

(1999) 03 AP CK 0048

In the Andhra Pradesh High Court

Case No : Criminal RC No. 337 of 1996 and Batch

Ramacharan Agarwal

APPELLANT

Vs

Employees State Insurance Corportion, Hyderabad

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 13, 14, 482(2), 484(2)
Employees State Insurance Act, 1948 — Section 74, 84, 85, 86

Citation : (1999) 2 ALD 578

Hon'ble Judges : Vaman Rao, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : Mr. Koka Satyanarayana Rao and Mr. C. Padmanabha Reddy, Amicus Curie, for the Appellant; Public Prosecutor and Mr. Y. Venkateswara Rao, SC for Corporation, for the Respondent

Judgement

Vaman Rao, J

1. This matter arises out of a reference made by our learned Brother Justice T. Ranga Rao in Criminal RC No.337 of 1996. It appears that the same question of law arises in other CrI. RC Nos.919 and 135 of 1997 and in Writ Petition No.18377 of 1994.

2. CrI. RC No.337 of 1996 is directed against the judgment dated 16-2-1996 in Pros. SC No.67 of 1995 on the file of the Special First Class Magistrate, Judge Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad (herein-after referred to as "Special Magistrate"). The revision petitioner was prosecuted for the offence of contravention of Section 85 (e) and (g) of the Employees State Insurance Act, 1948 (for short, "the Act") and on the basis of the evidence adduced, he was convicted for the said offence and was sentenced to pay a fine of Rs.200/- under each count and in default to suffer simple imprisonment for two weeks. Aggrieved by the said conviction and sentence, the petitioner filed this revision petition.

3. The principal defence of the accused before the trial Court was that the factory in question was not located within the implemented area of the Employees State Insurance Scheme and also no notification was issued by the High Court conferring powers on the Presiding Officers of the Industrial Tribunal to exercise the powers of Judicial Magistrate of First Class as provided u/s 13 of the Code of Criminal Procedure, 1973 (for short "the Code, 1973") and as such the Court had no jurisdiction to entertain the case. The learned Special Magistrate rejected both the contentions and found him guilty as stated above.

4. When the revision i.e., Crl. RC. No.337 of 1996 came up for hearing before our learned Brother, Justice T. Ranga Rao, the plea of want of territorial jurisdiction on the ground that the factory was not located within the area covered by the Employees Insurance Scheme was not pressed. The only question canvassed was that the Presiding Officer, Industrial Tribunal who was appointed as Special Judicial First Class Magistrate under the provisions of the Criminal Procedure Code, 1898 (for short "the Code, 1898") was not re-appointed as such Magistrate after the Code, 1973 came into force and as such the Presiding Officer, Industrial Tribunal was not vested with the jurisdiction of the Judicial First Class Magistrate and, therefore, he had no jurisdiction to try the offences under Employees State Insurance Act.

5. It is seen that our learned Brother Justice Sri K.B. Siddappa, presiding over a single Bench in Criminal Revision Case No.674 of 1995, in which judgment was rendered on 27-10-1998, had accepted the plea that under the new Criminal Procedure Code, 1973 it was only the High Court which could confer judicial powers on the Industrial Tribunal to exercise jurisdiction under Sections 84 and 85 of the Employees State Insurance Act. As they were not notified as Special Judicial First Class Magistrates after new Criminal Procedure Code, 1973 came into force, they had no jurisdiction to exercise the powers of Judicial First Class Magistrate. It was also held by the learned Judge that the ex-officio appointment of all Presiding Officers of Industrial Tribunal under the Old Criminal Procedure Code was not saved u/s 484 of Criminal Procedure Code, 1973 (for short "the Code, 1973"). On this ground, the said revision was allowed holding that the order passed by the Chairman, Industrial Tribunal was without jurisdiction. Justice Sri T. Ranga Rao in this revision petition disagreed with that view and directed that a reference may be made to a Division Bench after obtaining the orders of the Hon'ble the Chief Justice. It is under these circumstances, Crl. RC No.337 of 1996 has been referred to this Bench.

6. u/s 85 of the Employees State Insurance Act, certain acts or omissions are punishable as an offence. The relevant part of Section 85 is extracted below.

