
(2003) 02 CAL CK 0044
In the Calcutta High Court
Case No : C.R.R. No. 2680 of 1998

R.L. Kanoria and Others

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 20-02-2003

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(17), 40
Penal Code, 1860 (IPC) — Section 405, 406

Citation : (2003) 3 CALLT 48a : (2003) 3 CALLT 48 : (2003) 2 CHN 414 : (2003) 3 LLJ 433

Hon'ble Judges : Pradip Kumar Biswas, J

Bench : Single Bench

Advocate : S.S. Roy, for the Appellant; Subal Moitra, for the Respondent

Judgement

Pradip Kumar Biswas, J.—Parties are present before me through their learned advocates. Heard them at length.

2. This is an application u/s 401 read with Section 482 of the Code of Criminal Procedure filed at the instance of Mr. R.L. Kanoria and 4 others seeking to set aside the order dated October 7, 1997 passed by the learned Metropolitan Magistrate, 6th Court, Calcutta in the proceeding being No. C/2363/97 pending before the said learned Court u/s 406 of the Indian Penal Code and/or quashing of the aforesaid proceeding.

3. The short facts leading to the filing of this application are as under:

4. The petitioners are the Directors of Carbon Composites (India) Ltd. (hereinafter referred to as the "said company"). The said company was engaged in the business of manufacturing and processing various types of sports goods and they had a factory at Falta Processing Zone, "Sector-I". It has been alleged that the Insurance Inspector of the complainant has lodged a complaint and subsequently a proceeding u/s 406 of the Indian Penal Code was initiated before the learned Metropolitan Magistrate, 6th Court, against these petitioners for non-

deposit of the Employees" State Insurance contribution (hereinafter referred to as "the E.S.I.") which had been deducted by them from the wages and salaries of the employees of the said company during the period from March, 1996 to May, 1996 to the E.S.I. Fund within the statutory time and such sum was to the tune of Rs. 6105.95 p. The aforesaid allegation was brought in by them upon misconception of law that the petitioners are responsible for deposit of such contribution of the employees to the E.S.I. Fund and the complainant in its complaint has wrongly defined the position of the petitioners as Directors of the "said company" vis-a-vis as principal employers.

5. It has also been alleged that the complainant on his fanciful conjectures had tried to define that these petitioners as occupiers of the factory and thereby making them responsible for deposit of the employees' share of contribution which has been deducted by the "said company" into the E.S.I. Fund. It has also been contended that the employees of the petitioners who have been employed at the factory have been employed by the said company itself and the said company is the principal employer of its employees and the present petitioners as Directors of the company are not personally liable to pay contributions under the Employees' State Insurance Act, 1948 as they did not come under the purview and ambit of the definition of the nomenclature "Principal employer" as in this particular case the company itself, being the factory, is also employer of these employees. That being the position, the petitioners have come up before this forum being aggrieved by and dissatisfied with initiation and continuation of the aforesaid proceeding being case No. C/2363/97 pending before the learned Metropolitan Magistrate, 6th Court.

6. Mr. Subhendu Sekhar Roy, the learned advocate appearing for the petitioners at the very outset drawing my attention to a decision reported in the case of Employees State Insurance Corporation Vs. S.K. Aggarwal and Others, has submitted before me that Section 2(17) of the E.S.I. Act, defines the principal employer as either owner or occupier taking care of all eventualities. When the owner of the factory is the principal employer, there is no need to examine who is occupier. The owner will be the principal employer u/s 40. Therefore, even if the definition of "principal employer" under the Employees' State Insurance Act, 1948 is read in Explanation 2 to Section 405 of the Indian Penal Code, the Directors of the company, would not be covered by the definition of "principal employer" when the company itself owns the factory and is also the employer of its employees at the head office. In any event, in the absence of any express provision in the Indian Penal Code incorporating the definition of "principal employer" in Explanation 2 to Section 405, this definition cannot be held to apply to the term "employer" in Explanation 2. The term "Employer" must be understood as in ordinary parlance. In ordinary parlance it is the company which is the employer and not its Directors either singly or collectively. Placing reliance upon the ratio of the aforesaid decision, it has been submitted by Mr. Roy that since these petitioners who have been Directors as per the ratio of the aforesaid decision, they cannot be regarded as principal employer so as to rope in in

connection with the present ease.

