

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2018

Pronounced on : 10.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.26456 of 2009

N.Krishnamoorthy,
Proprietor,
M/s. Deccan Enterprises,
No.1, Arcot Road,
Valasaravakkam,
Chennai - 600 087.

... Petitioner

Vs.

Employee's State Insurance Corporation,
Having its Regional Office at
No.143, Sterling Road,
Chennai - 600 034,
Rep. by
The Insurance Inspector (Legal),
Regional Office, ESI Corporation,
Chennai - 600 034.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.32876 of 2004 pending on the file of the II Metropolitan Magistrate Court, Egmore, Chennai and quash the same and stay all further proceedings in C.C.No.32876 of 2004 till pending disposal of this Criminal Original Petition.

For Petitioner : Mr.N.Srinivasulu

For Respondent : Mr.G.Bharadwaj,
Special Public Prosecutor (ESIC)

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O R D E R

These Criminal Original Petition is filed to call for the records pertaining to C.C.No.32876 of 2004 pending on the file of the II Metropolitan Magistrate Court, Egmore, Chennai and quash the same and stay all

further proceedings in C.C.No.32876 of 2004 till pending disposal of this Criminal Original Petition.

2.The petitioner, who is the proprietor of M/s. Deccan Enterprises is doing business of manufacture and exports of garments, who has been arrayed as an accused in C.C.No.32876 of 2004 for the offences under Sections 85(a) Punishable under Section 85(1)(b) of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948) has filed the above quash petition.

3.The prosecution has been launched by the Employees' State Insurance Corporation, after obtaining sanction.

4.The case of the prosecution/ Employees' State Insurance Corporation is that the Insurance Inspector S.Viswanathan had conducted an inspection on 27.02.2004 and had verified the Wage Register/Factory Register; Form "7" Register; and Attendance Register and found that under Section 40 of the Act, the accused as the Principal Employer, should pay in respect of every employer, whether directly employed by him or by or through an immediate Employer, both the Employer's contribution and the Employee's contribution. And that the contribution, the Employee's contribution and the Employer's contribution should be paid within the time limit specified under Regulation 31 of the Regulations.

5.The accused ought to have paid an amount of Rs.4,87,116/- (Rupees four lakh eighty seven thousand one hundred and sixteen only) for the wage period from May 2003 to January 2004 within the time limit laid down under Regulation 31 of the Regulations i.e. Within 21 days from the expiry of the wage period in which the contribution fall due.

6.Thus, by their failure to pay the above contribution amount of Rs.4,87,116/- in accordance with the provisions of Section 40 (1) of the Act r/w Regulations 31 of the Regulations, the accused has committed an offence under Subsection (a) of Section 85 of the Act punishable under Section 85 (i) (b) of the Act.

7.In support of the case, the documents annexed to the complaint are Extract of C-6 Register (Xerox copy), special Verification Report dated 27.02.2004, C-18 (Actuals) dated 08.03.2004, sanction order, and copy of the resolution published in the Gazette of India dated 17.08.1991. On receipt of the summons the accused had filed the above quash petition.

8.The contention of the learned counsel for the petitioner/accused is that the respondent/Employees' State Insurance Corporation had erroneously claimed the amount of Rs.4,87,116/- towards the contribution to Employees' State Insurance Corporation for the period from May 2003 to January 2004. But as per the records, the petitioner has to pay only Rs.4,19,888/- (Rupees four lakh nineteen thousand eight hundred and eighty eight only) to the respondent and this admitted amount of Rs.4,19,888/- was paid by way of cheque bearing No.341863 dated 23.08.2004 to the respondent and the petitioner/accused has not paid the disputed amount of Rs.67,228/- (Rupees sixty seven thousand two hundred and twenty eight only).

9.The learned counsel for the petitioner/accused further contended that the respondent issued C-18 Adhoc Notice claiming contribution from the petitioner/accused by their letter dated 18.11.2005 for the disputed amount of Rs.67,228/-. Hence, the petitioner filed a petition in EIOP No.24 of 2006 before the Principal Labour Court, Chennai. In which by way of C.M.P.No.660 of 2005, the Principal Labour Court had granted stay, by staying of C-18 Adhoc Notice dated 18.11.2005 on condition to deposit a sum of Rs.1,52,000/- and the same was complied by the petitioner.

10.The learned counsel for the petitioner/accused further submitted that the respondent had filed a criminal case in C.C.No.32876 of 2004 pending on the file of the II Metropolitan Magistrate Court, Egmore, Chennai insisting the petitioner/accused to pay the disputed amount of Rs.67,228 is illegal and not justified, in view of the EIOP No.24 of 2004 is pending on the file of the Principal Labour Court, Chennai.

