(1990) 08 MAD CK 0002

In the Madras High Court

Case No : Criminal Appeal No. 80 of 1985 and Criminal Miscellaneous petition No. 101 of 1985

Insurance Inspector, Employees' State Insurance Corporation — APPELLANT

Vs

Venkatesan
P.R. Ramakrishnan and V.R. Venkatesan Vs State — RESPONDENT

Date of Decision : 09-08-1990

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 313
Employees State Insurance Act, 1948 — Section 85(i)

Citation : (1991) LW(Cri) 133

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : P. Rajamanickam, for the Appellant; V. Gopinathan, for the Respondent

Final Decision : Dismissed

Judgement

Arunachalam, J.—One of the Petitioners in Crl. M.P. No. 101 of 1985 and the Respondent in Crl. A. No. 80 of 1985 are the same. In Crl.

M.P. No. 101 of 1985, the Respondent is the Insurance Inspector, E.S.I. Corporation, Madras. In the appeal, the Appellant is the Insurance

Inspector, Local Office, E.S.I. Corporation, P.N. Palayam, Coimbatore.

2. The appeal as well as the miscellaneous petition are disposed of together since the questions raised are either common or overlap.

3. It is better to dispose of the Criminal appeal initially. The Respondent and another were prosecuted in S.T.R. No. 223 of 1984, before the

Additional Judicial First Class Magistrate, Coimbatore, for having committed an offence u/s 85(a) punishable u/s 85(i) of the Employee''s State

Insurance Act, 1948 (Central Act XXXIV of 1948) (hereinafter referred, to as ''the

Act''). The allegations in the complaint were, that one P.R.

Ramakrishnan (A-1) was the Managing Director and the Respondent was the Adminstrative Officer of the Factory known as M/s. Radhakrishna

Mills Ltd., Peelamedu, Coimbatore. They were, therefore, principal employers under the provisions of the Act. The Respondent and another, who

had recovered Rs. 39,357.40 towards employee''s contribution from the wages/ salaries of their employee''s, had failed to remit the said amount

along with the employer''s contribution, within the time limit contemplated under Regulation 31 of the Employee''s State Insurance (Central)

Regulations, 1950. During the course of trial, on behalf of the Appeallant, three official witnesses were examined and Exhibits P-1 to P-5 were

marked. Exhibit P-1 is the inspection report dt 28.11.1983 Exhibit Show Cause notice dt 17.2.1984, while Ex.P-3 is the P-2 is the bar

acknowledgement for receipt of the Show Cause notice Exhibit P-4 is the extract for the period from October 1982 to April 1983 in C-6

Register. Exhibit P-5 is the order of sanction by the Regional Director, dated 9-4-1984.

4. The trial Magistrate, after referring to the depositions of P.Ws.1 to 3 and Exhibits P-1 to P-5, observed, that there were no incriminating

circumstances against the Respondent and another to question them u/s 313, Code of Criminal Procedure. The learned Magistrate finally

concluded, that the prosecution had failed to let in evidence that the Respondent herein or the other were the principal employers of the factory in

question. It was also observed that the prosecution had not chosen to let in evidence, that either of them was the owner or occupier or the manager

of the factory and any of them had the ultimate control over the affairs of the factory. Apparently, an order of acquittal was recorded on the basis

of there being no evidence on record to convict the Respondent and another.

5. In this appeal filed by the Employee''s State Insurance Corporation, Mr. P. Rajmanickam, learned Counsel appearing on behalf of the

Appellant, contended that the trial Magistrate had overlooked Exhibit P-2, the show cause notice dated 17-2-1984 addressed to the Respondent,

who had admittedly received it as vouchsafed by Exhibit P-3. In Exhibit P-2, it has been specifically mentioned as follows:

...You, being the manager and therefore the Principal employer of the said factory are required to insure all your employees under the Act, pay the

ESI contribution in respect of all employees including employees of the immediate employer....

In view of Exhibit P-2 not having been considered, it is the argument of the learned Counsel for the Appellant, that there has been miscarriage of

justice, needing interference in this appeal.