"85. Punishment for failure to pay contributions, etc. :

If any person -

(a)

(b)

(c)

(d)

(e) fails or refuse to submit any return required by the regulations, or makes a false return, or

(f)

(g) is guilty of any contravention of or non-compliance with any of the requirement of this Act or the rules or the regulations in respect of which no special penalty is provided,

he shall be punishable -

(i)

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees;

7. Section 86 of the Act contemplates that no Court inferior to that of Metropolitan Magistrate or Judicial Magistrate of First Class shall try any offence under this Act. Thus, it is apparent that offences u/s 85 of the Act can be tried only by a Court not inferior to Metropolitan Magistrate or Judicial First Class Magistrate. Section 74 of the Act provides that the State Government shall by notification in Official Gazette constitute an Employees Insurance Court for such local area as may be specified in such notification. Sub-section (3) of Section 74 provides that any person who is or has been a judicial officer or legal practitioner shall be qualified to be a Judge of the Employees Insurance Court. It is not disputed that the Industrial Tribunal-1, Hyderabad has been designated as Employees State Insurance Court for the purpose of Section 74 of the Act. The offences under Sections 84 and 85 of the Act, as seen above, could be tried only before a Court of Judicial First Class Magistrate or above. For this purpose, it appears that the State Government exercising their powers u/s 14(1) of the Code, 1898 issued notification in G.O. Ms. No.91, Home (Courts.B) Department dated 12-1-1963 conferring upon the Presiding Officer, Industrial Tribunal-I, Hyderabad, the powers to try cases punishable under Sections 84 and 85 of the Employees State Insurance Act, 1948 in the area comprising the cities of Hyderabad and Secunderabad.

8. The contention of the learned Counsel for the revision petitioner, Sri Koka Satyanarayana Rao, is that the appointment of Industrial Tribunal as Judicial First Class Magistrate under the notification referred to above u/s 14 of the Code, 1898 would not survive after repeal of the Code, 1898 under the new Code,

1973. The contention is that the appointment of Special Judicial First Class Magistrate u/s 14 of the Act ceased to have an effect after the new Code, 1973 came into force. The argument is unless a new notification u/s 13 of the Code, 1973 was issued by the High Court appointing the said Tribunal as Judicial Magistrate of First Class, the Tribunal must be held to have ceased to have the jurisdiction to try offences under Sections 84 and 85 of the Act.

9. Sri C. Padmanabha Reddy, the learned senior Counsel has been requested to assist the Court in the matter as amicus curie. It was argued by Sri C. Padmanabha Reddy, the learned senior Counsel that the view taken by Justice Sri K.B. Siddappa is correct and inconsonance with the provisions of the new Code, 1973.

10. The contentions of Sri Koka Satyanarayana Rao, the learned Counsel for the revision petitioner and Sri C. Padmanabha Reddy, the learned senior Counsel (amicus curie) have been countered by the learned Public Prosecutor, Sri Rasheed Ahmad and Sri V. Venkaleswara Rao, the learned Counsel for Employees State Insurance Corporation stating that conferring of powers of Judicial First Class Magistrate u/s 14 of the Code, 1898 has been saved u/s 484 of Cr.PC, 1973. The learned Counsel for the revision petitioner, Sri Koka Salyanarayana Rao, and Sri C. Padmanabha Reddy, the learned senior Counsel, however, pointed out that Section 484(2)(b) of the Code, 1973 specifically enjoins that appointments of Special Magistrates made under the Old Code are excluded from the purview of saving provision. Section 484(2) of the Code, 1973 is extracted below for ready reference:

484. Repeal and Savings - (1) The Code of Criminal Procedure, 1898 (5 of 1898) is hereby repealed.

(2) Notwithstanding such repeal, -

(a)

(b) all notifications published, proclamations issued, powers conferred, form prescribed, local jurisdictions defined, sentences passed and orders, rules and appointments, not being appointments as Special Magistrates, made under the old Code and which are in force immediately before the commencement of this Code, shall be deemed, respectively to have been published, issued, conferred, prescribed, defined, passed or made under the corresponding provisions of this Code;

(c) and (d)

(3)"

11. The learned Counsel for the revision petitioner Sri Koka Salyanarayana Rao as well as the learned Public Prosecutor and the learned Counsel for State Employees Insurance Corporation both seek to rely on the provisions u/s 484(2) (b) of the Code, 1973 to support their rival contentions.

12. It is argued by the learned Counsel for the petitioner, Sri Koka Salyanarayana Rao and also the learned amicus curie, Sri C. Padmanabha Reddy that in clause (b) of Section 484(2) of the Code, 1973, the words "not being appointments as Special Magistrate" would show that appointments of Special Magistrates u/s 14(1) of the Code, 1898 are not saved after the Code, 1973 came into force. The learned Public Prosecutor on the other hand seeks to draw sustenance from clause (b) of subsection (2) of Section 484 of the Code, 1973 by underlining the fact that "all notifications published" and "powers conferred" under the provisions of the Code, 1898 (in this case, Section 14 of the Code, 1898) are categorically saved u/s 484(2) of the new Cr.PC 1973. Thus, it is argued that the conferment of powers of Judicial First Class Magistrates on Industrial Tribunals under notification vide G.O. Ms. No.91 dated 12-1-1963 is saved u/s 484(2) of the Code, 1973 and the Presiding Officers, Industrial Tribunals must be deemed to continue to be vested with the powers of the Judicial First Class Magistrate.

