
(2003) 06 CAL CK 0029
In the Calcutta High Court
Case No : C.R.R. No. 2698 of 1998

R.L. Kanoria and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 26-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 482
Employees State Insurance Act, 1948 — Section 2(17), 40, 86A
Penal Code, 1860 (IPC) — Section 405, 406

Citation : (2003) 3 CALLT 48 : (2004) CriLJ 867 : 108 CWN 716 : (2004) 1 LLJ 72

Hon'ble Judges : Pradip Kumar Biswas, J

Bench : Single Bench

Advocate : S.S. Roy and C.R. Bakshi, for the Appellant; Subal Moitra, for the Respondent

Judgement

Pradip Kumar Biswas, J.—By filing the instant application u/s 401 read with Section 482 of the Code of Criminal Procedure, one Mr. R.L. Kanoria and four others have come up before this Court seeking to quash the proceeding being Case No. C/2323/97 now pending before the learned Metropolitan Magistrate, 3rd Court, Calcutta u/s 406 of I.P.C. and/or for setting aside the order dated October 7, 1997 passed by the aforesaid learned Magistrate in the aforesaid proceeding alleging that they are the Directors of the Carbon Composites (India) Ltd., (hereinafter referred to as the "said company") and the said company was engaged in the business of manufacturing and processing of various types of sports goods and they had a factory at Falta Processing Zone, Sector-I.

2. Further it has been alleged by the petitioners that the Insurance Inspector of the complainant has lodged a complaint and subsequently a proceeding u/s 406 of I.P.C was initiated before the aforesaid Court against these petitioners for non-deposit of the Employees' State Insurance Corporation's contributions (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 June 1995 to August 1995 to the E.S.I. Fund within the statutory time and such sum was to the tune of Rs. 5,788.30p.

3. It has further been alleged that the aforesaid allegation was against these petitioners upon misconception of law and in the complaint itself, the complainant has wrongly defined the status of the petitioners as Directors of the said Company vis-a-vis as "principal employers".

4. 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 made them responsible for depositing of the employees' share of contribution which has been deducted by the "said company", into the E.S.I Fund.

5. It has further been alleged that employees of the petitioners who have been employed at the factory have been employed by the said factory itself and the said company is the "principal employer" of its employees and the present petitioners as Directors of the said company are in no way personally responsible to pay contributions under the E.S.I. Act, 1948 as they do not come under the purview and ambit of the definition of the nomenclature "principal employer".

6. Being aggrieved by and dissatisfied with the initiation and continuation of the aforesaid proceeding being case No. C/2323/97 pending before the learned Metropolitan Magistrate, 3rd Court, Calcutta, the petitioners have approached this forum for quashing of the aforesaid proceeding.

7. I have heard the learned advocate of the parties before me at length. Mr. S.S. Roy, learned counsel appearing for the petitioners drawing my attention to a decision reported in 1988 Cr.L.J. 4027 in the case of Employees' State Insurance Corporation v. S.K. Aggarwal and Ors., has submitted before me that Section 2(17) of the Employees' State Insurance 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 of I.P.C., 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 me ratio of the aforesaid decision, they cannot be regarded as principal employer so as to rope in connection with the present case,

8. 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.

9. Moreover, he has also drawn my attention to a decision reported in 1986(11) CHN 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 IPC is wide enough to include principal employers as defined in the E.S.I. Act. Only the principal employer 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.

10. Mr. Roy appearing for the petitioners referring to a decision reported in 2002 SCC (Cri) 344 in the case of Suganthi Suresh Kumar v. Jagdeeshan has further submitted that in the aforesaid decision it has 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".

11. I have also gone through the aforesaid decision and the decision cited on behalf of the opposite party. Now, in view of aforesaid decision of the Apex Court reported in Suganthi Suresh Kumar v. Jagdeeshan (supra) it is quite clear that despite the fact that whether or not the provisions of Section 86-A of the Employees' State Insurance Act was considered by the Supreme Court, the aforesaid judgment reported in E.S.I. Corporation v. S.K. Aggarwal and Ors. (supra), even then it has a binding force on all the sub-ordinate Courts of India and when in clear terms it has been laid down 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 IPC 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.

12. 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.

13. So, to sum up the position as it has emerged now, I am rather prompted to hold on the existing materials 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 IPC can be maintained against them.

14. That being the position, the present prosecution u/s 406 of the IPC 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.

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