11.The learned Special Public Prosecutor appearing for the respondent/Employees' State Insurance Corporation had stoutly opposed the contention of the learned counsel for the petitioner/accused stating that pendency of the EIOP No.24 of 2005 will no way be a bar to proceed against the petitioner/accused in C.C.No.32876 of 2004. Further, he had filed the typed set. From the typed set, it could be seen that the EIOP No.24 of 2005 has been filed by the respondent before the Principal Judge, Employees' State Insurance Corporation Court, Chennai. C-18 Notice dated 21.04.2004 is under challenge before the Employees' State Insurance Corporation Court in EIOP No.24 of 2005 and the Employees' State Insurance Corporation issued a notice dated 18.11.2005 for recovery of an amount of Rs.7,55,661/- (Rupees Seven lakh fifty five thousand six hundred and sixty one only) under various head of account and for a different period.

12.The pendency of this case will not have a bar in C.C.No.32876 of 2004 and relied upon the citation of this Court reported in 1998 (80) I.F.L.R. 449 in the case of Jayamohan Vs. The Manager, Employees' State Insurance Corporation, which had been followed in Crl.O.P.(MD) No.11089 of 2007 in the case of K.L.Sankarapandian Vs. Employees' State Insurance Corporation. This Court had categorically held that

"While such being the case of the respondent in C.C.NO.124 of 1995, the revision petitioner has challenged the determination of the quantum of contribution payable by him to the Employees' State Insurance Corporation, and that is why he has filed E.S.O.P.NO.2 of 1995 before the District Judge, Kanyakumari District at Nagercoil, under Section 45-A of the Employees' State Insurance Act. Therefore, the questions involved in the civil matter in E.S.O.P.NO.2 of 1995 and in the criminal proceedings in C.C.NO.124 of 1995 are not identical and they are distinct and different questions to be answered by different courts of law. A mere obtaining of interim stay by the revision petitioner in I.A.NO.447 of 1995 in E.S.O.P.NO.2 of 1995 will not prevent the criminal court from proceedings with the case in C.C.NO.124 of 1995 for the simple reason that the criminal court or the Magistrate's Court cannot be bound by the order passed by the Civil Court, much more so when the criminal court is not a party to the stay proceedings in I.A.NO.447 of 1995 in E.S.O.P.NO.2 of 1995. In other words, the pendency of E.S.O.P.No.2 of 1995 or the obtaining of interim stay in I.A.NO.447 of 1995 is not a bar to prosecute or to continue the criminal proceedings in C.C.No.124 of 1995. On a reading of the complaint in C.C.No.124 of 1995, I find there is prima facie case triable by a competent criminal court and the allegations made in the complaint are not groundless. Considering the above facts and circumstances of the case, I am to hold that the order passed by the learned Judicial Magistrate No.2 at Nagercoil, in Crl.M.P.No.4210 of 1995 on July 21, 1997, has to be confirmed, and this Criminal

Revision case has to be dismissed and, consequently, I answer this point as against the revision petitioner...."

13.This Court in full agreement with the view expressed in the above two citations wherein mere obtaining of interim stay by the petitioner will not prevent the criminal court from proceeding with the criminal case for the simple reason that the Criminal Court cannot be bound by the order passed by the Civil Court. There is no order of stay. Further, the EIOP No.24 of 2005 challenged with regard to set aside the C-18 Notice dated 21.04.2004 and C-19 Notice dated 21.06.2004 and 07.07.2004 towards the contribution for the period from 1998 to 2002.

14.Here the criminal case is with regard to the contribution for the period from May 2003 to January 2004 and further, the C.M.P.No.660 of 2005 has been filed under Section 75(2) (B) of the Employees' State Insurance Corporation Act to waive the condition to deposit 50% of the amount for filing EIOP, wherein the Employees' State Insurance Corporation Court has waived 30% of the amount and directed the petitioner to pay the balance 20% of the amount in Court on or before 09.01.2006.

15.Thus, the pendency of the EIOP No.24 of 2005 and M.P.No.660 of 2005 would no way be a bar for the Criminal Court to proceed further with this case. At this juncture, the counsel for the respondent have fairly accepted that if the disputed amount of Rs.67,228/- (Rupees Sixty seven thousand two hundred and twenty eight only) along with the interest rate as per the act from 08.03.2004 is paid.

16.The learned Special Public Prosecutor has submitted that the continuation of the criminal proceedings could be quashed, though, the petitioner sought time to make the payment. The petitioner latter expressed his inability to make the payment.

17.In view of the above facts and circumstances of the case and the contention of the petitioner has to be decided only during trial. Hence, the quash petition is dismissed. This Court by order dated 28.06.2018 had vacated the stay and directed the trial Court to proceed

with the case expeditiously, within a period of three months. Hence, the trial Court is directed to complete the trial as per the earlier direction and report compliance.

Sd/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

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To

- 1.The II Metropolitan Magistrate Court,
Egmore, Chennai.
 - 2.The Employee's State Insurance Corporation,
Having its Regional Office at
No.143, Sterling Road,
Chennai - 600 034,
Rep. by
The Insurance Inspector (Legal),
Regional Office, ESI Corporation,
Chennai - 600 034.
 - 3.The Public Prosecutor,
High Court, Madras.
- +1 cc to Mr.G.Bharadwaj Advocate SR.NO. 55530

ORDER IN

Cr1.O.P.No.26456 of 2009

ASK(28/08/2018)

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