

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.117 of 2016
and
Crl.M.P.Nos.831 and 832 of 2016

Bharath Krishna Sankar
S/o.Sri.M.Y.Sankar

... Petitioner/ Petitioner/ 4th Accused

vs.

Employees State Insurance Corporation
Having its Regional Office at
No.143, Sterling Road, Chennai - 34.
represented by Superintendent Legal
ESI Corporation Chennai. ... Respondent/ Respondent/ Complainant

Criminal Revision filed under section 397 & 401 of the Code of Criminal Procedure, praying to call for the records of the case in C.C.No.2213 of 2013 dated 18.12.2015 on the file of the II Metropolitan Magistrate, Egmore, Chennai, passed in Crl.M.P.No.298 of 2015 in C.C.No.2213 of 2013 on 18.12.2015.

For Petitioner : Mr.A.Arumugham

For Respondent : Mrs.S. Jayakumari
St.Counsel for ESI Corporation

O R D E R

This revision arises against the order of learned II Metropolitan Magistrate, Egmore, Chennai, passed in Crl.M.P.No.298 of 2015 in C.C.No.2213 of 2013 on 18.12.2015.

2. Given the limited nature of the plea of the petitioner and having the benefit of earlier order of this Court, this Court proceeds to pass final orders without issuing notice to the respondent.

3. Petitioner is facing prosecution for offences punishable u/s.85(g) r/w 85(ii) of Employees State Insurance Act, 1948 in C.C.No.2213 of 2013 on the file of learned II Metropolitan Magistrate, Egmore, Chennai. The offence relates to non-furnishing of returns as required under the Act and the punishment in the event of conviction may be a term of imprisonment which may extend to one year or with fine which may extend to Rs.4,000/- or with both. Petitioner moved Crl.M.P.No.298 of 2015 in C.C.No.2213 of 2013 seeking dispensing with appearance in keeping with section 205 Cr.P.C. Petitioner made known that he would accept his guilt.

In a related case which was tried in C.C.No.5988 of 2012, a similar plea by the petitioner moved by way of a petition was accepted by the same Court and as a consequence, learned counsel for petitioner had appeared on behalf of the petitioner and upon the plea of guilt, fine was imposed by the same Court viz., II Metropolitan Magistrate, Egmore, Chennai, on 20.02.2014 and the case was closed.

4. Learned counsel for petitioner submitted that the violation alleged in the complaint is technical in nature and that the petitioner was pleading guilty thereto since the petitioner is residing at Madurai and he is in charge of day-to-day affairs of the company, he could not be present in person, the Court below ought to have allowed the petition u/s.205 Cr.P.C.

5. This Court, under orders in CrI.R.C.Nos.1625 and 1626 of 2008 dated 23.12.2008, has considered the following decisions:

(i) M/s.Bhaskar Industries Ltd. v. M/s.Bhiwani Denim and Apparels Ltd. and others [AIR 2001 SC 3625], wherein it has been held thus:

"17. Thus, in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the Court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, a precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel in his behalf would be present in court and that has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses."

(ii) Keeya Mukherjee v. Magma Leasing Ltd. and another [2008 CrI.L.J.2597], wherein it has been observed thus:

"27.If the court is satisfied of the genuineness of the statements made by the accused in the said application and affidavit it is open to the court to supply the questionnaire to his advocate (containing the questions which the court might put to him under section 313 of the Code) and fix the time within which the same has to be returned duly answered by the accused together with a properly authenticated affidavit that those answers were given by the accused himself. He should affix his signature on all the sheets of the answered

questionnaire. However, if he does not wish to give any answer to any of the questions he is free to indicate that fact at the appropriate place in the questionnaire (as a matter of precaution the court may keep photocopy or carbon copy of the questionnaire before it is supplied to the accused for an answer). If the accused fails to return the questionnaire duly answered as aforesaid within the time or extended time granted by the court, he shall forfeit his right to seek personal exemption from court during such questioning. The court has also to ensure that the imaginative response of the counsel is intended to be availed to be a substitute for taking statement of the accused."

In conclusion, this Court had observed as follows:

11. At the outset, it has to be pointed out that the learned Magistrate while rejecting the petitions filed under section 205 Cr.P.C. does not appear to have kept in mind the principles laid down by the Hon'ble Apex court in various decisions. In the light of the law laid down in the aforesaid decisions relied upon by the learned counsel for the petitioner, it could without any hesitation be held that the order cannot be sustained.

12. In the affidavit, as pointed out above, the petitioner has stated his difficulties as to why he is unable to appear before the court. Learned Magistrate ought to have considered the fact that the offences alleged against the petitioner are technical in nature and the accused having pleaded guilty before the court in writing, the learned Magistrate could have allowed the petitions filed under section 205 Cr.P.C. so that hardship to the petitioner could have been avoided and an early disposal could also be given to the cases by the Court. Therefore, in the light of the legal principles laid down by the Apex Court in the decisions relied upon by the learned counsel for the petitioner which are squarely applicable to the facts of the present cases, the above criminal revisions are allowed and the impugned orders dated 26.11.2008 passed in Cr1. M.P.Nos. 1515 of 2008 in C.C.No.524 of 2008 and Cr1.M.P.No.1513 of 2008 in C.C.No.523 of 2008 are set aside. However, it is made clear that petitioner shall file separate affidavits in C.C.Nos.524 of 2008 and 523 of 2008 giving an undertaking to the satisfaction of the court that he will not dispute the identity of the accused and that the learned counsel appearing on his behalf would be present in court during the hearing of the cases and the learned counsel is authorised to plead guilty on his behalf. On filing of such affidavit containing the said undertakings, the learned Chief Judicial Magistrate, Coimbatore is directed to permit the petitioner to appear through his counsel. Consequently, connected miscellaneous petitions are closed.

This Court finds the rationale of the above judgments applicable on all four in the present case.

This Criminal Revision shall stand allowed on the same lines. The order of learned Metropolitan Magistrate II, Egmore, Chennai, passed in CrI.M.P.No.298 of 2015 in C.C.No.2213 of 2013 on 18.12.2015, shall stand set aside. In the result, the Metropolitan Magistrate No.II, Egmore, Chennai is directed to accept a petition u/s. 205 Cr.P.C moved by the petitioner and to pass sentence on a plea of guilty being made on behalf of the petitioner by his counsel. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gpa

To

1. The Metropolitan Magistrate II,
Egmore, Chennai.

2. Do thro the Chief Metropolitan Magistrate
Chennai

1 cc to Mrs.S. Jayakumar, Standing Counsel for ESI, SR.5590

+ 1 cc to Mr.A.Arumugham, Advocate Sr 1289 (13/6/16)

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