

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.Nos.4704 and 4705 of 2015

&

M.P.Nos.1+1 of 2015

M/s.Saravana Fabrics
rep. By Jaganathan
83,Cholan Street
Chennai-600 011
Erode District - 638 051

...Petitioner
in both the petitions

vs.

E.S.I Corporation
rep. By the Inspector
ESI corporation, Sub-Regional Office
Coimbatore

...Respondent
in both the petitions

Prayer in Crl.O.P.No.4704 of 2015: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order of the Judicial Magistrate No.6, Coimbatore dated 23.09.2014 in Crl.M.P.No.3308 of 2014 in S.T.C.No.905 of 2007.
Prayer in Crl.O.P.No.4705 of 2015: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to set aside the order of the Judicial Magistrate No.6, Coimbatore dated 23.09.2014 in Crl.M.P.No.3309 of 2014 in S.T.C.No.1702 of 2007.

For Petitioner : Mr.V.Nicholas

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

ORDER

The respondent initiated proceedings in C.C.Nos.905 of 2007 and 1702 of 2007 on the file of the learned Judicial Magistrate No.6, Coimbatore under the provisions of Employees State Insurance Act, 1948 stating that the petitioner is a Proprietor of M/s.Saravana Fabrics having place of business at No.83, Cholan Street, Chennai-600 011 which is covered under the Employees State Insurance Act with the Distinct Code No.56-44469-11. The petitioner is the Principal employer of the said concern and he has not remitted the contribution

towards the Employer-Employees' share on due date and he committed default in the payment of contribution of a sum of Rs.1,49,078/- for the period 01.06.2002 to 30.09.2005. Therefore, show-cause notice was given on 12.12.2005 and even after the receipt of the show-cause notice, the petitioner did not comply with the provision and therefore prosecution was launched under Section 85(a), 85(1)(b) R/w. Section 86 of the Employees State Insurance Act, 1948. Similarly, prosecution was launched under Section 85(e) of the Employees State Insurance Act for failure to submit return.

2. In those cases, the petitioner filed Crl.M.P.No.3308 of 2014 in S.T.C.No.905 of 2008 and Crl.M.P.No.3309 of 2014 in S.T.C.No.1702 of 2007 under Section 91 Cr.P.C to summon the copy of the Cancellation Certificate, Registration Certificate relating to TNGST No.2920459 and application issued by Late A.S.Kandasamy relating to surrender of R.C.No.2920459 from the Commissioner of Sales Tax Department, Perundurai. Those petitions were dismissed and aggrieved by the same, these two applications are filed.

3. It is submitted by the learned counsel for the petitioner that the petitioner's father Kandasamy was running the establishment M/s.Saravana Fabrics at Door No.10/28, East New Street, Chennimalai and that establishment was closed after the death of his father and to prove the same the Cancellation Certificate in respect of Saravana Fabrics which was run at Door No.10/28, East New Street, Chennimalai and the Registration Certificate relating to Saravana Fabrics bearing T.N.G.S.T.No. 2920459 and the surrender application filed by his father in respect of T.N.G.S.T.No. 2920459 are to be summoned from the Commissioner of Sales Tax Department and those documents would prove that the petitioner is not the proprietor of Saravana Fabrics and without appreciating the same, the learned Judicial Magistrate dismissed the applications.

4. I am unable to accept the contention of the learned counsel for the petitioner. It is seen from the complaint filed by the respondent that Saravana Fabrics run at Door No.83, Cholan Street, Chennimalai, is covered under the Employees State Insurance Act and the code number of the establishment is 56-44469-11. It is further submitted that the petitioner is the proprietor of the said Saravana Fabrics. The Survey Report dated 12.07.2002 was also enclosed along with the complaint. Therefore, it is the specific case of the respondent that Saravana Fabrics having business at No.83, Cholan Street, Chennimalai, which has been covered under the ESI Act with code No. 56-44469-11, failed to pay the contribution and also failed to file return and for that purpose prosecutions were launched. Therefore, the closure of the unit at Door No.10/28, East New Street, Chennimalai, by his father, has no relevance to the case filed by the respondent. Further, it is not the case of the petitioner that T.N.G.S.T.No. 2920459 stood in the name of

A.S.Kandasamy was in respect of Saravana Fabrics having business at No.83, Cholan Street, Chennimalai, as contended by him. It is open to the petitioner to prove the same by producing documents and the surrender of Registration Certificate in respect of Saravana Fabrics run at Door No.10/28, East New Street, Chennimalai has no relevance to the complaint filed by the respondent. Hence, the petitions were rightly dismissed by the learned Judicial Magistrate. I do not find any infirmity in the order passed by the learned trial Judge.

5. Accordingly, these criminal original petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar
Dated:11.3.15

True Copy

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.6,
Coimbatore.
 - 2.do thro' The Chief Judicial Magistrate,
Coimbatore.
 - 3.The Inspector
E.S.I Corporation
ESI corporation, Sub-Regional Office
Coimbatore
 - 4.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.V.Nicholas, Advocate,SR.11703.

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