

(2011) 06 KAR CK 0006

In the Karnataka High Court

Case No : CRL R.P. No's. 1235 of 2010 c/w etc.

Sri Arvind Raghavan and Another

APPELLANT

Vs

ESI Corporation

RESPONDENT

Date of Decision : 09-06-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 239

Employees State Insurance Act, 1948 — Section 85, 85 (a), 85 (e), 85 (g)

Penal Code, 1860 (IPC) — Section 405, 406

Citation : (2011) 131 FLR 884 : (2011) ILR (Kar) 3199 : (2011) 5 KarLJ 499 :
(2011) 4 KCCR 2562 : (2012) 1 LLJ 614

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : N.V. Vijay, for M/s Lexaxis for Petitioners Common, for the Appellant;
M.P. Geethadevi, Advocate for M/s M.P. Assts. for Respondent (Common), for the
Respondent

Final Decision : Allowed

Judgement

V. Jagannathan, J.—All these criminal revision petitions involve common questions of law and therefore with the consent of Learned Counsel for the parties, these petitions are disposed of finally though the matter is listed for admission.

2. The common facts in all these petitions are that, a complaint was filed by the respondent E.S.I. Corporation against the petitioners u/s 200 of Cr. P.C. before the Trial Court praying for taking cognizance of the offences punishable under Sections 405 and 406 of IPC on the complaint allegations that the accused petitioners though had deducted the employees contribution, failed to remit the same to the E.S.I. Corporation within the stipulated time and therefore the offences under Sections 405 and 406 of IPC are made out against the petitioners. The said complaint led to the case being registered against the petitioners and the petitioners sought for discharge by filing an application u/s 239 of the Cr. P.C. Learned Trial Judge accepted the said prayer of the petitioners

and accused Nos. 1 and 2 were discharged. This order was called in question by the E.S.I. Corporation before the Revisional Court and the Learned Judge of the Revisional Court allowed the revision petition and set-aside the order of the Trial Court and directed the Trial Court to restore the complaint and to proceed in accordance with law.

3. In all these petitions, the common grounds urged by the petitioners are that, the E.S.I. Corporation had sent a letter to the petitioners giving them an opportunity to remit the dues to the Corporation and the said offer was made under the Amnesty scheme formulated by the Corporation in respect of the offences punishable u/s 85(a)(e)(g) of the ESI Act. The petitioners therefore took advantage of the Amnesty scheme and before the expiry of the date given i.e. before 31.7.2000, the amounts had been remitted with interest by the petitioners and as such, the petitioners therefore sought for discharge from the case and the Trial Court rightly discharged the accused. The Revisional Court could not have interfered with the order of discharge and particularly in the face of Amnesty scheme, which was extended by the Corporation to all the defaulting employers. As such, Learned Counsel Sri. N.V. Vijay for the petitioners sought for the order of the Revisional Court being set-aside and restoring that of the Trial Court.

4. On the other hand, submission of Learned Counsel Smt. Geethadevi for the E.S.I. Corporation is that, the Amnesty scheme that was offered was confined to section 85 of the ESI Act, whereas the offences alleged against the petitioners are being under Sections 405 and 406 of the IPC, the Trial Court could not have discharged the accused and rightly the Revisional Court rectified the mistake committed by the Trial Court. Learned Counsel also filed a memo along with the complaint filed in each one of the four cases.

5. Further submission made by the Learned Counsel for the respondent is that, it is not a case of the employer not deducting the contribution from the employees, but it is a case of the employer after deducting the contribution, failing to remit the same to the Corporation and therefore Sections 405 and 406 of IPC gets attracted. Apart from that, it was submitted that, the Amnesty scheme would not cover offences punishable under Sections 405 and 406 of IPC.

6. In the light of the submission put forward, whether the revision petitioners have made out a case for this Court to interfere with the order of the Revisional Court.

7. The fact of the employer having not remitted the contribution to the Corporation is not in dispute. The amount involved in the four cases pertains to different periods, which are as follows:

CRL. R.P. No. 1235/10

-July 1998 - Rs. 3,145?90

CRL. R.P. No. 1236/10

-April 98 - Rs. 3,357-60

May 98 - Rs. 3,091-30

June 98 - Rs. 3,043-45

Total: - Rs. 9,492-45

CRL. R.P. No. 1237/10

Jan 98 - Rs. 3,358-10

Feb 98 - Rs. 2,666-10

March 98 - Rs. 3,204-85

Total: - Rs. 9,229-05

CRL. R.P. No. 1238/10

Oct 97 - Rs. 3,432-60.

