

(2008) 04 MAD CK 0001

In the Madras High Court

Case No : Criminal O.P. (MD) No. 11089 of 2007 and M.P. (MD) No's. 1 and 2 of 2007

K.L. Sankarapandian Nadar, C/o. M.S.K.L. Sankarapandian
and Co.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Citation : (2009) 1 LW(Cri) 170

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Advocate : G. Mariappan, for the Appellant; P. Sermakani, for the Respondent

Final Decision : Dismissed

Judgement

S. Nagamuthu, J.—The Petitioner, who is the sole accused in S.T.C. No. 230 of 2006 on the file of the Judicial Magistrate No. VI,

Madurai, facing prosecution for the alleged offence u/s 85(3) read with 85(ii) of the Employees' State Insurance Act, 1948 on the complaint of the

Respondent, has come forward with this petition u/s 482 Cr.P.C, seeking to quash the proceedings.

2. The case of the Insurance Corporation, in brief, as per the complaint is as follows:

The Petitioner is the owner of a factory known as M/s.K.L. Sankarapandian & Co., at Virudhunagar and the said factory is covered as per the

provisions of Section 1(4) read with 2(12) of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the Act"). The Petitioner is the

Principal Employer as defined in Section 2(17) of the Act. As per Section 44 of the Act, the Petitioner, being the Principal Employer of the factory

is required to furnish the returns to the Respondent. For the contribution period ended with 30.09.2004, the return should have been submitted by him on or before 11.11.2004. But, the Petitioner has failed to submit the same. The said failure to submit the return, according to the Insurance Corporation is an offence u/s 85(e) of the Act. With these allegations, the Respondent has laid the private complaint, on which the learned Judicial Magistrate has taken cognizance.

3. The contention of the Petitioner is that M/s. K.L. Sankarapandian & Co., is not a factory as defined in the Act. According to him, there were only three workers engaged and not 11 workers as stated in the complaint. As per the legal requirement, to make the premises as a factory, 10 or more persons should be employed. When the Respondent issued notice u/s 44(2) of the Act, the Petitioner submitted that the Mill is not a factory as there were less than 10 workers employed. Despite the same, it is stated by the Petitioner that for the contribution period between April 2004 and September 2004, an order determining the contribution amount at Rs. 7722/- was passed by the Respondent in No. 57/41056-06/INS.III/74/04 dated 04.02.2005 u/s 45-A of the Act. For the contribution period between October 2004 and September 2005, the Respondent passed an order dated 31.03.2006 determining the contribution u/s 45-A of the Act at Rs. 35,393/-. Aggrieved over the above said two orders, the Petitioner has filed E.S.I.O.P. Nos. 41 and 42 of 2006 respectively before the Employees State Insurance Court (Labour Court), Madurai. The Employees State Insurance Court, by interim order dated 28.04.2006 has granted Interim Stay of the operation of the impugned orders.

4. The main contention of the Petitioner in this petition is that since the determination orders made u/s 45-A of the Act, having been stayed, the Prosecution launched against the Petitioner is illegal and the same is therefore liable to be quashed.

5. It is seen from the records that the private complaint was filed before the learned Judicial Magistrate on 18.05.2005 and cognizance was taken on the same day. The interim order of stay came to be passed by the Insurance Court after about 11 months of launching of the prosecution. The Petitioner would contend that since the question whether the Petitioner's concern

is a factory and whether the Petitioner is a Principal Employer or not are in dispute before the competent Court viz., the Employees State Insurance Court and therefore, the prosecution is not maintainable and further the said questions cannot be decided by the Criminal Court. Thus, according to the Petitioner, allowing of the prosecution to continue further would be a wasteful exercise and the same would amount to abuse of process of Court. On these grounds, the Petitioner has come forward with this petition, seeking to quash the said proceedings.

6. I have heard the submissions of the learned Counsel for the Petitioner and the learned Counsel for the Respondent and thoroughly perused the materials available on record.

7. Admittedly, the Petitioner is the proprietor of the concern known as M/s.K.L. Sankara Pandian & Co., at Virudhunagar. It is also not in dispute that the Petitioner's factory was covered by the authorities by allotting a code number. The Petitioner has not challenged the same by raising any dispute before the Employees' Insurance Court u/s 75 of the Act. The question whether any person is a Principal Employer or not and whether he is liable to pay the employees' contribution or not are to be decided exclusively by the Employees' State Insurance Court as stated in Section 75 of the Act. But, in this case, as stated above, the Petitioner has not raised any dispute and he has not prayed for any declaration that his concern is not a factory and that he is not the Principal Employer.