13. To appreciate the rival contentions, it is necessary to scrutinize carefully the provisions u/s 14 of the Code, 1898. Section 14 of the Code, 1898 is extracted below :

"14(1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second and third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the presidency-towns.

(2) Such Magistrate shall be called Special Magistrates and shall be appointed for such terms as the Local Government may by general or special order direct.

(3) With the previous sanction of the Governor-General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by sub-section (1).

(4) No powers shall be conferred under this Section on any Police Officer below the grade of Assistant District Superintendent, and no powers shall be conferred on a Police Officer except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force."

14. The contentions of the learned Public Prosecutor is that the local Government was empowered u/s 14(1) of the Code, 1898 to confer upon any person all powers on a Magistrate of the first, second or third class in respect of a particular cases or a particular class or a particular classes of cases or in regard to cases generally in any local area outside the presidency towns. It is in exercise of such powers, that the above referred notification (G.O. Ms. No.91 dated 12-1-1963) was issued by the Government conferring powers of Judicial First Class Magistrate on the Presiding Officers of the Industrial Tribunals and inasmuch as Section 484(2) of the Code, 1973 saves notifications issued and powers

conferred under the old Code, it must be held that the Presiding Officers of Industrial Tribunals continued to be vested with the powers of judicial first class Magistrates conferred by the Government under the said notification.

15. It is true that Section 484 of the Code, 1973 saves "notifications published" and "powers conferred" along with other matters like forms prescribed, local jurisdiction defined, sentences passed and orders, rules and appointments made etc. immediately before the commencement of the new Code. The difficulty arises as Section 484(2)(b) of the Code, 1973 also specifically indicates that though the appointments made under the old Code are saved but what are saved are the appointments not being "appointments as Special Magistrates". A plain reading of Section 484(2)(b) of the Code, 1973 would make it abundantly clear that appointments of Special Magistrates made under the provisions of Section 14 of the Code, 1898 are specifically excluded from the ambit of the saving clause. Section 484(2)(b) of the Code, 1973 also contemplates that "notifications published" and "powers conferred" are saved. With reference to the notification vide G.O. Ms. No.91 dated 12-1-1963, it is contended by the learned Public Prosecutor that the Presiding Officer of the Industrial Tribunal was merely conferred with the powers of Judicial First Class Magistrate u/s 14(1) of the Code, 1898 and that it was not a case of appointment of Special Magistrate.

16." It is necessary to point out that while sub-section (1) of Section 14 of the Code, 1898 refers to the Government's powers to confer upon any person all or any powers of a Magistrate (first, second or third class), sub-section (2) of the said Section uses the word "shall be appointed" with reference to the said Magistrates. The question is whether there are two streams or classes of Magistrates, one brought into existence by conferring powers and the other by appointment. The words "powers conferred" and the words "appointments as Special Magistrates" found in Section 484(2) of the Code, 1973 must be given their plain meaning and effect. If powers of Magistrate conferred on some persons could be said to have been saved and if appointments made as Special Magistrates must be held not to have been saved, they must be referable to two different entities. It is difficult to conceive that persons on whom powers of Magistrates had been conferred under the provisions of Section 14(1) of the Code, 1898 will continue to be vested with those powers and the Special Magistrates appointed, who are referred to in subsection (2) of Section 14 of the Code, 1898 will cease to hold such appointments. Such a contention can be countenanced if on a proper interpretation of Section 14 of the Code, 1898 and having regard to other provisions in the Code, 1898, it is possible to identify two different categories of judicial Magistrates as mentioned above, namely, one class of Magistrates consisting of persons on whom powers were conferred and the other class of Magistrates who were appointed as such. A careful reading of provisions of Sections 14(1) and (2) would reveal that persons on whom Section 14(1) of the Code, 1898 contemplates conferring of powers of Magistrates are themselves referred to in sub-section (2) of that Section as Special Magistrates and sub-section (2) further provides that such Special Magistrates shall be

