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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.04.2017

CORAM

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.217 of 2017

and

Crl.M.P. (MD) Nos.196 and 1581 of 2017

1. R.R.Aravind : Petitioner/Accused no.1
2. M/s.Bhuvaneswari Textiles (P) Ltd.,
Thadicombu, Dindigul-624 709 : Petitioner/Accused no.2

-vs-

Insurance Inspector (Legal)
Employees State Insurance Corporation,
Sub-regional Office (Madurai),
4th Main Road, K.K.Nagar,
Madurai-625 020. : Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in STC No.213 of 2009 on the file of the Judicial Magistrate No.VI, Madurai and quash the proceedings initiated against the petitioners.

For Petitioners : Mr.V.O.S.Kalaiselvam
For Respondent : Mr.K.C.Ramalingam

O R D E R

This petition in Crl.O.P.(MD) 217 of 2017 has been filed to call for the records in STC No.213 of 2009 on the file of the Judicial Magistrate No.VI, Madurai and quash the proceedings initiated against the petitioners.

2. Employees State Insurance Corporation has launched prosecution in STC No.213 of 2009 before the learned Judicial Magistrate No.VI, Madurai against the petitioners herein for offences under Sections 85(g) punishable under Section 85(ii) of the ESI Act, 1948 (in short "the Act"), challenging which, the accused are before this Court.

3. Heard the learned counsel for the petitioners and the learned counsel appearing for the respondent Insurance Corporation.

4. It is the case of the accused that when the provisions of the ESI Act, 1948 were sought to be invoked in respect of the petitioner's Textile Mill, a batch of writ petitions were filed in W.P.Nos.24874 of 2007 etc., challenging the very coverage, which



were dismissed on 03.10.2007. Thereafter, the petitioners had filed M.P.No.1 of 2011 in W.P.No.24874 of 2007, contending that the Court may direct the petitioner's Mill to pay ESI contribution from the date of dismissal of the writ petitions, namely, 03.10.2007 and not for the earlier dates. This Court passed the following order on 16.12.2011 in M.P.No.1 of 2011 in W.P.No.24874 of 2007:

"7. Thus, considering the above facts and circumstances and considering the judgments cited above, I am inclined to direct the management as well as the employees of the respective petitions to make contribution towards ESI from the date of the order viz., 03.10.2007. All the applications are ordered accordingly.

There shall be a similar order in the present petition also. The petition is ordered accordingly."

After the dismissal of W.P.No.24874 of 2007 on 03.10.2007, the ESI Corporation launched the aforesaid prosecution in the year 2009.

5. It is the contention of the learned counsel for the petitioners that in view of the order passed by this Court in M.P.No.1 of 2011 in W.P.No.24874 of 2007 dated 16.12.2011, the very prosecution of the petitioners is an abuse of process of law.

6. Per contra, learned counsel appearing for the ESI Corporation refuted the contention.

7. This Court gave its anxious consideration to the rival submissions made on either side.

8. It is true that the petitioners had challenged the very coverage of the Act in W.P.(MD) No.24874 of 2007, which was eventually dismissed by this Court on 03.10.2007. The present prosecution of the petitioners is not for the non payment of ESI contribution prior to 03.10.2007, but the prosecution is for the failure of the petitioners to submit their returns as required under Section 85(g) of the Act. The Writ Court had not granted any exemption to the petitioners from filing the returns and therefore, the order in M.P.No.1 of 2011 in W.P.No.24874 of 2007 dated 16.12.2011 cannot enure to the advantage of the petitioners for quashing the present prosecution launched in STC No.213 of 2009 on the file of the Judicial Magistrate No.VI, Madurai.

9. Accordingly, **Crl.O.P.(MD) No.217 of 2017 is devoid of merits and the same is dismissed accordingly.** Consequently, the connected miscellaneous petitions are closed.

<https://hcservices.ecourts.gov.in/hcservices/>
At this juncture, learned counsel for the petitioners submits that the presence of R.R.Aravind before the Trial Court

may be dispensed with.

11. Accepting the submission, this Court directs R.R.Aravind to appear before the Trial Court and furnish a bond under Section 88 Cr.P.C. without sureties. He shall appear before the Trial Court to collect the complaint copy, for questioning on charges, questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, his presence before the Trial Court is dispensed with, on condition that he shall engage a Lawyer on special vakalth and give an undertaking that he will not dispute his identity and that his counsel will cross-examine the prosecution witnesses in his absence on the day they are examined in chief without adopting dilatory tactics as per the judgment of the Hon'ble Supreme Court in the case of **Vinod Kumar vs. State of Punjab** reported in **2015 (1) Scale 542**. If he adopts any dilatory tactics, it is open to the Trial Court to insist for his presence.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate No.VI,
Madurai.
- 2.-do-Thro' Chief Judicial Magistrate, Madurai.
3. The Insurance Inspector (Legal)
Employees State Insurance Corporation,
Sub-regional Office (Madurai),
4th Main Road, K.K.Nagar,
Madurai-625 020.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.C.Ramalingam, Advocate, SR.13229

+1cc to M/S.V.O.S.Kalaiselvam, Advocate, SR.13267

CrI.O.P. (MD) No.217 of 2017
19.04.2017(1/2)

AR/SML

kk/KP-04.05.2017-3P-7C