6. I have heard Mr. V. Gopinathan, learned Counsel appearing on behalf of the Respondent. I have carefully considered the submission made by

Mr. P. Rajamanickam. I am unable to agree with him. The prosecution had chosen to place before Court substantive evidence, through P.Ws.1 to

3. Those responsible officers did not even choose to connect either the Respondent or the other person with the factory. There is not even a

whisper or a shred of evidence in the substantive evidence even to remotely connect the Respondent or the other person with the day-to day

affairs of the factory. Simply because in a self-serving document Exhibit P-2, it has been stated, that the Respondent herein was the manager and,

therefore, the principal employer, that cannot enure in favour of the prosecution, especially when oral evidence had been brought on record. It

cannot also be overlooked that the Respondent did not have a chance to explain the contents of Exhibit P-2 u/s 313, Code of Criminal Procedure

because he was not questioned. At this distance of time, on this slender argument, I am unable to interfere and set aside the judgment of the trial

Magistrate in so far as it relates to the Respondent, which is certainly sustainable, on the ground of lack of evidence against the Respondent, to

connect him with offence alleged. In that view, this appeal is dismissed.

7. The Respondent in Crl. A. No. 80 of 1985 and one P.R. Ramakrishnan are the Petitioners in Crl. M.P. No. 101 of 1985. The prosecution

against them is for an offence u/s 85(e) and (g) punishable u/s 85(ii) of the Act. The first Petitioner has been shown as Chairman and Managing

Director of M/s. Radhakrishnan Mills Ltd., Peelamedu, Coimbatore. The second Petitioner has been shown as the Administrative Officer of the

said factory. The allegations in the complaint show, that the Petitioners, as principal employers, should submit a return of contribution cards in

Form No. 6 as required under Regulation 26 of the Employees'' State Insurance (Central) Regulation, 1950 along with the contribution cards in sets A, B, and C within 42 days of the expiry of each contribution period. The Petitioners had failed to submit the return of contribution cards as

aforementioned together with the contribution cards for B, C and A sets ended on 24-9-1983, 26-11-1983 and 28-1-1984 respectively, which

return cards should have been submitted on or before 5-11-1983, 7-1-1984 and 10-3-1984 respectively.

8. In this petition filed u/s 482, Code of Criminal Procedure to quash the pending proceedings, Mr. V. Gopinathan, learned Counsel appearing on

behalf of the Petitioners, contended that the finding of fact in S.T.R. No. 223 of 1984 by the Additional Judicial First Class Magistrate,

Coimbatore, will constitute issue estoppel, prohibiting this prosecution, in the sense that evidence shall not be allowed to be let in to distrub the

findings of fact arrived in S.T.R. No. 223 of 1984. To substantiate his contention, he submitted that the period for which the prosecution in the

later case is intended covers the same period referred in the prior prosecution. He has also made a specific plea, that unless the payments were

made, the question of forwarding cards may not arise.

9. Mr. P. Rajamanickam, learned Counsel appearing for the Respondent, contended that the plea of issue estoppel projected, was totally

misconceived, for, the trial Magistrate in S.T.R. No. 223 of 1984, had observed that there was no evidence, even to question the accused therein

and the acquittal was based on lack of evidence and, therefore, the findings, if any, rendered were not based on evidence placed before Court.

The latter prosecution does not relate to the same period. Both counsel have referred to certain decided cases, which I will refer to shortly.

10. Even at the outset, I may indicate, that I am not convinced that the principle issue estoppel would apply to the facts of this case. In State of

Andhra Pradesh v. Kokkiligada Meeraiah 1970 M.L.J. (Crl.) 265, the Supreme Court stated, that the rule of issue of estoppel was to prevent

relitigation of the issue determined in a criminal trial between the State and the accused, as conclusion inconsistent with the conclusion at the earlier

trial was prohibited. It was further observed that if the in respect of an offence arising out of a transaction, a trial had taken place and the accused

had been acquitted, another trial in respect of the offence alleged to arise out of the transaction or of a related transaction which requires the Court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial was prohibited by the rule of issue estoppel. Again, the apex

Court in Lalta v. State of Uttar Pradesh 1970 M.L.J. (Crl) 605 reiterated, that where an issue of fact had been tried by a competent Court on a

former occasion and a finding had been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the

prosecution, not as a bar to the trial and conviction of the accused for a different offence, but as precluding the reception of evidence to distrub that

finding of fact when the accused was tried subsequently even for a different offence which might be permitteed by law.

