
(2013) 06 BOM CK 0108

In the Bombay High Court

Case No : Criminal Writ Petition No. 519 of 2001

Satyanarayan Mohanlal Jalan, Purushottam, Krushna
Santanarayan Jalan and Parsuram

APPELLANT

Vs

Employees State Insurance Corpn. and The State of
Maharashtra

RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 245
Employees State Insurance Act, 1948 — Section 2(17), 39, 40

Citation : (2013) ALLMR(Cri) 2923 : (2013) 3 BomCR(Cri) 741

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

Advocate : A.G. Talhar, for the Appellant; S.K. Tambe, APP, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Bhangale, J.—Heard. The petitioners have prayed to quash the criminal proceeding arising from criminal complaint No. 2865/1995 pending before the Judicial Magistrate First Class, Jalgaon. It appears that complainant employees State Insurance Corporation at Jalgaon prosecuted the petitioners on the ground that there was failure to pay contribution in respect of wage periods from April 1992 to March, 1994. The contribution in respect of which default was committed is stated in the sum of Rs. 23,958/- alleging violation of section 39 and 40 of E.S.I. Act read with Regulation 31 of the E.S.I. Regulations 1950. The complainant alleged that non payment of contribution payable under the Act is a continuing offence and petitioners were sought to be prosecuted on that basis. It appears that proceedings remained pending pursuant to order dated 12.8.2002.

2. Learned counsel for the petitioners placed reliance upon ruling in the case of C.K. Gupta and another Vs. Employees State Insurance Corporation and others, (Bombay High Court).

3. Learned counsel appearing for the respondent brought to my notice that

although the accused had applied for discharge from the case u/s 245 of Code of Criminal Procedure, the application was rejected by a reasoned order by learned Chief Judicial Magistrate, Jalgaon on 2.4.2002 on the ground that material on record was found sufficient to explain the particulars to the accused. The particulars are already explained to the accused. It is also submitted on behalf of the respondent that this particular order though passed earlier was not canvassed by the petitioners at the time when interim order was passed staying the complaint proceeding on 12.8.2002 by this Court. Regarding ruling in C.K. Gupta's case, it is submitted on behalf of the respondents that the Manager Must be shown to have been appointed for carrying out the provisions of E.S.I. Act then only Director of the Company can claim exemption from penal liability for failure to pay the contribution. In the ruling in C.K. Gupta's case, the Manager was named for carrying out the provisions of the Act. In that context, term "Principal Employer" defined u/s 2(17) of the Act was interpreted to the effect that, if the Manager is appointed for carrying out the provisions of the Act, no director can be implicated for the violation of the provisions of the Act. Contention can very well be considered by the trial court as it is needless to observe that if the Manager is appointed to carry out the provisions of the Act, Criminal Liability for violation to contribute can be fastened upon him and not on any other innocent person. With these observations, I think interim stay should be vacated as granted by this Court and Petition must be dismissed with observations that prosecution for failure to pay contribution lodged against the accused (present petitioners) should proceed in accordance with law, on merits, since particulars of the accusations are already explained to the petitioners/accused. Petition is, therefore, dismissed accordingly.