

(2006) 08 AP CK 0008

Andhra Pradesh High Court

Case No: Criminal Petition No. 2068 of 2006

S.B.P.S. Ram Mohan and Another

APPELLANT

Vs

Employees State Insurance
Corporation and Another

RESPONDENT

Date of Decision: Aug. 2, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Employees State Insurance Act, 1948 - Section 2(17), 39(5), 45C, 45D, 45E

Citation: (2006) 2 ALD(Cri) 464 : (2007) 1 ALT(Cri) 141 : (2008) 1 RCR(Criminal) 860 : (2008) 1 SLJ 526

Hon'ble Judges: A. Gopal Reddy, J

Bench: Single Bench

Advocate: Sasikala, for C. Kodanda Ram, for the Appellant; Venkateshwarlu and Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A. Gopal Reddy, J.

This Petition, u/s 482 of Criminal Procedure Code has been filed to quash the proceedings in P.C. No. 57 of 2003 pending on the file of the Judicial Magistrate of First Class for Employees State Insurance Act and Chairman, Industrial Disputes-I, at Hyderabad initiated for the offence u/s 85(a) r/w (i)(a) of the Employees' State Insurance Act, 1948 (for short "the Act").

2. Heard the learned Counsel for the petitioners on 28.7.2006 and learned Additional Public Prosecutor for second respondent. Since none represented the first respondent-complainant, the matter is posted to today for orders. Even today, none represented the first respondent-complainant.

3. The first accused is M/s. Sarvaraya Textiles Limited Company and the petitioners herein are the A-2 and A-3 and they are the Managing Directors of A-1-Company. The allegations of the prosecution is that A-2 and A-3 are the principal employers in respect of A-1 -Company within the meaning of Section 2(17) of the Act r/w Section 86-A of the Act (as amended). The petitioners, being the principal employers of the A-1-Company, failed to comply with the provisions of the Act and accordingly, the insurance Inspector of Employees" State Insurance Corporation-first respondent herein issued a notice on 5.4.2002 to the accused calling upon them to show cause as to why they should not be prosecuted for non-compliance of the provisions of the Act, followed by notices dated 7.10.2002 and 24.12.2002. The notice dated 24.12.2002 was also acknowledged by the accused on 6.1.2003. In spite of the said notices, the accused did not respond nor did they furnish any reason as to why they could not comply with the provisions of the Act. Notices were also issued to the accused on 4.4.2002, 5.8.2002, 20.8.2002 and 7.11.2002 demanding them to pay contributions to an extent of Rs. 9,71,280/- for the period from 11/2001 to 8/2002 alongwith interest. The Inspector of the Corporation inspected the records of the A-1-Company on 1.3.2002, 3.5.2002 and 7.10.2002 and reported the contributions payable as Rs. 9,71,280/- for the period from 11/2001 to 8/2002, The Inspector also found that the accused deducted a sum of Rs. 2,61,526/- from the wages of their employees towards employees" share, of contribution for the period from 11/2001 to 8/2002, but did not remit the same to the complainant Corporation. Thus, the accused being the principal employers committed the offence as alleged. During the course of trial, the Inspector of the Corporation was examined-in-chief as P.W.2 on 24.3.2006. At that stage, A-2 and A-3 have come with this petition to quash the impugned proceedings inter alia contending that the petitioners do not come within the definition of "principal employer" as envisaged u/s 2(17) of the Act. Further, the entire amount payable for the period from 11/2001 to 8/2002 has been paid by the accused and there is no default of payment to attract the penal provisions of the Act. It is submitted that in the course of revival of the A-1-Company, the Board for Industrial and Financial Reconstruction ("BIFR") prepared a draft rehabilitation scheme and after obtaining the consent of all the parties particularly the first respondent-complainant, a rehabilitation scheme was sanctioned by BIFR. According to the said rehabilitation scheme, the complainant has consented for receiving the arrears due to it in instalments and subsequently, the accused paid all the contributions due to it in the agreed instalments. Further, the Inspector, who was examined as P.W. 2, has also deposed that the accused paid the contributions covering the charged period to a tune of Rs. 9,76,119/-. Furthermore, as per the terms of the said scheme, all the civil and criminal cases filed by the Employees" State Insurance Corporation against the accused have to be withdrawn. In view of the same, continuation of the prosecution against the petitioners is nothing but abuse of process of law and the same is contrary to the scheme prepared and approved by the BIFR in consultation with the complainant.

4. Smt Sashikala, representing Mr. C. Kodanda Ram, learned Counsel for the petitioner would contend that under the rehabilitation scheme prepared by the BIFR since all the amounts due to the complainant-Corporation have been paid as agreed, the prosecution cannot be proceeded further even for the delayed payment, if any, and in support of her contention, placed reliance on *Aravinda Parimala and Ors. v. Employees State Insurance Corporation* 1997 (1) ALT (CrI.) 958 (Kar.) . Further the petitioners cannot be termed as principal employer as defined u/s 2(17) of the Act since A-2 and A-3 are residing at the Head Office of A-1-Company at Madras. For the said proposition, she placed reliance on a decision of the Apex Court in [Kirloskar Brothers Ltd. Vs. Employees" State Insurance Corpn.,](#) . Lastly, it is contended that u/s 39(5)(b) of the Act any interest recoverable under Clause (a) shall be recovered as an arrear of land revenue or u/s 45-C to Section 45-I of the Act. In view of the same, continuation of the prosecution against the petitioners is an abuse of process of law and therefore, the same is liable to be quashed.

5. The order of Bench-III of BIFR, dated 7.7.2005, appended along with this petition, discloses that the representative of EPFO attended the mandatory hearing held on 29.9.2004 by BIFR and submitted their claims and accordingly, a scheme was prepared. Pursuant to the said scheme, the Recovery Officer of the complainant-Corporation, through his orders in proceedings No. 62-Q/RRO/27956-11/2005, dated 3.8.2005 vacated the Prohibitory Order issued on 2.12.1997 to enable the A-1-Company to operate its account with the Indian Overseas Bank, Kakinada. In view of the same, it is obligatory on the part of the complainant-Corporation to withdraw the complaint as per the approval scheme, which was prepared with its consultation.

6. The term "principal employer" is defined u/s 2(17) of the Act, which reads thus:

2(17) "Principal employer" means:

(i) in a factory, the owner or occupier 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 (63 of 1948), the person so named;

(ii) in any establishment under the control of any department of any Government of 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.

7. Admittedly, the petitioners, who are arrayed as A-2 and A-3, are not named managers of the A-1-Company for the Kakinada Branch. In the case of *Kirloskar Brothers Ltd.* (2 supra) the Apex Court held that the principal employer is the exclusive owner or occupier of the factory and includes the managing agent or the

owner or occupier or where a person has been named as the manager of the factory under the Factories Act, the person so named or any other person responsible for the supervision and control of the establishment etc., is the principal employer. In view of the said interpretation the prosecution launched against the petitioners and its continuation against them is nothing but abuse of process of law. Furthermore, the complainant-Corporation has not rebutted the contention of the petitioners that the entire dues payable to it, have already been paid and if any interest is due, the same can be recovered as arrears of land revenue, as held by the Karnataka High Court in the case of Aravinda Parimala and Ors. (supra). For all the reasons stated above, the impugned proceedings are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the impugned proceedings are quashed to the extent of petitioners herein.