11. Ratnavel Pandian, J., as he then was, in Ponnuswamy v. Venkatachalam (Sic) pointed out that the principle of issue estoppel or res judicata

was different from the principle of double jeopardy or autrefois acquit. The learned Judge quoted the view aforestated of the Supreme Court.

These decisions certainly show that, if the facts placed before the Court had been appreciated and a finding had been rendered between the same

parties, such findings of fact, cannot be allowed to be relitigated. It is fairly apparent on the facts of this case, that the judgment of the trial

Magistrate in S.T.R. No. 223 of 1984 is so confused, that a particular stage he holds that there was no evidence on record to question the

accused u/s 313, Code of Criminal Procedure and ultimately gives a finding that the Petitioners could not be convicted not because that they were

not principal employers, but because the prosecution had not placed any evidence before the Court to substantiate their case, that they were

principal employers. The finding of the trial Magistrate, therefore, has no value whatsoever to operate as an issue estoppel or res judicata to

prevent the trial, in this prosecution. In this context, it will be relevant to refer to the judgment of the Supreme Court, brought to my notice by the

learned Counsel for the Respondent and reported in Manipur Administration v. Thokcham Bira Singh 1966 MWN (Crl.) 189. The Supreme

Court observed as follows:

... This, however, in our opinion does not afford any assistance to the argument becaused Pritam Singh and Another Vs. The State of Punjab, did

not introduce any variation in the Code as regards either investigation, enquiry or trial. As we have pointed out earlier, issue estoppel does not prevent the trial of any offence as does autrefois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence

had already been led and a specific finding recorded at an earlier criminal trial before a Court of competent jurisdiction....

These observations will show, that what was precluded was letting in of evidence to prove a fact in issue as regards which evidence has already

been let in and a specific finding recorded at an earlier criminal trial before a Court of competent jurisdiction. As I have already observed, the

acquittal in S.T.R. No. 223 of 1984 was based on the ground of no evidence and obviously resort to the principle of issue estoppel cannot enure

in favour of the Petitioners. This question having been answered, it still remains to be considered, as to whether the prosecution in C.C. No. 4537

of 1984 can be allowed to survive, in respect of both the Petitioners. Learned Counsel appearing for the Petitioner being conscious, that the

second submission would relate to appreciation of evidence, would desire it to be left out of consideration, so that his chance before the trial

Magistrate may not be thwarted by any observations that may be made herein. Hence I refrain from considering the merits of that submission.

12. In the complaint, the first Petitioner has shown as the Chairman and Managing Director, while the second Petitioner has been christened as the

Administrative Officer. Though there can be no doubt, that the principal employer would be the person liable to pay contribution, Sub-section (g)

to Section 85 of the Act can take in its fold any other person found in charge of the establishment of the factory to produce to the Inspector or

other official account books and other documents relating to the employment of the persons, payment of wages, etc. It could not be, therefore,

reasonably argued, that the prosecution cannot be proceeded with against the Managing Director, because the very designation suggests, that he

must be in the Knowledge of the affairs of the factory I am, therefore, unable to quash the prosecution as against the first Petitioner at this stage. It

will, of course, be open to the first Petitioner to establish before the trial Magistrate, that he may not be covered by the definition of principal

employer as contemplated u/s 2(17) of the Act. As for as the second Petitioner is concerned, merely because he is shown as an Administrative

Officer, without anything further to indicate that he was in over-all control of the affairs of the factory, he cannot be prosecuted. I have recently taken this view in a group of petitions. Hence as for as the second Petitioner in Crl. M.P. No. 101 of 1985 is concerned, the prosecution in C.C.

No. 4537 of 1984 on the file of II Metropolitan Magistrate, Egmore, Madras, shall Stand quashed. This petition is dismissed in so far as it relates

to the first Petitioner.