidlckk, J

Bench : Single Bench

Advocate : G. Jayachandran, for Special Public Prosecutor, for the Appellant; Shanmughavelayutham, for the Respondent

Final Decision : Allowed

Judgement

S.M. Sidlckk, J.—The appellant is the complainant and the respondents are the accused 1 to 3. This appeal is preferred by the

Appellant/Complainant to set aside the order of acquittal passed by the learned Second Metropolitan Magistrate, Eg-more at Madras on

26/6/1989 in C.C. No. 5263/1988.

2. The facts, which have given rise to the present appeal, are briefly as follows:-

The accused No. 1 and 2 are the partners and the accused No. 3 is the Manager of the Factory known as M/s. Sree Krishnaswamy Mill,

Komarapalayam. The factory known as M/s. Sree Krishnaswamy Mills situated at No. 15, Palliapalayam Road, komarapalayam 638 183, Salem

District is covered under the Act as per the provisions of S. 1(4) read with S. 2(12) of the E.S.I. Act. Thus a distinctive code number was allotted

to the said Factory. The accused No. 1 and 2 being the partners and the accused No. 3 being the Manager and the principal employers of the said

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inspector-employees-state-insurance…

Factory as per the provisions of the E.S.I. Act. The principal employer is required to submit to the E.S.I. Corporation a return in respect of the

Employees employed in the said factory in Form No. 6 known as the return of contributions within the time limit specified under Regulation 26 of

the Regulations. The accused have failed to submit the said Return of Contributions in Form No. 6 in respect of their employees for the

contribution period ended on 30/9/1987 which return should have been submitted by them on or before 31/10/1987. Thus by their failure to

submit the said Return to the E.S.I. Corporation on or before 31/10/1987 the accused have committed an offence as per the provisions of Sub-

Section (e) of S. 85 of the E.S.I. Act. The accused No. 3 has already been convicted for having committed a similar offence of non-submission of

Return in Form No. 6 for the contribution period ended on 30/9/1986 and fined Rs. 300/- in all by the Court of the Second Metropolitan

Magistrate, Egmore at Madras in C.C. No. 3762/87 on 16/11/1987. As such he is liable to be punished under S. 85-A also. The complaint is

filed in time in accordance with the provision of S. 86(3) of the E.S.I. Act. The Regional Director has accorded sanction for prosecution of the

accused for the abovesaid offences as required under S. 86(l) of the E.S.I. Act.

3. Copies of the complaint were furnished to the Respondents/Accused. As the Respondents/Accused denied the accusation, they were ordered

to be tried by the Magistrate. Then a petition was filed on behalf of the accused raising a preliminary objection and stating that the complaint should

be dismissed on the ground that the offence under S. 85(e) of the E.S.I. Act is not said to have been committed by the accused in as much as it is

not shown in the complaint that there was remittance of contribution amount, which is a pre-condition for the submission of the return of

contribution. The said application to dismiss the complaint filed by the accused was resisted by the Appellant/Complainant before the trial

Magistrate by filing a detailed counter statement.

4. Therefore, no trial was held. On hearing the arguments of both the counsel on the preliminary objection raised by the accused, the learned

Magistrate found that the accused are not guilty of the offence with which they are charged and so the learned Magistrate acquitted the accused.

Aggrieved against the order of acquittal the Appellant/Complainant has come up

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inspector-employees-state-insurance…

in appeal.

5. After hearing the learned counsel for the appellant and the learned counsel for the respondents the point that arises for determination in this

appeal is as to whether the order of acquittal passed by the learned Magistrate is sustainable in the facts and circumstances of the case and if so, to

what relief the Appellant/Complainant is entitled.

6. Point The lower Court acquitted the accused on the only ground that the complaint for the offence under S. 85(e) of E.S.I. Act without a

complaint under S. 85(a) is not maintainable in view of the decision of this Court reported in AshokKumar Goyal v. Manager, E.S.I. Corporation,

Madras (1987 L.W. (Cri.) 285),

7. That was a case where a complaint was filed by the E.S.I.-Corporation stating that the accused therein failed to submit the return of contribution

cards in Form No.6 which should have been submitted by him on or before 10th July 1982 and thus he would have become guilty of the offences

under Ss. 85(g) and 85(e) of the E.S.I Act. The trial Court in that case viz., the Sub Divisional Magistrate at Ponneri did not give any finding that

the accused has failed to submit the return and cards referred to in the complaint, but gave a finding that the accused has failed to pay his

contribution in respect of the period ending 20.5.82 and so on the basis of that finding convicted the accused under Ss. 85(g) and 85(e) of the

E.S.I. Act and sentenced him to undergo rigorous imprisonment for three months for each count and to pay a fine of Rs. 1,000/- on each count.

On appeal, the Sessions Judge, at Chingleput found that since the evidence is only in respect of nonpayment of contribution and since there was no

evidence whatsoever in respect of the non-submission of the return of contribution and contribution cards, the conviction was not sustainable and

accordingly the Sessions Judge at Chingleput acquitted the accused of the offence for which he stood charged but however directed retrial of the

accused allowing the respondent to adduce evidence in respect of the offence complained of under S. 85(a) of E.S.I. Act for non-payment of

contribution.

8. Against the Judgment of the sessions Judge at Chingleput the accused in that case preferred the Revision before the Madras High Court which

rendered the decision reported in 1987 L.W.(Cri.) 285 by Justice David

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inspector-employees-state-insurance…

Annoussamy. In the above said Judgment reported in 1987 L.W.(Cri).

