

(1963) 10 RAJ CK 0004
In the Rajasthan High Court

Mohan Dass

APPELLANT

Vs

Regional Director, Employee's State Insurance Corporation

RESPONDENT

Date of Decision : 21-10-1963

Acts Referred:

Employees State Insurance Act, 1948 — Section 15, 2, 4, 5, 75

Citation : (1964) CriLJ 612 : (1963) RLW 591

Hon'ble Judges : L.N. Chhangani, J

Bench : Single Bench

Judgement

L.N. Chhangani, J.—This is a reference By the Additional sessions Judge No. 2, Jaipur City, recommending inlay proceedings in criminal base No. 310 of 1961 under section 85 of the employees' state insurance Act inordinate referred to as the Act) pending before the him Magistrate, Jaipur, be stayed till the decision of miscellaneous proceedings u/s 75(2) of the am pending before the Employees' Insurance Court of Jaipur City (hereinafter referred to as the insurance court). The learned Additional Sessions Judge further recommended that the Judge of the insurance Court be Directed to expedite the disposal of the proceedings pending perom It.

2. The relevant facts giving rise to the present reference may be briefly stated as follows:—

The Employees' State Insurance Corporation through Its Regional Director filed a Complaint on 15/1/1961 against Mohan Dass Khandeiwai under section 85 of the Act. It was stated that the firm M/s Jem chemical and Pharmaceutical works Jaipur was a factory within the meaning of Sub-section (12) of section 2 of the Act and that Mohan Dass was Its Manager. The accused was responsible for payment of the employer's contribution to the Corporation and he having made a default for the quarter ending 31st December, 1960, was guilty u/s 85 of the Act

3. The accused denied the allegations made in the complaint and contended that the petitioner had severed all his connections with the said M/s Jem chemical

arm Pharmaceutical Works on 18-9-1959 and was, therefore, not liable to pay any contribution and was not guilty to any of the contraventions or non-compliance with any of the requirements of the Act or the rules or regulations made thereunder.

4. During the pendency of these criminal proceedings, the Regional Director filed yet another application Under Section. 75(2) of the Act for the recovery of employers' contribution amounting to Rs. 906 for the period from 8-3-1960 to 29-7-1961 in the Insurance Court. The accused petitioner contested this petition as well on the same grounds on which he denied his liability u/s 85 of the Act. The insurance court was asked to issue a writ & number of issues out of which issues Nos. 4 and 5 being relevant for purposes of the present case, may be reproduced here:-

4. Whether Monanaass Khandeiwai was the principal Employer and Manager during the period under dispute as defined in Section 2 Sub-section (17) of the E.S.I Act?

5. Whether the opposite party is liable to pay contribution from 8-3-60 to 29-7-61 and also submit contribution cards in respect of the Employees of the said Factory?

On 22nd March, 1963 the accused petitioner monanaass filed an application in the criminal case praying for quashing of the criminal proceedings. His contention was that the criminal proceedings were not maintainable without prior determination of the liability of the accused under the Act. The application was rejected by the Magistrate on 22-3-1963. The accused-petitioner went in revision to the court of session and the revision was finally heard by the Additional Sessions Judge No. 2. The Additional Sessions Judge held that there was nothing in the scheme of the Act to warrant an inference that no criminal proceedings can be instituted u/s 85 of the Act without first getting the question of dispute regarding payment of contribution decided by the insurance Court u/s 75 of the Act. He, however, held that pending the proceedings before the insurance court the criminal proceedings should be stayed.

5. Mr. Mardia appeared for the accused petitioner and supported the reference. Mr. Ugani Rai appeared on 14th October, 1963 and opposed the reference, though, however, he has failed to appear in spite of due notice.

6. While opposing the reference, Mr. Ugam Kaj relied upon two cases of this Court, namely, Keshrimal Vs. The State, and Keshrimal Vs. The State, this Court considered the question whether a criminal case should be stayed because there is a civil suit pending about the same matter and adopted the to stay rule?

There is no invariable rule that a criminal proceeding should be stayed pending the issue of a civil suit, but that the matter was entirely one of discretion of the court to be exercised having regard to the merits of all the circumstances of the case.

In Kalu's case ILR (1953) Raj 697 the same principle was stated in the following

terms?

That there is no invariable rule that a criminal proceeding should be stayed pending the decision of a civil court involving the same or allied subject-matter, but it is a matter entirely one of discretion to be exercised having regard to the merits and circumstances of each particular case.