7. In opposing the aforesaid contention of Mr. Roy, Mr. Subal Moitra, the learned advocate appearing for the opposite party has drawn my attention to the provision of Section 86-A of the Employees' State Insurance Act, 1948 and has submitted before me that in the aforesaid decision of the Apex Court the provision of Section 86-A was not taken into consideration and as such the aforesaid decision of the Apex Court has no binding force in connection with the present case.

8. Moreover, he has also drawn my attention to a decision reported in 1986 II C.H.N. page 128 and referring to that judgment, he has submitted before me that in the aforesaid decision, it was held that the expression "employer" used in Explanation 2 to Section 405 of the I.P.C. is wide enough to include principal employers as defined in the E.S.I. Act. Only the principal employers as defined in Section 2(17) of the said Act can recover the amount of employees' contribution, Therefore, the person referred to in Explanation 2 is an employer who under the authority of Section 40, Sub-section (2) of the E.S.I. Act can deduct the employees' share of contribution from their wages. As a result, the expression "person" appearing in Explanation 2 clearly refers to the principal employer defined in the E.S.I. Act.

9. Mr. Roy appearing for the petitioners referring to a decision reported in the case of Suganthi Sureshkumar v. Jagdeeshan 2002 SCC (Cri) 344 has further submitted that in the aforesaid decision it as clearly been laid down by the Apex Court that "it is impermissible for the High Court to overrule the decision of the Apex Court on the ground that the Supreme Court laid down the legal position without considering any other point. It is not only a matter of discipline for the High Courts in India, it is the mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The High Court cannot question the correctness of the decision of the Supreme Court even though the point sought before the High Court was not considered by the Supreme Court."

10. I have also, gone through the aforesaid decision and the decision cited on behalf of the opposite party. Now, in view of the aforesaid decision of the Apex Court reported in 2002 SCC (Cri) 344 (supra) it is clear that despite the fact that whether or not the provision of Section 86-A of the Employees' State Insurance Act, was considered by the Supreme Court in passing the aforesaid judgment reported in Employees State Insurance Corporation Vs. S.K. Aggarwal and Others, , even men it has a binding force on all the subordinate Courts of India and when in clear terms it has been laid by the Supreme Court in the aforesaid decision that in any event, in the absence of any express provision in the Indian Penal Code incorporating the definition of "principal employer" in Explanation 2 to Section 405, this definition cannot be held to apply to the term "employer" in Explanation 2 to Section 405 of I.P.C. and the term "employer" in Explanation 2 must be understood as in ordinary parlance. In ordinary parlance it is the

company which is the employer and not its Directors either singly or collectively.

11. In view of the aforesaid ratio of the decision of the Supreme Court, the decision reported in 1986(II) Calcutta High Court Notes, 128 cannot be held to be a good law and as such it has no binding force.

12. So, to sum up the position as it has emerged now, I am rather prompted to hold on the existing materials that the present petitioners of this case cannot be regarded as "principal employer" and as such they cannot be brought into the purview of the Employees' State Insurance Act, 1948 for violating the provision of Section 40 of the aforesaid Act and as such no proceeding u/s 406 of I.P.C. can be maintained against them.

13. That being the position, the present prosecution u/s 406 of the I.P.C. instituted against the present petitioners as Directors of the company should be quashed. Consequently, the proceeding pending before the Court of Metropolitan Magistrate against these petitioners stands quashed.

14. Xerox certified copy of this order, if applied for, be given to the learned advocates for the parties expeditiously.