285, the learned Judge in the middle of paragraph 4 has stated as follows:-

Thirdly, offence of non-payment and the offence of non-submission of records are two distinct offences, as could be seen from S. 25 of the Act.

The non-payment of contribution is punishable under S. 85(a) of the Act, whereas the failure of submission of return is punishable under S. 85(e)

of the Act. Further, the punishment for the offence under Clause (a) is different from the punishment in respect of other clauses... Fourthly, the

legislature by providing two different offences has by itself indicated its intention that a person who has failed to pay should not be punished for not

submitting the contribution cards and return.

9. Placing reliance on the last sentence viz., ""Fourthly, the legislature by providing two different offences has by itself indicated its intention that a

person who has failed to pay should not be punished for not submitting the contribution cards and return"", the learned counsel for the

respondents/accused argued that the present complaint filed under S. 85(e) for the failure to submit the return of contribution cannot be maintained

in law without a complaint under S. 85(a) for the failure to pay the contribution. In other words the learned counsel for the respondent/accused

would submit that a complaint for both the offences under Ss. 85(a) and 85(e) alone can be maintained and not a complaint for the single offence

under S. 85(e) of E.S.I. Act.

10. In my view the above approach of the learned counsel for the respondent/ accused is erroneous for the following reasons. No doubt the

learned Judge Justice David Annoussamy has observed in one portion of the Judgment about the intention of the Legislature that a person who has

failed to pay should not be punished for not submitting the contribution cards and return, and by such an observation it cannot be taken to mean

that a complaint for failure to submit the return of contribution under S. 85(e) is not maintainable without a complaint for failure to pay contribution

under S. 85(a) of E.S.I. Act. The learned Judge Justice David Annoussamy has observed in the earlier portion of his judgment i.e., in the middle of

Para 4 of his judgment candidly that the offence of non-payment of contribution and the offence of non-submission of return of contribution are two

distinct offences. Having stated so he could not have meant to say that a

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inspector-employees-state-insurance…

complaint for both offences alone is maintainable

11. A reading of the provisions in S. 85(a) and 85(e) of E.S.I. Act would clearly indicate that they are different and separate offences and they

cannot go together. The first step is to file a return and the next step is to pay the contribution, and the failure to observe the same can only be

separate and distinct. In other words the contribution cannot be in the first instance and the failure of submitting the return of contribution cannot be

at a later stage. The failure to pay contribution cannot be interlinked or inter-connected with the failure to submit the return of contribution as

required by the Regulation.

12. In my view the above decision of Justice David Annoussamy is wrongly interpreted by extracting a passage in his Judgment and quoted the

same out of context to contend that the complaint for the single offence under S. 85(e) for non-submission of the return of contribution is not

maintainable without a complaint for non-payment of contribution under S. 85(a) of E.S.I. Act. Therefore in my view, the decision of the learned

Judge Justice David Annoussamy cannot be the basis to contend that the complaint under S. 85(e) of the E.S.I. Act without a complaint under

8.85(a) of E.S.I. Act is not maintainable under law.

13. Nowhere in the Regulation 26 of E.S.I. Act (General) Regulations of 1950 it is stated that the payment of contribution is simultaneous with the

filing of the return of contribution. It states that the return of contribution along-with the receipted challans can be submitted. It can be submitted

without the challans or with the challans. It is not mandatory for the owner of the establishment to pay the contribution and then to file the return of

contribution. It is not the case of the Respondents/Accused that the. E.S.I. Corporation refused to receive the return without the payment of

contribution. Even there may be ""nil"" return and in such a situation there shall not be any payment of contribution and so a ""nil"" return of

contribution can also be submitted by the owner of the establishment. So it is futile to contend on behalf of the Respondents/Accused that in as

much as it is not shown in the complaint that there was remittance of contribution amount, which is a precondition for submission of return of

contribution to the E.S.I. Corporation, the offence under S. 85(e) of the E.S.I. Act is not said to have been committed by the accused. Therefore

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inspector-employees-state-insurance…

the present complaint for the offence of non-submission of the return of contribution simpliciter under S. 85(e) of E.S.I. Act is maintainable.

14. The learned counsel for the Respondents/Accused Mr. Shanmugavelayutham submitted that the law on the question of filing a complaint and

maintaining the same for the offence of non- submission of return of contribution under S. 85(e) of E.S.I. Act can be settled by this Court but

however the lower Court has acquitted the accused in the year 1989 and now eight years have elapsed and in those circumstances the finding of

acquittal passed by the learned Magistrate need not be interfered with. The above contention is not entitled to any acceptance in this case for the

following reasons. No evidence was adduced on the side of the complainant and no documents were filed and marked in this case. There were no

proceedings under S. 313 of Cr.P.C. There is no finding on the merits of the case but there is a finding with regard to the preliminary objection

raised by the accused that the complaint is not maintainable under law. Therefore there is no trial in this case in the eye of law. In view of these

compelling reasons I am of the view that the order of acquittal must be set aside and a retrial has to be ordered. In those circumstances I am of the

view that the order of acquittal passed by the learned Second Metropolitan Magistrate, Egmore at Madras has to be set aside and a retrial has to

be ordered and the appeal has to be allowed and consequently I answer this point in favour of the Appellant/Complainant.

15. In the result the appeal is allowed. The order of acquittal passed by the learned Second Metropolitan Magistrate, Egmore at Madras on

26/6/1989 in C.C. No. 5263/88 is set aside. The learned Second Metropolitan Magistrate, Egmore is directed to restore the complaint to its

original file and it is further directed that the accused in this case shall be retired and a Judgment shall be delivered in accordance with law.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/inspector-employees-state-insurance…