
(1993) 07 MAD CK 0033
In the Madras High Court
Case No : Criminal O.P. No. 6920 of 1993

T. Azeezar Rahman and Co. and others	APPELLANT
Vs	
Employees' State Insurance Corporation	RESPONDENT

Date of Decision : 23-07-1993

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(17), 85

Citation : (1993) 07 MAD CK 0033

Hon'ble Judges : D.M. Ali Mohamad, J

Bench : Single Bench

Advocate : T.R. Ravi, for the Appellant; P. Rajamanickam, for the Respondent

Judgement

S.M. Ali Mohamed J.

1. The petition u/s 482, Criminal Procedure Code, 1973, to call for the records connected with C.C. No. 153 of 1991 on the file of the learned

Judicial Magistrate, Ambur, and to quash the same.

2. The respondent herein, Employees' State Insurance Corporation, represented by its manager, Local Office, Employees' State Insurance

Corporation, Ambur, filed a complaint for offences u/s 85(a) punishable u/s 85(i) of the Employees' State Insurance Act, 1948, against a

registered partnership firm of T. Azeezar Rahman and Co., the first petitioner herein and its partner, namely, Abdul Jabbar, the second

petitioner/second accused and T. Habeebur Rahman, manager, the third accused/third petitioner before the Court of Judicial Magistrate, Ambur,

North Arcot District. It is averred in the complaint as follows :

8. That the accused ought to have paid contributions due and payable to the Corporation for the months of April, 1990, to September, 1990,

within the time limit laid down under regulation 31 of the Regulations.

9. But the accused have failed to pay the contributions due for the months of April, 1990, to September, 1990, in accordance with the provisions of regulation 31 of the Regulations.

Thus, by their failure to pay the contributions for the months of April, 1990, to September, 1990, in accordance with the provisions of section

40(1) of the Act, read with regulation 31 of the Regulations, the accused have committed an offence under sub-section (a) of section 85 of the

Act.

3. It is contended by learned counsel for the petitioners that as far as the second accused/second petitioner, Abdul Jabbar, one of the partners, is

concerned, there are no specific averments in the complaint that he was responsible for the offences u/s 85(a) punishable u/s 85(i) of the Act. He

has cited the ruling of Arunachalam J. in *G. Ramaswamy Moopanar v. Employees' State Insurance Corporation* [1990] LW (Cri.) 414 in support

of his contention. The question for consideration in the case was :

Can a director of a company or a partner of a firm be prosecuted as a "principal employer" falling within the fold of section 2(17) of the

Employees' State Insurance Act, 1948 ?

4. After elaborately considering different rulings of the High Courts and the Supreme Court, the learned judge answered the question thus :

The director of a company or a partner of a firm, by virtue of being a director or a partner, is not a principal employer, contemplated by section

2(17) of the Employees' State Insurance Act. He is not personally liable to pay the employer's contribution under the Act. The Act contemplates

an "immediate employer" and the "principal employer", but when the definition of "principal employer" refers to the "owner" or "occupier" of a

factory, it is apparent that the principal employer can either be the owner or the occupier, depending upon the facts of each case. The word "or"

must be read disjunctively and cannot be read as "and" because such reading is bound to introduce an uncertainty, in fastening the obligation, to

deduct and pay the employer's contribution as well as the employees' contribution. The concept appears to be that the person liable is one who

has ultimate control over the affairs of the factory.

5. Mr. P. Rajamanickam, learned counsel for the respondent, was fair in his submission and pointed out that as far as the second accused, Abdul

Jabbar (one of the partners), is concerned, there are no specific averments in the complaint that he was in charge of the factory during the material

time when the offence was committed. He also drew the attention of this court to, paragraph 51 of the above ruling by Arunachalam J. The learned

judge has held :

It will always be open to the court to invoke the provisions of section 319, Criminal Procedure Code, 1973, if in the course of enquiry or trial it

appeared to it, from the evidence, that any person not being the accused, had committed an offence.

6. Mr. P. Rajamanickam contended that it will be open to the trial court to invoke the provisions of section 319, Criminal Procedure Code, if in the

course of trial it appeared that the particular accused has committed the offence. There is substance in the contention of learned counsel for the

Corporation.

7. Following the ruling cited in the above case, I am of the view that as far as the second accused is concerned, no offence has been made out u/s

85(a) punishable u/s 85(i) of the Act. Therefore, the proceedings against the second accused, Abdul Jabbar, in C.C. No. 153 of 1991 on the file

of the Judicial Magistrate, Ambur, are quashed. However, it is always open to the trial court to invoke the provisions of section 319, Criminal

Procedure Code, if necessary.