Nov 97 - Rs. 3,371-30

Dec 97 - Rs. 3,284-30

Total: Rs. 10,088-20

The petitioners have also enclosed to their respective petitions the receipts issued by the Corporation in respect of the contribution being remitted by the employer pursuant to the Amnesty scheme extended to the employers. The remittance by the petitioners were all within the last date mentioned in the Amnesty scheme i.e. remittances were made before 31.7.2000. Therefore, the question is, whether the Amnesty scheme availed of by the petitioners has put an end to the complaint allegations once and for all.

8. Section 405 of the IPC, in the explanation. 2, which was introduced by the Act 1975 with effect from 1.9.75, is as under:

Explanation 2:- A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administrated by the Employee's State Insurance Corporation established under the Employee's 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.

9. Section 85 of the E.S.I. Act which deals with the punishment for failure to pay contributions, is as under:

85. Punishment for failure to pay contributions, etc:- If any person-

- (a) fails to pay any contribution which under this Act he is liable to pay, or
- (b) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer's contribution, or
- (c) in contravention of Section 72 reduces the wages or any privileges or benefits admissible to an employee, or
- (d) in contravention of Section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or
- (e) fails or refuses to submit any return required by the regulations, or makes a false return, or
- (f) obstructs any Inspector or other official of the Corporation in the discharge of his duties, or
- (g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules of the regulations in respect of which no special penalty is provided,

he shall be punishable -

(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but-

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees;

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the Clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.

10. A close reading of the provisions contained in Section 85 and the explanation 2 to Section 405 of the IPC would go to show that, u/s 85 where the employer deducts the employees' contribution but commits default in the payment of contribution to the Fund or in other words, fails to pay contribution, which under the ESI Act is liable to pay, he is punishable u/s 85 of the ESI Act.

11. Explanation 2 to Section 405 of IPC also mentions that, where the employer who deducts contribution and commits default in payment of his contribution shall deem to have dishonestly used the amount of such contribution and as such Section 405 of IPC gets attracted.

12. Thus, the essence of Section 85 of the ESI Act as well as Section 405

explanation 2 being one and the same, punishment is attracted both u/s 85 of the ESI Act and Sections 405, 406 of IPC for committing default in payment of contribution.

13. The offer made by the Corporation vide its letter dated 16.5.2000 reads as under:

On review of Court cases pending, it is observed that ESI Corporation has launched a case against you in Special Economic Offences Court under Sec. 85(a), (e), (g) and the same has been registered as C.C. No. 1099/99-1102/99.

Though the earnest desire of the Corporation not to file cases against defaulting Employers, some times we may have to resort to this, due to certain compelling reasons. Corporation never wants to be harsh with the Employers who might have committed an offence without their knowledge and may not be a deliberate one.

However, here is a golden opportunity given to all Employers who are facing prosecution action for various offences, in various Courts, an Amnesty scheme has been announced by the Corporation vide letter No. T. 11.14.32.4.97. INS. IV which will be valid upto date 31.07.2000. Accordingly, you can avail this opportunity by remitting all the dues including interest and damages and also by submitting a declaration that such an offence will not be repeated in future.

14. It is therefore clear from para. 3 of the aforesaid Amnesty scheme offer that the Corporation intended to give the defaulting employers some time to make good the mistake committed by them by remitting the amount within 31.7.2000 and the said paragraph also mentions that the opportunity given is to all the employers who are facing prosecution action for various offences in various Courts. The said scheme therefore does not restrict itself only to Section 85 of the ESI Act.

15. Such being the case, the Amnesty scheme introduced by the Corporation gave the employers concerned an opportunity to make good the mistake committed by them. Therefore, in my view, the Amnesty scheme not only absolves the employer of commission of offence u/s 85 of the ESI Act, but also u/s 405 of the IPC, in as much as, explanation 2 to 405 of IPC can be said to be an off-shoot of Section 85 of the ESI Act though the same act is made punishable under the ESI Act and I.P.C.

16. Under the above circumstances, Learned Judge of the Revisional Court was in error in upsetting the order passed by the Trial Court. The discharge order passed by the Trial Court is in accordance with the scheme offered by the Corporation itself and the petitioners having availed the same scheme and having remitted the amount within 31.7.2000, the matter has to be put an end to and the question of the petitioners committing the offence u/s 405 or 406 of IPC therefore does not arise.

For the above reasons, all these petitions are allowed and order of the Revisional

Court is set-aside and order of discharge passed by the Trial Court is confirmed.