

Sequeira

*IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION*

CRIMINAL APPEAL NO. 874 OF 2000

C.K.Thapliyal.

.. Appellant

Vs

1. Shri Mangatram Suranjilal Kaushal
and others.

.. Respondents

Mr.H.V.Mehta, for the Appellant.

Mr.G.A.Kataria, for Respondent No.1.

Mr.P.H.Gaikwad Patil – APP, for Respondent - State.

Coram : N.M.Jamdar, J.

Date : 11 August 2017.

P.C :

By this Appeal, the Appellant the original Complainant, an officer from the Employees State Insurance Corporation, has challenged the Judgment and order passed by the learned Metropolitan Magistrate Mazgaon, Mumbai dated 7 January 2000 acquitting the Respondent No.1 of the offences punishable under section 85(a) of Employees State Insurance Act, 1948.

2. The complaint was filed in the Court of Metropolitan Magistrate Mazgaon, Mumbai in a cyclo-styled format against the Respondent No.1 stating that the Respondent No.1 had not paid requisite contribution payable under the provisions of the Employees State Insurance Act, for the period between October 1989 to December 1989 i.e. period of three months. The Complainant examined himself and produced the sanction letter on record. The learned Magistrate found that there was no material produced at all in respect of number of employees, the quantum of the contribution and such other details, failing which the Respondents could not be convicted for a criminal offence prescribed under the Act. The learned Magistrate accordingly acquitted the Respondent by judgment and order dated 7 January 2000.

3. I have heard learned counsel for the parties.

4. Mr.Mehta, the learned counsel for the Appellant submitted that once the Respondent is a factory, then nothing further was required to be shown by the Appellant and it is not necessary for the Appellant to produce any further evidence such as contribution or number of employees. The learned counsel submitted that the learned Magistrate has needlessly placed this burden on the Appellant and has committed perversity in passing the impugned judgment and order. The learned counsel relied upon decision of the learned Single Judge of this Court reported in *Insurance Inspector, E.S.I.C. and etc. vs. Yogendra Swarup Agarwal and another* – 2003 Lab. I.C. 199, in

regard to the scheme of the Act and its compliance. Mr.Kataria, the learned counsel for the Respondent No.1 on the other hand submitted that, the Respondent has never been covered under the provisions of the E.S.I. Act and the Respondent never had more than ten employees.

5. Perusal of the decision of the learned Single Judge in the case of *N.T.Kate*, shows that the other Single Judges of the Court have taken a contrary view and have stressed on the need to specify the details and quantum of the contribution as a subject matter of the charge. No decision of the Division bench or of the Supreme Court is shown holding that no responsibility whatsoever is placed on the prosecution under the Act.

6. For non-payment of contribution, under the provisions of the Act, both civil as well as criminal liability arises and by the very nature of the consequences, the parameters for adjudication must differ. It cannot be that the prosecution lodged under the Act, which will entail penal consequences, will place no responsibility on the prosecution at all. An absolute proposition that a cyclostyled complaint with no further particulars should be entertained and Respondents be convicted, can be accepted. In the present case the only thing that is placed on record is the cyclo-styled complaint and sanction order. The complainant does not know any particulars whatsoever. He has not even asserted that the employees with the Respondent establishment at any point of time exceeded ten in

number. He has admitted that he does not know the number of employees, let alone the amount due. If this was the state of evidence before the learned Magistrate, it cannot be said that he committed any perversity in not convicting the Respondent. The order of acquittal therefore, cannot be interfered with. The charge was framed against the Respondent in the year 1990. Now the Respondent is almost 80 years old and it is informed, seriously ill. The relevant period of three months was 30 years ago.

7. Considering the totality of the circumstances, no case is made out for reversal of the order of acquittal. It is needless to state that if there is any liability, which can be recovered as per law, the department can always recover the amount of contribution by taking recourse to the other provisions of the Act. Appeal is dismissed.

(N.M.Jamdar, J.)