

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos.180 to 187 of 2010

CRL.R.C.No.180 of 2010:

Employees State Insurance Corporation
rep.by its Manager, ESI Corporation
Salem

.. Petitioner

Versus

1. V.Ramanathan
2. V.Ravichandran

.. Respondents

Criminal Revision cases are filed under Sections 397 and 401 of Cr.P.C. against the order of acquittal passed by the learned Judicial Magistrate No.1, Dharmapuri in Crl.M.P.No.4480 of 2009 in C.C.No.400 of 2002, Crl.M.P.No.4484/2009 in CC.NO.404/2002, Crl.M.P.No.4481/2009 in CC.No.401/2002, Crl.M.P.No.4483/2009 in CC.NO.403/2002, Crl.M.P.No.4485/2009 in CC.NO.399/2002, Crl.M.P.No.4482/2009 in CC.NO.402/2002, Crl.M.P.No.4486/2009 in CC.No.398/2002, Crl.M.P.No.4479/2009 in CC.NO.405/2002 respectively dated 7/9/2009

For Petitioner : Mr.M.Sriram
in all Crl.R.Cs. for Mr.G.Bharadwaj

For Respondents : Mr.Velmurugan
in all Crl.R.Cs.

COMMON ORDER

The above Criminal Revision Cases have been filed by the Employees State Insurance Corporation aggrieved against the order of discharge dated 07.09.2009 passed by the learned Judicial Magistrate No.I, Dharmapuri in Crl.M.P.Nos.4480, 4484, 4481, 4483, 4485, 4482, 4486 and 4479 of 2009 in C.C.Nos.400, 404, 401, 403, 399, 402, 398 and 405 of 2002 respectively in

discharging the respondents, who are arrayed as A3 and A5 in the criminal case filed by the petitioner.

2. The case of the petitioner in brief is as follows:

The petitioner/Employees State Insurance Corporation preferred a complaint as against the Employer, viz., Sivamani Spinning Mills Limited and the Managing Director and the Directors of the company under Section 85(a) of the Employees State Insurance Act, 1948 for non-payment of contribution in respect of the employers of the said company who are covered under the Employees State Insurance Corporation Act. Since the Managing Director and the Directors of the Company are responsible for the conduct of the business during the relevant period, they were also arrayed as an Accused. According to the petitioner, under Section 40 of the Act, the accused as the Principal Employer should pay in respect of every employee, whether directly employed by him or through an immediate Employer, both the Employer's and the Employee's Contribution and that the same should be paid within the stipulated time under Regulation 31 of the Regulations. However, the accused failed to pay the same. Hence, the complaint.

3. Learned counsel for the petitioner would submit that out of the five accused persons, A-4 has earlier filed a petition under Section 245 of the Cr.P.C and he was discharged from the alleged offence. Further, A-2, the Managing Director of the A1-company died when the case was pending; therefore, the charges alleged against him got abated and the remaining accused viz., A-3 and A-5 are the respondents herein. The respondents herein have filed a petition before the Court below seeking to discharge them from the purview of prosecution on the ground that on the date of filing of criminal complaint they were not the Directors of the A-1 company. Further they have stated before the Court below that for the one and the same cause of action two complaints were preferred. The Court below without considering the fact that the respondents have filed the discharge petition after a period of seven years, discharged them from the purview of prosecution when there were material evidences made against them. Hence, these revisions have been filed.

4. Learned counsel for the petitioner would submit that the Court below has allowed the discharge petition on the ground as if a similar case has been filed on the same cause of action. He also brought to the notice of this Court that as per Section 2 (17) (i) of the Act, the legal representatives of a deceased owner is responsible for payment of the contribution. Since the respondents herein are the sons of the deceased Managing Director/A2, their names have been added as an accused in the criminal case. Accordingly, the learned counsel would pray for setting aside the order of discharge passed by the

Court below.

5. Learned counsel appearing for the respondents would submit that the respondents herein were not Directors of A1 company at the relevant point of time. He also submitted that the second respondent has already been discharged from the alleged offence in an identical case. He would further submit, on instructions, that subsequently they have paid all the dues/contribution to the petitioner Corporation. Accordingly, they would pray for the dismissal of the criminal revision cases.

6. Heard both sides and perused the records. Section 2 (17) (i) of the Employees' State Insurance Act, 1948 reads as follows:

"2. Definitions: ---

17- "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 (63 of 1948), the person so named;.....

(ii)

(iii)"

6. Admittedly, in this case, both the respondents are the sons of the deceased Managing Director/A-2. Further, a perusal of the order passed by the Court below would disclose that it had discharged the respondents herein only on the ground that under similar circumstances, in an identical case in between the same parties, A5, viz., the second respondent herein was discharged on the ground that he was not the Director at the relevant point of time. Though it is submitted that the respondents were not Directors of the company at the relevant point of time, an affidavit has been filed by the first respondent herein before this Court in a writ petition stating that he is the Managing Director of the A-1 company and this evidence has been produced by the petitioner before this trial Court. It is also brought to the notice of this Court by the learned counsel appearing for the respondents that subsequently, they have paid the contribution, which the petitioner-Corporation denies. The respondents also have not produced any document before this Court to prove the same as they do not have any records with them.

7. As far as the petitioner corporation is concerned, they have filed documentary evidence in the form of letters written by the respondents, before the Court below, to show that the respondents were the directors during the relevant period. Further, it is brought out that the respondents are the sons of the deceased Managing Director/A-2 and as per Section 2

(17) (i) the petitioners assume responsibility as legal heirs of the deceased A-2 in the affairs of the company, which includes the liability of A-2. Therefore, it is contended on behalf of the petitioners that the respondents herein have responsibility in respect of the affairs of the company and they cannot be discharged. Whether the respondents have any responsibility or not towards the dues payable to the corporation as Directors of the company during the relevant period has to be examined by the trial court in the light of documentary evidence produced by the petitioner corporation. The trial court, without examining the documentary evidence has discharged the respondents herein only on the ground that they were not the Directors of the company during the relevant period and further in a similar case, the deceased A-2 was discharged. The fact that the second accused got discharged from a similar case cannot be a ground for discharging the respondents in this case.

8. For all the aforesaid reasons, without going into the merits of the case, the orders of discharge passed by the Court below in all these cases are set aside and the matters are remitted back to the Court below to consider the matter afresh. It is open to both the parties to raise all the points, which were raised before this Court in these revision cases, including the point that the second respondent, viz., A5 was discharged from the alleged offence. The Court below is also directed to verify as to whether the respondents have paid the contribution, as contended by them and thereafter pass orders on merits and in accordance with law. Accordingly, all these Criminal Revision Cases are allowed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

vj2/rsh

To

1. The Judicial Magistrate No.1, Dharmapuri
2. The Public Prosecutor, Madras.

+1 cc to Mr.G.Bharadwaj Advocate sr.58317

+1 cc to Mr.M.Velmurugan Advocate sr.58270

Crl RC Nos.180 to 187 of 2010

aa24/11/2015