It was further added?

It is eminently desirable and that is indeed the policy of the Legislature that a criminal proceeding should be decided as expeditiously as possible and it follows, therefore, that except for compelling reasons such a proceeding should not be allowed to hang on indefinitely until the decision of a civil suit which may take years to decide.

There can be no quarrel with the principle of law laid down in these cases. However, for the proper application of the principle laid down in these cases it is necessary to consider the relevant provisions of the Act which have a considerable bearing on the controversy as to the desirability of staying a criminal proceeding pending the determination of the dispute relating to civil liability of the accused. It will be appropriate at this stage to read the relevant portion of section 85 of the Act:—

85, If any person?

- (a) fails to pay any contribution which under this act he is liable to pay, or
- (b) xxx
- (c) xxx
- (d) xxx
- (e) xxx
- (f) xxx
- (g) xxx

he shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees, or with both.

7. The learned Counsel for the opposite party contended that on a literal construction of section 85 of the Act a criminal court should be held competent to decide the controversy as to liability of the accused to pay a contribution under the Act. At first sight, an impression may likely be created that a criminal court is competent to adjudicate upon the liability of an accused to pay a contribution but a closer examination of the matter reveals that the contention of the opposite party cannot be accepted.

Section 85 of the Act cannot be construed in isolation and must be read in conjunction with the scheme of the Act and other relevant provisions of the Act.

Section 4 of the Act empowers the state Government to constitute of means of a notification in the official gazette to provide by Insurance Courts for specified local areas for the purposes of adjudicating disputes arising under the Act. Section 5 Sub-section (1) enumerates eight categories of questions or disputes and directs that they shall be decided by the Insurance Court in accordance with the provisions of the Act. Sub-section (2) further lists six kinds of claims which shall be decided by the insurance court. Sub-section (3) provides that no civil court shall have jurisdiction to decide or deal with any question or dispute as aforesaid or to adjudicate on any liability which by or under this Act is to be decided by the Employees Insurance Act. Section 15 evidently has created a special exclusive forum for determination of disputes and claims specified therein and has ousted the jurisdiction of civil courts to determine such disputes and claims, it follows so, it requires no serious argument to show that criminal courts also cannot entertain and adjudicate upon such disputes and claims. Surely, the Legislature while the jurisdiction of the civil courts to determine the said dispute or questions or claims cannot be expected to intend that criminal courts should nevertheless be treated as competent to determine such matters.

A contrary view must frustrate the very purpose of creating a special exclusive forum. It is in this background that section 85 of the Act must be interpreted.. Construing section 85 in the light of the considerations mutated above, I find no difficulty in concluding that section 85 cannot be taken to empower a criminal court to "entertain and determine questions or disputes or Claims" specified in Section 75 of the Act. It comes into operation and can be invoked only when there is no controversy over the questions or disputes or claims mentioned in section 85 either the parties having joined no controversy over them or the controversies, if raised having been properly determined by the Insurance Court under section 75. The nature of inquiry under section 85 is restricted to the determination of limited questions such as whether the employer being indisputably liable to make employer's contribution has made a default in making contribution.

Reverting to the facts of the case in hand, it can be stated that the accused petitioner has denied that he was the Manager of M/s. Jem Chemical and Pharmaceutical Works and, therefore, could not "be treated as an employer liable to make employers' contribution". The Corporation itself subsequent to the criminal case also filed a claim for contribution in the insurance Court in respect of such contributions, the question as to who is or was the principal employer (which expression includes a named manager vide Section 2(17)) in respect of any employees is one of the eight categories enumerated in Section 75 vide Section 75(1)(d). So also a claim for contribution is included in the claims listed in Section 15(2) that clearly the questions raised in the criminal case fall within Section 75 of the Act and require to be determined by the Insurance Court; besides the questions of fact actually in issue before the insurance Court in the case No. 1 of 1962, in these circumstances I have no doubt that the City Magistrate is not competent to undertake the determination of the above "questions" and must await the determination of the questions by the Insurance Court.

and the Additional Sessions Judge is fully, Justified in recommending the stay of criminal case pending the determination of the claim case before the insurance Court.

8. I accordingly, accept the reference and direct that the proceedings : in the Criminal Case No. 310 of 1952 pending, to before the City Magistrate shall be stayed in the decision of the Miscellaneous Application No. 1 of Pending before the insurance Court, the insurance is further directed to expedite the disposal of the miscellaneous application.