

(2014) 10 KL CK 0158
In the High Court Of Kerala
Case No : Crl. Rev. Pet. No. 179 of 2004 (B)

R. Suresh Kumar

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(1)
Employees State Insurance Act, 1948 — Section 40, 68, 85(a), 85(e)

Citation : (2014) 10 KL CK 0158

Hon'ble Judges : A. Hariprasad, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu and P. Maya, Advocate for the Appellant; P. Sankarankutty Nair, Advocate and Madhu Ben, Public Prosecutor, Advocate for the Respondent

Judgement

A. Hariprasad, J.—Revision petitioner challenges the concurrent findings of the courts below wherein he was found guilty under Sections 85(a), (e) and (g) of the Employees' State Insurance Act, 1948 (for short "the Act").

2. Case in the complaint is as follows :

Revision petitioner is the first accused. He was the Secretary of the second accused Society. Second accused society is covered under the provisions of the Act. The principal employer is bound to submit return to the Regional Office of the E.S.I Corporation in respect of the employees employed in the factory run by the Society in Form No. 6 within the time satisfied under Regulation 26 of E.S.I. Regulation, 1950 (in short "the Regulation"). According to the averments in the complaint, the accused in the case failed to submit the return for the period ended on 31-03-1998 and 30-09-1998. It is further alleged that the accused failed to pay E.S.I contribution for the period from 01-04-1997 to 31-12-1997 amounting to Rs.65,760/- as provided under Section 40 of the Act r/w Regulations 29 and 31.

3. Heard the learned counsel for the petitioner and the learned Standing Counsel for the E.S.I Corporation.

4. Trial court examined two witnesses and marked nine documents on the side of the prosecution. There was no defence evidence.

5. Learned counsel for the revision petitioner submitted that the revision petitioner was not the Secretary at the material time. Therefore, the courts below erred in convicting the revision petitioner. To repel this contention, courts below relied on by the oral evidence of PW's 1 and 2 and Exts.P6 and P7. Ext.P6 is a declaration signed by the revision petitioner furnishing the contributory particulars under Section 68 of the Act and Regulation 27. Ext.P7 is the inspection report. Those documents are proved through PW's 1 and 2. Ext.P7 shows that the revision petitioner was the Secretary at the material time. I find no legal reason to interfere with the findings on this aspect by the courts below. The contention that the persons, who prepared Exts.P6 and P7 were not examined will not improve the case of the revision petitioner in view of the facts established through the oral evidence and documentary evidence. On going through the impugned judgments, I do not find any reason to find that the courts below committed any legal error in appreciating the evidence or applying the principles of law. Learned counsel for the revision petitioner drew my attention to CrI.M.A. No. 6435/2014, which is an application to accept documents. According to him the documents produced in the revision would show that the second accused society had already paid Rs.62,000/- towards the claim. However, the fact remains that the offence once attracted will not be absolved by subsequent payment. Learned Standing Counsel for the Insurance Corporation submitted that without any instruction, he cannot agree that the petitioners have made the payment. He has not received any instruction so far regarding the so called payment made by the second accused to the Corporation. Learned counsel for the petitioner submitted that this can be considered by the Corporation independently. The only anxiety is that he shall not be put in imprisonment on the basis of this finding. Considering the entire facts and circumstances of the case and without expressing any opinion as to the payment claimed to have been made by the second accused towards the liability of the Corporation, I find that in the facts and circumstances, the sentence can be suitably modified.

In the result, the revision petition is partly allowed. Convictions of the petitioner for the aforementioned offences are confirmed. The simple imprisonment for one month imposed on the petitioner under Section 85(a) of the Act is set aside. He shall pay a fine of Rs.2,500/- (Rupees two thousand five hundred only) for the offence under Section 85(a) of the Act and in default of payment of fine, he shall undergo simple imprisonment for a period of one month. He shall also pay a fine of Rs.1000/- (Rupees one thousand only) under Section 85(e) of the Act and a default sentence of 15 days simple imprisonment. If the amounts are realized, it shall be paid as compensation under Section 357(1) Cr. P.C. to the complainant Corporation.

Learned counsel for the petitioner submitted that the petitioner has already paid the fine amount. If he had already paid the fine amount as directed by the court below, excess, if any, shall be returned to the revision petitioner.

All pending interlocutory applications will stand dismissed.