

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.1435 of 2006

JUDGMENT:

1. This Criminal Appeal is filed by the appellant-accused against the judgment dated 10.10.2006 passed in P.C.No.29 of 2003 by the Judicial Magistrate of First Class to Try Offences under the E.S.I. Act and Chairman, Industrial Tribunal-I, Hyderabad.

2. The case of the complainant reads as follows:

The factory of the accused viz., M/s. Sri Krishna Rice & Flour Mills, Guntur, was brought under the coverage of ESI Act under Section 2 (12) of the Act, 1948 with effect from 6.3.1998. According to the ESI Act, every Principal Employer shall pay both the shares of contributions i.e., employees' share of contribution as well as employer's share of contribution in respect of every employee in the first instance and the principal employer is entitled to recover the employees' share of contribution from their wages relating to the period in respect of which the contribution is payable and every such contribution payable under said Act in respect of an employee shall be paid by the Principal Employer within 21 days of the last day of the calendar month. It is alleged that the accused-principal employer of the said factory failed to comply with the provisions of the Act in spite of notice and thereby, the appellant-accused is alleged to have committed the offence punishable under Sections 85(a) of the ESI Act, 1948.

3. On behalf of the complainant, P.Ws.1 and 2 were examined and ExsP1 to P9 were marked. D.W.1 was examined and Exs.D1 to D18 were marked on behalf of the accused.

4. On appreciation of both oral and documentary evidence, the trial Court found the appellant-accused guilty for the offence under Section

85(a) of the ESI Act and accordingly, convicted and sentenced him to undergo simple imprisonment for six months and to pay fine of Rs.5,000/- in default to suffer simple imprisonment for one month. It is ordered that out of the fine amount, an amount of Rs.2,000/- be paid to the complainant-corporation to compensate the costs spent by it to prosecute the case. Aggrieved by the judgment of the trial Court, the appellant-accused filed this appeal.

5. Heard and perused the material available on record.

6. From the material on record, it is apparent that the factory of the appellant is covered under the ESI Act and he failed to pay the contributions as alleged and there is no sufficient evidence to disprove the case of the complainant.

7. After arguing for some time, the learned Counsel for the appellant submitted that the factory of the appellant was closed in the year 2006 due to loss and therefore, a lenient view may be taken.

8. Considering the above submission and in view of the nature of the offence, this Court is inclined to pass the following order.

The conviction recorded against the appellant-accused by the trial Court for the offence under Sections 85(a) of the ESI Act is confirmed. But the sentence of imprisonment imposed by the trial Court against the appellant-accused for the said offence is set aside, while confirming the sentence of fine with the default sentence.

9. Accordingly, the Criminal Appeal is partly allowed. Consequently, the miscellaneous petitions, if any pending in this appeal, shall stand closed.

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RAJA ELANGO, J

Date: 22nd July, 2016

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