8. Admittedly, the Petitioner did not submit the return for the contribution period ending with 30.09.2004. The said return should have been submitted on or before 11.11.2004. Thereafter, as provided in Section 45-A of the Act, the Respondent has determined the amount on the basis of the available information. A perusal of the petitions filed u/s 75 of the Act before the Employees' State Insurance Court in E.S.I.O.P. Nos. 41 and 42 of 2006 would go to show that the Petitioner has only challenged the determination orders passed u/s 45-A of the Act. Of course, the Insurance Court has only granted stay of the operation of the determination orders dated 04.02.2005 and 31.03.2006. It means that the Insurance Corporation cannot demand the amount to be paid as per the determination orders. If any prosecution is launched against the Petitioner for nonpayment of the employees' contribution as determined u/s 45-A of the Act,

which has been now stayed, certainly such prosecution shall be liable to be quashed. But, in the case on hand, the prosecution has been launched not for the failure to pay the employees' contribution on the basis of the determination orders, but for the failure to submit the return as required u/s 44(1) of the Act. The Petitioner's factory was long before covered under the Act by the proceedings of the Respondent by allotting a separate code number. As pointed earlier, the said proceedings of the Respondent, bringing the business concern of the Petitioner within the purview of the Act has not been challenged at all. Therefore, there can be no doubt that the Petitioner should have submitted his return within the time stipulated. After such submission, if he has any grievance regarding the determination order passed u/s 45-A of the Act, again it is challengeable u/s 75 of the Act.

9. Yet another point which needs to be considered is that the order of interim stay came to be passed by the Insurance Court only on 28.04.2006, whereas the Prosecution was launched long before the said date on 18.05.2005 itself. Thus, on the date when the learned Judicial Magistrate took cognizance of the offence on the private complaint filed by the Respondent, there was no legal hurdle for him to take cognizance since as on 18.05.2005, there was no order of interim stay by the Employees State Insurance Court. As pointed out earlier, the interim stay is only in respect of the determination orders and not against the proceedings of the Respondent bringing the business concern of the Petitioner within the purview of the Act.

10. In *Jayamohan v. Manager, Employees' State Insurance Corporation* reported in 1998 (80) I.F.L.R 449, a learned Single Judge of this Court, while dealing with a question as to whether the Criminal Court is bound by an order passed by the Civil Court subsequently or not has held as follows:

While such being the case of the Respondent in C.C. No. 124 of 1995, the revision Petitioner has challenged the determination of the quantum of contribution payable by him to the Employees' State Insurance Corporation, and that is why he has filed E.S.O.P. No. 2 of 1995 before the District Judge, Kanyakumari District at Nagercoil, u/s 45-A of the Employees' State Insurance Act. Therefore, the questions involved in the civil

matter in E.S.O.P. No. 2 of 1995 and in the criminal proceedings in C.C. No. 124 of 1995 are not identical and they are distinct and different

questions to be answered by different courts of law. A mere obtaining of interim stay by the revision Petitioner in I.A. No. 447 of 1995 in

E.S.O.P. No. 2 of 1995 will not prevent the criminal court from proceedings with the case in C.C. No. 124 of 1995 for the simple reason that the

criminal court or the Magistrate's Court cannot be bound by the order passed by the Civil Court, much more so when the criminal court is not a

party to the stay proceedings in I.A. No. 447 of 1995 in E.S.O.P. No. 2 of 1995. In other words, the pendency of E.S.O.P. No. 2 of 1995 or the

obtaining of interim stay in I.A. No. 447 of 1995 is not a bar to prosecute or to continue the criminal proceedings in C.C. No. 124 of 1995. On a

reading of the complaint in C.C. No. 124 of 1995, I find there is prima facie case triable by a competent criminal court and the allegations made in

the complaint are not groundless. Considering the above facts and circumstances of the case, I am to hold that the order passed by the learned

Judicial Magistrate No. 2 at Nagercoil, in CrI.M.P. No. 4210 of 1995 on July 21, 1997, has to be confirmed, and this Criminal Revision case has

to be dismissed and, consequently, I answer this point as against the revision Petitioner....

11. I am in full agreement with the view expressed by the learned Single Judge in the said case, wherein he has concluded that mere obtaining of

interim stay by the Petitioner will not prevent the criminal court from proceeding with the criminal case for the simple reason that the criminal court

cannot be bound by the order passed by the civil court. In the case on hand, as pointed out earlier, the order of interim stay was only in respect of

the determination made u/s 45-A of the Act and so, the said stay order, which came to be passed long after launching of the prosecution would not

in any way be a bar for the criminal court to proceed further with the case. It is for the trial court to give a finding on the basis of the evidence

adduced by both the parties as to whether the Petitioner has committed the offence or not. Thus, I do not find any valid ground to quash the

proceedings.

12. For the reasons stated above, this Criminal Original Petition is liable to be dismissed and accordingly, the same is dismissed. Consequently, the

connected M.P.(MD)Nos.I and 2 of 2007 are also dismissed.