

(1986) 08 CAL CK 0015
In the Calcutta High Court
Case No : Criminal A.P. No. 186 of 1985

Sankar Bhattacharjee

APPELLANT

Vs

Bholonath Ghosh

RESPONDENT

Date of Decision : 08-08-1986

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 26
Employees State Insurance Act, 1948 — Section 85

Citation : (1986) 1 CALLT 165 : 91 CWN 282 : (1995) 3 LLJ 495

Hon'ble Judges : Manoranjan Mallick, J

Bench : Single Bench

Advocate : K.K. Moitra and Subal Maitra, for the Appellant; S.K. Das Gupta, for the Respondent

Final Decision : Allowed

Judgement

Monoranjan Mallick, J.—This is an appeal against an order of acquittal passed by Sri S.N Banerjee, learned City Sessions Judge, Calcutta dated December 8, 1984 by which the order of conviction and sentence passed on the respondent u/s 85(g) of the Employees' State Insurance Act has been set aside and the respondent No. 1 has been acquitted of the offences.

2. Facts are briefly as follows

3. The accused respondent No. 1 along with T.P. Ghosh and Amiyabala Ghosh, since deceased, were the partners of M/s. The Star Printing Works having its factory at No. 30, Shibnarayan Das Lane, Calcutta and, as such, the principal employers as defined in Section 2(17) of the Employees' State Insurance Act as the partners of the firm they were Covered under the Employees State Insurance Act and the code number was allotted to it was being numbered 41-2080 and as principal employers they were liable u/s 40 of the act to pay both the employers and employees shares of contribution in respect of every employee by affixing requisite stamps on the contribution cards or the employees as provided in regulation 26 of the E.S.I. (General) Regulations, 1950 for the period alleged in

the petition of complaint; they were, therefore, liable to be prosecuted u/s 85(a) (g) of the Act. On the basis of the complaint by the present appellant who is the Inspector of the E.S.I. Corporation, a criminal proceeding was lodged against all the partners. During the pendency proceedings, Tarapada Ghosh and Amiyabala Ghosh died. The learned Magistrate on considering the evidence on record found the respondent No. 1 Bholanath Ghosh guilty u/s 85(g) and convicted and sentenced him to pay a fine of Rs. 1000/-, in default, to suffer simple imprisonment for one month and a half and also-directed that 50 per cent of the fine, if realised, shall be paid to the complainant by way of compensation.

4. Being aggrieved, the respondent No. 1 preferred an appeal before the Learned Chief Judge, City Sessions Court, Calcutta, and Sri S.N. Banerjee, learned Judge, City Sessions Court, Calcutta, set aside the order of conviction on the view that only because the respondent No. 1 was the partner, he should not be prosecuted and that the Regulation 26 holds the employer being in possession of contribution card is liable for submission of the card and the respondent No. 1 having not been found to have any concern with the affair of the firm cannot be held guilty for non compliance or non performance of any other partner having possession of the contribution card.

5. With the above finding, the learned Judge set aside the order of conviction and sentence passed against the respondent No. 1.

6. Being aggrieved the complainant has preferred this appeal on obtaining special leave.

7. At the time of hearing Mr. K.K. Moitra, learned Advocate appearing for the appellant, submits a very short but interesting point. He has submitted that the definition of the "principal employer" in relation to the factory as given u/s 2(17) of the Act clearly indicates that the owner or the occupier of the factory would be principal employer and by using inclusive definition some other persons have also been included as principal employer so far as the factory is concerned. He has, therefore submitted that the partners of the firm being the owners of the factory had the liability to submit the contribution card under Regulation 26 of the E.S.I. (General) Regulations 1950 to the office of E.S.I. Corporation within the specified period and any partner even if he is not in immediate charge of the management of the firm would be liable. He has also referred to me a recent decision of the Supreme Court reported in : Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, and has drawn an attention to paragraph 4 of the judgment of the Supreme Court in which the Supreme Court has clearly held that the partnership business belongs to the partners and each one of them is an owner thereof. That is a decision under the Employees" State Insurance Act. He, therefore, contends that when u/s 2(17), the respondent No. 1, being partner, was one of the owners of the firm he could not avoid the liability u/s 40 of the Act and for failure to perform the statutory liability under Regulation 76 he is liable to be prosecuted u/s 85(g) of the Act.

8. On perusing Section 2(17) of the Employees' State Insurance Act, Section 40 and Section 85(g), I am convinced that the learned Sessions Judge was absolutely in error in taking the view that a partner qua partner could not be prosecuted for non-submission of the contribution card of the factory in accordance with Regulation 26 of the ESI (General) Regulation. So far as any other establishment than any establishment under the control of any Department of any Government of India is concerned person responsible for the supervision and control of the establishment shall be the principal employer in view of Section 2(17)(iii) of the Act. But insofar as the factory is concerned, the liability of the owner of the factory is absolute. In such circumstances, when the respondent No. 1 was admittedly a partner of the factory of the firm owning factory, he could not escape the liability of the prosecution u/s 85(g) of the Act for non-submission of contribution card within the specified period as provided in Regulation 26 of ESI General Regulation, 1950.

9. In the circumstances, the order of acquittal passed by the learned Sessions Judge is clearly illegal and perverse and based on erroneous interpretation of the relevant provision of the Employees' State Insurance Act. In the circumstances, the appeal should be allowed and the conviction and sentence passed against the respondent No. 1 should be restored.

10. Hence the appeal be allowed. The order of acquittal passed by the learned City Sessions Judge, 13th Bench, Calcutta in Criminal Appeal No. 8 of 1984 be set aside. The conviction and sentence passed by the learned Magistrate be restored. The order directing that 50 per cent of the fine, if realised, shall be paid to the complainant by way of compensation be also restored.

Appeal allowed.