appointed for such term as the local Government may by general or special order direct. Thus, the persons on whom powers are conferred under sub-section (1) of Section 14 of the Code, 1898 are themselves the Special Magistrates referred to in sub-section (2) and it is their appointment, which is again mentioned in sub-section (2) of Section 14 of the Code, 1898. Apart from Section 14, there is no other provision in the Criminal Procedure Code, 1898 under which any person could be conferred with the powers of judicial Magistrate or under which a Special Magistrate could be appointed. On the other hand, as far as conferring of powers is concerned, there are other kinds of powers which can be conferred under the Criminal Procedure Code. For example, u/s 17(4) of the Code, 1898, a Sessions Judge could confer powers to hear applications for bail on an Additional Sessions Judge in urgent cases in his absence. In fact, the judgment of the Rajasthan High Court in the case of *Dhola v. State*, 1975 CrLJ 1274, would show that such power conferred by the Sessions Judge on the Additional Sessions Judge u/s 17(4) of the Code, 1898 under a notification dated 19-5-1956 was held to have been saved by virtue of the saving provision u/s 484(2)(b) of the Code, 1973 and as such additional Sessions Judge was held to continue to be vested with such powers even after the new Code, 1973 came into force though fresh notification has not been issued.

17. Thus, there are no two categories of Special Magistrate i.e., (i) those who came into existence by virtue of powers conferred on them, and (ii) those who were appointed as such Special Magistrates. There is only one class of Special Magistrates, whose appointment is referable to Section 14 of the Code, 1898. In the light of this, it is not possible to rely on the words "powers conferred" in Section 484(2)(b) of the Code, 1973 by linking them to the mention of conferring of powers on any person u/s 14(1) of the Code, 1898, ignoring the provision in Section 14(2), and to hold that powers of Magistrate conferred u/s 14(1) are saved in the teeth of the specific mandate in Section 484(2)(b) of the Code, 1973 that appointments of Special Magistrates are not saved. Thus, the words "powers conferred" in Section 484(2)(b) are more general in nature referable to provisions in the Code under which some other powers could be conferred, whereas appointments of Special Magistrates referred to in the said Section could be traced only to Section 14 and to no other provision in the Code, 1898.

18. Under these circumstances, there is no escape from holding that appointment of Special Judicial First Class Magistrates made u/s 14 of the Code, 1898 is not saved u/s 484(2)(b) of the Code, 1973. It cannot be disputed that the Presiding Officer, Industrial Tribunal-I on whom powers of Judicial First Class Magistrate were conferred under notification No.91 dated 12-1-1963 issued by the Government of Andhra Pradesh has been exercising such powers by virtue of his appointments as Special Judicial First Class Magistrates u/s 14 of the Code, 1898. Admittedly, the High Court has not appointed such officers as Special Magistrates u/s 13 of the Code, 1973. Hence, the Presiding Officer, Industrial Tribunal-1 must be held to be lacking jurisdiction to try the offences under Sections 84 and 85 of the Employees State Insurance Act, 1948.

19. In *Naresh Chandra Agarwal and Another Vs. The State*, , the Allahabad High Court held that the Special Magistrate appointed under the old Code will not be in a position to proceed with the trial of cases investigated by the Delhi Special Police Establishment under the new Code of Criminal Procedure on the ground that appointment of Special Magistrates do not fall within the purview of the saving provision u/s 484(2)(b) of the Code, 1973.

20. In the case of *Mohammad Haneef Vs. Smt. Anisa Khatoon and Another*, , a reference is made to an unreported judgment of the Allahabad High Court. As seen from the passage quoted in the above cited judgment, it was specifically held that though appointments made under the old Code have been validated u/s 484(2) of the Code, 1973 but because the Special Magistrates have been excluded from the purview of this clause, the powers conferred on them and their appointments made under the old Code shall not remain valid after the old Code had been repealed by the new Code.

21. Thus, these cases also support the view taken by us that appointment of Special Magistrates made u/s 14 of the Code, 1898 do not come within the purview of the saving clause in Section 484(2)(b) of the Criminal Procedure Code, 1973.

22. In the result, we hold that the conviction of the petitioners/accused in Crl. RC Nos.337 of 1996 and 135 of 1997 for the offences under Sections 85 (a), (e) and (g) of the Employees State Insurance Act, 1948 cannot be sustained and the accused are entitled to be acquitted on the ground that the trial Court, viz., the Industrial Tribunal-I, Hyderabad had no jurisdiction to try the offences in question. Criminal RC No.919 of 1997 is allowed and the order of the Industrial Tribunal-I dated 27-8-1997 in Criminal MP No.119 of 1996 holding that it had jurisdiction is set aside, and Writ Petition No.18377 of 1994 is allowed and we hold that Special First Class Magistrate, Judge, Employees Insurance Court and Chairman, Industrial Tribunal-I, Hyderabad had no jurisdiction to try the offences under Employees State Insurance Act, 1948.

23. Before parting with the case, we place our appreciation on record for the valuable assistance rendered to us by Sri C. Padmnabha Reddy, learned senior Counsel of this Court, as *amicus curiae*.

24. The reference made in Crl. RC No,337 of 1996 is answered accordingly.