
(2016) 03 CAL CK 0178
In the Calcutta High Court
Case No : CRR No. 834 of 2015

Prasanta Jana

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-03-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, Section 482
Employees State Insurance Act, 1948 — Section 85(a)

Citation : (2016) 4 CalHCN 670

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Mr. Anirban Dutta, Advocate, for the Petitioner; Mr. Subal Maitra, Advocate, for the Opposite party No. 2; Mr. Sabir Ahmed, Advocate, for the State

Final Decision : Disposed Off

Judgement

R.K. Bag, J.—The petitioner has preferred this revision under Section 401 read with Section 482 of the Code of Criminal Procedure praying for setting aside the judgment and order dated February 16, 2015 passed by learned Additional Sessions Judge, Fast Track Court, Durgapur, in Criminal Appeal No.3 of 2014 arising out of the judgment and order passed by learned Additional Chief Judicial Magistrate, Durgapur, in C.R. No.405 of 2009 under Section 85(a) of the Employees' State Insurance Act, 1948.

2. It appears from record that the opposite party - Employees' State Insurance Corporation filed a petition of complaint against the petitioner on the allegation of committing offence under Section 85(a) of the Employees' State Insurance Act, 1948. It is alleged in the said petition of complaint that the petitioner did not contribute the share of both employees and employer for the period from January, 2007 to March, 2007 and thereby the petitioner committed the offence under Section 85(a) of the Employees' State Insurance Act, 1948.

3. On March 14, 2014 learned Additional Chief Judicial Magistrate, Durgapur, acquitted the petitioner of the charge under Section 85(a) of the Employees'

State Insurance Act, 1948. The judgment and order of acquittal passed by learned Magistrate was challenged by the opposite party before the court of sessions by preferring Criminal Appeal No.3 of 2014. On February 16, 2014 learned Additional Sessions Judge, Fast Track Court, Durgapur, disposed of the Criminal Appeal No.3 of 2014 and convicted the petitioner for the offence under Section 85(a) of the Employees' State Insurance Act, 1948 and sentenced him to suffer imprisonment for one year. The said judgment and order passed by learned Additional Sessions Judge in Criminal Appeal No.3 of 2014 is under challenge in this revision.

4. Mr. Anirban Dutta, learned counsel for the petitioner submits that the petitioner has deposited contribution of share of the employees and employer for the period of default and one supplementary affidavit is filed in connection with this case. Mr. Dutta further submits that the petitioner deposited Rs.1,06,370/- in favour of the opposite party by bank draft which covers not only the arrears of contribution in this case but also arrears of contribution in connection with other criminal cases initiated by the opposite party against the petitioner. By referring to the proviso to Section 85(a)(i) of the Employees' State Insurance Act, 1948 Mr. Dutta contends that the amount of sentence may be reduced as the petitioner has already deposited the contribution for the period of default and the petitioner is willing to make payment of interest on the said amount in the form of fine. He has relied on the decision of this court in "R.K. Agarwal v. State of West Bengal" reported in 2006(3) CHN 610 in support of his above contention.

5. Mr. Subal Maitra, learned counsel for the opposite party submits that the Employees' State Insurance Corporation has already received the amount of Rs.1,06,370/- from the petitioner, which covers not only contribution of the petitioner for the period of default in connection with this case, but also contribution of the share of the employees and employers in connection with other criminal cases initiated by the opposite party against the petitioner. Mr. Maitra also submits that he has no objection if the amount of sentence is reduced and the petitioner is directed to make payment of fine which is compulsory under the penal provision for which the petitioner is charged.

6. Mr. Sabir Ahmed, learned counsel appearing on behalf of the opposite party State also does not raise any objection if the amount of sentence of imprisonment is reduced and the petitioner is directed to make payment of fine as per provision of law.

7. Admittedly, the petitioner has deposited the arrears of contribution of employees and employer with the opposite party no.2 during the pendency of the revision before the High Court. On perusal of provision of Section 85(a)(i) of the Employees' State Insurance Act, 1948 I find that the petitioner is liable to undergo imprisonment for minimum sentence of one year and also liable to pay fine of Rs.10,000/- for default in contributing share of the employees and employer with the opposite party - Employees' State Insurance Corporation. The proviso to Sub-Section (i) of Section 85(a) of the Employees' State Insurance

Act, 1948 also lays down that the minimum sentence of imprisonment prescribed under the statute may be reduced by the court by giving adequate and special reasons. In the instant case, the petitioner has deposited both employees' and employer's share of contribution with the opposite party no.2 during the pendency of this revision and the opposite party no.2 has also accepted the said arrears of contribution after his conviction by the appellate court. Since the petitioner has deposited arrears of contribution, I am inclined to impose the minimum sentence of imprisonment and fine on the petitioner for the offence under Section 85(a) of the Employees' State Insurance Act, 1948. In this regard, I would like to follow the law laid down by the learned single Judge of this Court in "R.K. Agarwal v. State of West Bengal" reported in 2006(3) CHN 610.

8. In view of my above observation, the judgment and order dated February 16, 2015 passed by learned Additional Sessions Judge, Fast Track Court, Durgapur, in Criminal Appeal No.3 of 2014 is modified to the extent that the petitioner is convicted under Section 85(a) of the Employees' State Insurance Act, 1948 and he is sentenced to suffer imprisonment for one day that is till the rising of the court and to pay fine of Rs.10,000/- in default to suffer imprisonment for 3 months. The petitioner is directed to surrender before the trial court within a period of four weeks from the date of this order in order to undergo punishment imposed by this Court.

9. The criminal revision is, thus, disposed of.

10. Let a copy of the order be sent down to the learned court below for favour of information and necessary action.