
(2002) 01 CAL CK 0039
In the Calcutta High Court
Case No : Criminal Rev. No. 2015 of 1994

R.L. Jaiswal and Another

APPELLANT

Vs

E.S.I. Corporation and Others

RESPONDENT

Date of Decision : 30-01-2002

Acts Referred:

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

Citation : (2002) 1 CALLT 474 : (2002) 2 CHN 601 : (2002) 94 FLR 116

Hon'ble Judges : Pradip Kumar Biswas, J

Bench : Single Bench

Advocate : Biswanath Sanyal and Sanjay Singh, for the Appellant; Subal Moitra, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Biswas, J.—This is an application u/s 482 of the Code of Criminal Procedure seeking quashing of the present proceeding being Case No. C/1661 of 1988 under Sections 85(a), 85(e) and 85(g) of the Employees State Insurance Act, 1948 as amended.

2. The short fact of this case may be summarised as follows:-

The petitioner Nos 1 and 2 are Directors of the Company named and styled as Rajmata India (P) Ltd. (hereinafter referred to as the "company"). In the Factory of the said Company, there is a Factory Manager duly appointed under the provisions of Factories Act which is to the knowledge of the said Opposite Party, the ESI Inspector.

3. Due to the acute financial difficulties, the said Company could make provisions for Just paying the employees so that the Company might not collapse and the old employees may not thrown out of employment and under the provisions as contained in the said Act and Regulations, the said Company is under statutory obligations to pay the ESI dues within the statutory period. The Company,

however, paid the ESI dues for the entire period, but such making of payments were delayed due to acute financial stringencies as the Company was limping to carry on day to day business.

4. It has been alleged by the petitioners that as per the decision of apex Court, the liability to discharge the statutory obligations towards the ESI dues, rests solely upon the Factory Manager and the ESI Act being a Welfare legislation It was never the Intention of the legislature to put the Director or employees in Jail. It has further been alleged that as per the provisions of Section 85(g) of the ESI Act, there is provisions for compulsory imprisonment and the Director are vicariously liable for default of the Company and since It was decided by this Court as also by the apex Court that the prosecution against the Company does not lie, the Directors can not be prosecuted for vicarious liabilities and as such since the prosecution against the Company does not lie, Directors are liable to be discharged as prosecution cannot be continued against them without the accused Company being prosecuted.

5. It has further been alleged that taking of cognizance in such circumstances being per se illegal and void, further continuation of the proceeding is bad in law. Hence, this prayer for quashing of the proceeding.

6. In connection with this case, however, none has appeared on behalf of the petitioner when the matter was called on for hearing. The learned counsel for the Opposite Party No. 1 submitted before me that plainly upon the allegations made" out in the revisional application, the proceeding cannot be quashed as only after taking the evidence, It can be decided whether the Directors are in charge of the day to day conduct of the affairs of the Company or not.

7. It has further been submitted by him that provisions of Section 86(a) of the ESI brought into existence on 20.10.99, whereby the Company was to be made a party in such proceeding, but in the instant case was started in 1998, as could be seen from the paragraphs 6 and 7 of the petition of complaint, so there was no scope to bring the Company on record on the day when the complaint was filed. It has also been submitted that nothing has been produced in the present proceeding to show that in fact there is a Factory Manager duly appointed under the provisions of the Factory Act as there is no such record in the ESI Corporation and Para-II of the present application speaks of only knowledge of the ESI Corporation and in view of such allegation at this stage nothing can be decided without going into the merit of the matter after taking evidence during the trial. So, no relief can be granted to the petitioners on any of the grounds.

8. It is now quite well settled principles of law that for invoking jurisdiction u/s 482 of the Code of Criminal Procedure, the High Court must have to be satisfied first that prima facie there was abuse of the process of the Court and only in such event, the High Court may pass necessary orders for quashing of a criminal proceeding to prevent abuse of the process of the Court and to meet the ends of Justice.

9. It is now quite well settled that the proceeding against an accused person at the initial stage can be quashed only if on the fact of the complaint or the papers accompanying the same, no offence is committed. In other words, the test is that taking the allegation and the complaint, as they are, without adding or subtracting anything from it if no offence is made out, then the High Court will be justified in quashing the proceeding in exercise of its power u/s 482 of the Criminal Procedure. In the instant case, upon hearing O.P. No. 1 and upon perusal of the materials available on record and specially looking into the paragraph 4 of the complaint petition wherein it has been clearly asserted that the accused person being principal employer in respect of the said establishment, they are taking part in day to day affairs of the said establishment and they are responsible for the supervision and control of the same, I am of the clear opinion that at this stage plainly on the allegation as levelled in the revisional application, the relief as sought for by way of quashing of the proceeding, cannot at all be allowed as for assessing the merit of the matter and for ascertaining the truth or otherwise in the allegations, levelled against the petitioners those are required to be decided during trial on merit after taking evidence by examining the witnesses.

10. Accordingly, I hold and conclude that this is not a fit case where this Court should interfere by invoking Jurisdiction u/s 482 of the Cr.PC for quashing of the present proceeding, pending before the lower Court.

This revisional application is, therefore, liable to be dismissed. This revisional application is thus, dismissed.

Interim order. If there be any, stands vacated. The Learned Magistrate is directed to proceed with this trial in accordance with law as expeditiously as possible.