

**(2010) 04 PAT CK 0237****Patna High Court****Case No:** Criminal M.A. No. 42405 of 2008

Raj Kumar Gupta

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

**Date of Decision:** April 26, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 177, 178, 5
- Employees State Insurance (General) Regulations, 1950 - Regulation 26
- Employees State Insurance Act, 1948 - Section 2(12), 39, 4, 44, 85, 85

**Citation:** (2011) 2 LLJ 423**Hon'ble Judges:** S.P. Singh, J**Bench:** Single Bench**Final Decision:** Allowed

### **Judgement**

S.P. Singh, J.

The Petitioner has prayed for quashing order dated August 4, 2007, passed by the Judicial Magistrate, 1st Class, Patna in Case No. 2538 (M)/2007, taking cognizance u/s 85(a) of the Employees" State Insurance Act, 1948 (hereinafter referred to as the ESI Act) as well as quashing the entire prosecution on the ground of lack of territorial jurisdiction. The complainant, Opp. Party No; 2, the Insurance Inspector (Legal), Bihar Region of the Employees" State Insurance Corporation, Patna stated that Petitioner"s establishment, namely, Purana Bhagirath Hotel, Muzaffarpur, Bihar, Code No. 42-5319, is a factory/ establishment as defined in Sub-Section 12 of Section 2 of the ESI Act. It failed to submit return of Contribution from August 1, 2003 to May 31, 2007, which is mandatory as per Section 44 read with Section 39 of the ESI Act and within the time-limit prescribed under Regulation 26 of the ESI (Genl.) Reg., 1950 i.e., within 21 days of the calendar month in which the contribution falls due. Furthermore, despite a show cause notice, dated September 20, 2006 was also issued under registered post. It is further alleged that Petitioner, the principal employer of the establishment thus committed an offence u/s 85(a) of

the ESI Act as amended up to date.

2. The Petitioner submits that he is the; proprietor of Purana Bhagirath Hotel situated at Court Compound, Muzaffarpur which does not come under the purview of Factory or Establishment, as defined under Sub-Section 12 of Section 2 of the ESI Act. He submits that; even if his Establishment would come under the ambit of factory u/s 2(12) of the ESI Act, still the prosecution at Patna would be bad in law. The Petitioner contends that not only order taking cognizance, but entire proceeding pending in the Court of Judicial Magistrate, Patna is without jurisdiction. He submits that undisputedly his Establishment is in the district of Muzaffarpur, The contribution used to be deposited at the Branch Office of ESI, Muzaffarpur. The default, if any, on part of the Petitioner took place at Muzaffarpur and thus the Muzaffarpur Court alone would be competent to take cognizance. As per Section 177, Code of Criminal Procedure, an offence could be enquired and tried by a Court within whose local jurisdiction it was committed. He placed reliance on a decision rendered in case of Bimal Kumar Goddhyan @ Bimal Goddhyan, Uday Kumar Goddhyan and Binod Kumar Gaddhyam, all sons of Telu Ram Agrawal, Director Fatka Refractories Pvt. Ltd. Vs. The State of Bihar and Insurance Inspector, Employees State Insurance Corporation, . He further submits that for non-filing of return, the ESI through its Branch Manager Muzaffarpur has filed case u/s 85(e) o the ESI Act in Muzaffarpur Court.

3. Learned Counsel for the ESI submits that the instant case is fully maintainable at Patna. He submits that all the contributions made by Establishment/Factory at any centre or counter finally get credited in the Central Account at Patna. He submits that Regional Office of Bihar is situated at Patna, so notice was issued to him by the Assistant Director, ESI, CRO, Bihar, Patna. Learned Counsel has relied upon an order dated September 10, 2007, passes by a single Bench of this Court in case of Durga Kant Jha v. State of Bihar and Anr. in Cr. Misc. No. 29286/2005.

4. Heard learned Counsel for the parties and perused the materials available on records.

5. Section 4 of the ESI Act does not specifically deals with the provisions of territorial jurisdiction vis-à-vis filing of a case. In such situation, Section 5 of the Code of Criminal Procedure becomes relevant which is quoted herein below:

5. Saving. -Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

6. As there is no specific provision in ESI Act specifying territorial jurisdiction of an offence, the provisions of Code of Criminal Procedure would come into play.

