(1992) 03 P&H CK 0078

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 843-M of 1992

Vinay Mehra APPELLANT

Vs

Employees' State Insurance Corporation RESPONDENT

Date of Decision : 10-03-1992

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 26
Employees State Insurance Act, 1948 — Section 2(17), 39, 40(1), 43, 85

Citation : (1993) 1 LLJ 488 : (1992) 3 RCR(Criminal) 240

Hon'ble Judges : Harphul Singh Brar, J

Bench : Single Bench

Advocate : P.S. Hundal, for the Appellant; K.L. Kapur, for the Respondent

Final Decision : Allowed

Judgement

Harphul Singh Brar, J.—This judgment of mine will dispose of Criminal Miscellaneous Nos. 843-M and 846-M of 1992, as a common question of fact is involved in these two petitions. However, for facility of reference, facts have been taken from the Criminal Miscellaneous No. 843-M of 1992.

2. This is a petition u/s 482 of the Code of Criminal Procedure for the quashment of complaint dated October 27, 1989, u/s 85(e) of the Employees'' State Insurance Act, 1948 (for short "the Act"), pending in the Court of Chief Judicial Magistrate, Sonepat.

3. The petitioner states in his petition that he has been accused to be the principal employer of M/s. Kanishka Tyres and Tubes (Pvt.) Ltd., O/1, Industrial Area, Sonepat, in terms of Section 2(17) of the Act. It is alleged in the complaint that the accused has/have failed to submit the returns of contributions as required under Sections 39, 40(1) and 43 of the Act read with Regulation 26 of the Employees'' State Insurance (General) Regulations, 1950 (hereinafter referred to as ""the 1950 Regulations"), for the contribution period October 1, 1988 to March 31, 1989 along with interest, as specified in para 1(a) and (b) of

the First Schedule to the Act, which is an offence punishable u/s 85(e) of the Act. The petitioner slated that he is not the principal employer, but is a Chartered Accountant and works as Accounts Consultant to a number of establishments including M/s. Kanishka Tyres and Tubes (Pvt.) Ltd., Sonepat, and neither is he the in-charge of , nor is he responsible for, the conduct of the business of the company. This is the basic factual matrix of the case on which his learned counsel wants this Court to quash the complaint, Annexure P-1, as also the proceedings consequent thereto.

4. In a nutshell, learned counsel for the petitioner stated that a complaint u/s 85(e) of the Act is not maintainable against the petitioner, as he is not the principal employer of the company, because he does not fall within the meaning of "principal employer" as defined by Section 2(17) of the Act. He submits that a perusal of his appointment letter issued by M/s. Kanishka Tyres and Tubes (Pvt.) Ltd., O/1, Industrial Area, Sonepat (Haryana), copy Annexure P-2, would reveal that he was appointed as a consultant retainer and that during the tenure of his appointment as such or any other such appointment, no liability of any kind that may arise shall devolve upon him. Learned counsel quotes before me another instance by referring to the letter written by M/s. Kanishka Tyres and Tubes (Pvt.) Ltd., Sonepat, to the Deputy Director, Employees'' State Insurance Corporation, Sector 16, Panchdeep Building, Faridabad, Annexure P-3, that the petitioner was never and is not the principal employer of the company, rather Pardeep Nagpal was the occupier and Islam Ansari was the manager of the factory. He, thus, submits that the filing of complaint against the petitioner and its continuation before the Chief Judicial Magistrate is an abuse of the process of the Court.

5. Notice was issued in this petition to the; respondent-Insurance Inspector, Employees State Insurance Corporation, D-7, Prem Nagar, Sonepat.

6. Mr. Kapur, learned counsel for the respondent did not choose to file any reply in this case.

7. I have heard learned counsel for the parties at length and have given my anxious thought to the matter. Section 85 of the Act provides punishment for failure to pay contributions payable under the Act. Section 2, Sub-section (4), defines "contribution" as under:

"''contribution'' means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act,"

Section 2(17) of the Act is in the following terms:

"''Principal employer'' means-

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;

(ii) in any establishment under the control of any department of the Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment."

8. The complaint, Annexure P-1, against the petitioner u/s 85(e) of the Act has been filed as, according to the complainant, the petitioner continues to be the principal employer of M/s. Kanishka Tyres and Tubes (Pvt.) Ltd., Sonepat, in terms of Section 2(17) of the Act. It has been categorically stated by the petitioner that neither is he in charge of, nor is he responsible for, the conduct of the business of the company. Learned counsel for the petitioner states that the petitioner is in no way liable to submit the returns of contributions as required under Sections 39, 40(1) and 43 of the Act read with Regulation 26 of the 1950 Regulations, for the contribution period October 1, 1988, to March 31, 1989, due on May 12, 1989, along with interest as specified in para 1(a) and (b) of the First Schedule to the Act.

9. The facts stated in the petition have not been rebutted as no reply to the petition was filed.

10. After going through the relevant provisions of the Act which have been reproduced in the earlier part of the judgment, it cannot be held that the petitioner who is merely an accounts consultant can be termed as the principal employer of M/s. Kaniskha Tyres and Tubes (Pvt.) Ltd., Sonepat. He is neither the occupier nor is the manager of the factory, which fact is fortified by the letter, Annexure P-3, written by M/s. Kanishka Tyres and Tubes (Pvt.) Ltd., to the Deputy Director, Employees'' State Insurance Corporation, Sector 16, Panchdeep Building, Faridabad. In these circumstances, the complaint filed against the petitioner and further proceedings subsequent thereto are nothing but an abuse of the process of the Court.

11. In view of my observations made above, this petition succeeds. The complaint, Annexure P-1 as well as further proceedings before the Chief Judicial Magistrate, Sonepat, are hereby quashed.