

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

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Crl.A.No.707 of 2006

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JUDGMENT:

This Criminal Appeal is filed by the appellant challenging the judgment dt.12-05-2006 in P.C.No.13 of 2003 of the Judicial Magistrate of First Class to Try Offences under the ESI Act-cum-Chairman, Industrial Tribunal, Hyderabad.

2. Heard the learned counsel for the appellant Smt.K.Udaya Sri and the learned Public Prosecutor for 2nd respondent-State.
3. The ESI Corporation had filed a complaint alleging that the proprietor of M/s.Sri New Balaji Saw Mills, Gooty, Anantapur by name Sri K.Chandra Sekhar Babu and the petitioner herein, who was occupier of the said saw mills, have committed an offence under Section 85 (a) of the ESI Act (for short 'the Act') by not remitting ESI contributions of employees within the time stipulated in the Order dt.24-12-2001 passed by the competent authority under Section 45 of the ESI Act. The specific allegation is that the proprietor being the principal employer had failed to pay the balance of contributions i.e. employees' share and employer's share of contribution amounting to Rs.1,74,090/- covering the period from October 1992 to July 2001 within the stipulated time.
4. The Court below had convicted A-1 and A-2 under Section 85 (a) of the Act and sentenced them to undergo simple imprisonment for one year each and also to pay a fine of Rs.5,000/- each for the said offence under Section 248 (2)

Cr.P.C.

5. It is not disputed by both sides that appeal filed by A-1 in Crl.A.No.681 of 2006 against the impugned judgment herein was disposed of on 30-10-2013 confirming the conviction of the accused but modifying the punishment i.e. setting aside the sentence of imprisonment imposed on the appellant therein (A-1) while directing him to pay additional fine amount of Rs.10,000/- before trial Court on or before 13-12-2013.
6. Copy of the said judgment is placed before me. In the said judgment, this Court had held that perusal of the judgment and the material on record revealed that the accused committed offence as alleged by the prosecution and the same was substantiated by the documentary evidence under Exs.P-1 to P-11 adduced by the prosecution. This Court therefore had held that prosecution had proved its case against the accused and there was no need to interfere with the conviction recorded by the trial Court. It however took into consideration the fact that the unit of the appellant was small in nature and that subsequently the saw mill itself was not running and therefore modified the punishment.
7. The learned counsel on both sides have taken me through the judgment of the Court below and also the material on record and I am also of the opinion that the material on record establishes the guilt of the accused/appellant herein.
8. However, having regard to the fact that A-1 is the proprietor of the saw mill and the petitioner/A-2 herein is only an employee thereof, I am of the opinion that the sentence of imprisonment imposed on the appellant herein should also be set aside by

substituting the same with additional fine.

9. In this view of the matter, the conviction imposed on the appellant A-2 is hereby confirmed. But the sentence of imprisonment imposed on him is set aside and he is directed to pay additional fine amount of Rs.3,000/- (Rupees Three Thousand only) before the trial Court on or before 15-06-2015 failing which he shall undergo simple imprisonment for three months.
10. With the above directions, the Criminal Appeal is allowed in part.
11. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 08-04-2015

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