7. Section 177, Code of Criminal Procedure states that every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.

8. Section 178, Code of Criminal Procedure provides the place of inquiry or trial (a) when it is uncertain in which of several local areas an offence was committed, or (b) where an offence is committed partly in one local area and partly in another, or (c) where an offence is a continuing one, and continues to be committed in more local areas than one, or (d) where it consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

9. In the instant case, it would appear that the Petitioner's Establishment/Factory was at Muzaffarpur. He has been making the payment of contribution as required u/s 44 read with Section 89 of ESI Act in Branch Office, ESI, Muzaffarpur in past, and the same used to be accepted there. The allegation is that the Petitioner failed to make its contribution. It is not in dispute that the Petitioner had his Establishment at Muzaffarpur. Thus, the offence of not making contribution culminated at Muzaffarpur. It is not disputed that the Corporation has its branch at Muzaffarpur.

10. It is relevant to note that for failure of non-filing of return a complaint against the Petitioner, the ESI Corporation itself, filed a, case u/s 85(e) of the ESI Act, 1948 in the Court of Chief Judicial Magistrate, Muzaffarpur being Case No. 367/2007, Tr. No. 2618/2007. A copy of such complaint has been annexed as Annexure-3 to this application. The aforesaid case was filed by Branch Manager, Muzaffarpur Office of the Corporation who was duly authorized by the Regional Director, ESI Corporation, Bihar, Patna to appear, act, plead, make application and withdraw money on behalf of the Corporation by virtue of the Government of India Gazette Notification No. Ins. III 4(70-2/58) dated August 14, 1958, May 12, 1961 and February 14, 1964.

11. The unreported decision in case of Durga Kant Jha v. State of Bihar and Anr. (supra), referred to by the ESI Corporation would not be of much help to it, as this Court merely observed that the prosecution has been filed at Patna as per provisions contained in the Act at Patna. The relevant extract of order is quoted herein below:

It has been urged that cognizance order passed by learned Chief Judicial Magistrate, Patna, is not maintainable in view of the fact that in more or less similar situation the Petitioner has been noticed and is now facing prosecution on the basis of order passed by learned Chief Judicial Magistrate at Samastipur. In support of his contention he has relied upon a decision in PUR 2007, 269. This decision is, in the facts and circumstances of the case, not applicable for the reason that instant case has been filed for the prosecution of the Petitioner for non-furnishing of details and deposit of amount, which is required to be deposited as per provision contained in the said Act. So, in that view of the matter, cause of action may be presumed to have

arisen at Patna.

12. On the other hand, the Petitioner has relied upon decision in the case of Bimal Kumar Goddhyam @ Bimal Goddhyam v. State of Bihar (supra). He states that the aforesaid case was also u/s 85(a) of the ESI Act. In this case, the alleged offence took place in the State of Jharkhand, whereas cognizance was taken by Chief Judicial Magistrate, Patna. This Court quashed the cognizance taken by Chief Judicial Magistrate, Patna, as no part of occurrence took place in Patna.

13. Here, I may refer to case of Kameshar Prasad Singh v. Nalanda Sales Corporation (1975) BBCJ 585 in which this Court was also seized with issue of jurisdiction.

14. In the aforesaid case, Petitioner was working at Jamshedpur as an employee of the Divisional Office situated at Patna. The Petitioner was alleged to have committed forgery of certain bills, thereby misappropriated money at Jamshedpur. The allegation against the Petitioner constituted commission of offence of criminal breach of trust, misappropriation and falsification of account at Jamshedpur but the complaint was filed at Patna on the basis of location of Divisional Office there. This Court held that Patna Court cannot hold jurisdiction on the ground of consequences having ensued at Patna. The offences were committed at Jamshedpur, as such Court at Jamshedpur had jurisdiction to try the case in view of Section 177 of the Code of Criminal Procedure To reiterate Section 177 of Code of Criminal Procedure provides that every offence would be ordinarily tried by a Court within whose local limits the occurrence took place.

15. In this case also, the offence was committed in the district of Muzaffarpur, Merely because the amount deposited under Sections 39 and 44 of ESI Act at different places or branches is finally credited in Central Account in Patna would not confer jurisdiction on Patna Court on that account, if no offence has been committed within its territorial jurisdiction. On same analogy mere situation of the Regional Office would not confer jurisdiction on the Court, within whose jurisdiction it is located, if no offence is committed within its jurisdiction.

16. Thus I hold that the complaint case filed at Patna by the Opposite Party No. 2, the Insurance Inspector (Legal), Employees" State Insurance Corporation, Regional Office, Patna is not maintainable. Consequently, the order dated August 4, 2007, of Judicial Magistrate, 1st Class, Patna, taking cognizance in Complaint Case No. 2538(M)/2007, is too without jurisdiction. None the less liberty is being granted to the Employees" State Insurance Corporation, if so advised, to file a fresh complaint before the Muzaffarpur Court which alone would have jurisdiction in the matter.

In the result, this application is allowed with observation made above.