
(1985) 05 CAL CK 0004
In the Calcutta High Court

Sankar Bhattacharjee

APPELLANT

Vs

Manabendra Nath Dey and Others

RESPONDENT

Date of Decision : 28-05-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378
Penal Code, 1860 (IPC) — Section 405, 406

Citation : (1985) CriLJ 1957

Hon'ble Judges : N.G. Chaudhuri, J;Gobinda Chandra Chatterjee, J

Bench : Division Bench

Judgement

N.G. Chaudhuri, J.—The petitioner before us, an Inspector under the Employees' State Insurance Corporation, has come up in appeal u/s 378(4) of the Cr. P.C. aggrieved with an order of acquittal recorded by the learned Metropolitan Magistrate, 11th Court, Calcutta in case No. C-498 of 1982. The said case arose out of a complaint filed u/s 406 I.P.C. It was alleged by the petitioner before us as complainant in the said case that the two respondents are Directors of M/s. Eastern Type Foundry & Oriental Printing Works (Private) Limited, 18, Brindaban Basak Street, Calcutta-6, which is a factory and to which code No. 41-2215 was allotted by the E.S.I. Corporation. It was further alleged that the respondents were Principal Employers of the factory. The most material allegation is that the Insurance Inspector of E.S.I. Corporation inspected the records of the factory and on inspecting wages, salary register, stamp books and other relevant records of the factory found that the accused had deducted an amount of Rs. 8484.20 paise only from the wages of the employees as employees' share of contribution for the period from Jan. 1980 to Dec. 1980 and failed to deposit the said amount of money to E.S.I. Corporation within the specified time as required under and in the manner as provided by the Act and Regulations and as such committed criminal breach of trust in respect of the aforesaid amount within the meaning of Exp. 2 to Section 405 I.P.C. inserted in 1973. Evidence was adduced, but the learned Magistrate by the order impugned before us acquitted the respondents on the basis of a Division Bench judgment of this Court, viz. K.N. Genda v. The

State, reported in (1982) 2 CHN 223 : 1982 Lab 1C 1777. On the authority of the case noted above the learned Magistrate held that there was not sufficient averment in the complaint to connect the accused with the alleged offence and on that ground the proceedings were liable to be quashed. Mr. Bhose the learned Advocate for E.S.I. contends vigorously that there are sufficient averments in the petition of complaint to connect the accused respondents with the offence u/s 406 I.P.C. alleged against them. Amongst other things Mr. Bhose contends that Genda's case does not relate to proceedings initiated by an E.S.I. Inspector under the E.S.I. Act. We do not, however, express any opinion on last mentioned contention of Mr. Bhose. For the respondents no one appears. But Mr. A. R. Mondal appears on behalf of the State and he contends that the order of the learned Magistrate is right. We have gone through K. N. Genda's case once again. In para 6 of the said judgment Expl. 2 to Section 405 I.P.C. has been quoted. For the convenience of all concerned we quote the explanation once again.

A person, being an employer, who deducts the employee's contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

In the present case we have already indicated that in the petition of complaint (paragraph 2) it was clearly and expressly stated that the two accused, named in the petition of complaint, are Directors of the factory named to which the E.S.I. Corporation has allotted the Code Number mentioned in the said paragraph. It was further alleged that the factory was covered by the E.S.I. Act and the two accused were Principal Employers of the factory. In para 4 of the petition of complaint it was alleged in details that on inspection of the relevant documents and papers by the E.S.I. Inspector it was found that a sum of Rs. 8584.20 paise only was deducted from the wages of the employees as employees' share of contribution for the period from Jan. 1980 to Dec. 1980. It was alleged specifically that the accused had deducted the said amount and thereafter failed to deposit the said sum of money to the E.S.I. Corporation Fund within the specified time and as such they had committed the offence u/s 406 I.P.C. read with Expln. 2 to Section 405 I.P.C. We are satisfied that there was no lack of averment in the present case. So, the learned Magistrate was wrong in acquitting the accused after the evidence was laid. We are, therefore, satisfied that the order of acquittal recorded by the learned Magistrate is liable to be set aside and the case should go back to the learned Magistrate for retrial on the evidence on record and further evidence parties may choose to adduce. Accordingly, it is ordered that the appeal is allowed, the order of acquittal is set aside and the case is sent down to the learned C.M.M. Calcutta with direction to allot the case

to any one of Metropolitan Magistrate. The Magistrate to whom the case may be allotted will hear the case on evidence already on record and further evidence that may be adduced by the parties and will dispose of the case expeditiously on merits. Records be sent down to the Court below expeditiously.

Gobinda Chandra Chatterjee, J.

2. I agree.