

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.12445 of 2011

ORDER :

This Criminal Petition, under Section 482 Cr.P.C., is filed by the petitioners/A.1 and A.2 to quash the proceedings in Prosecution Case No.87 of 2004 on the file of the Judicial Magistrate of First Class for the offences under ESI Act-cum-Chairman, Industrial Tribunal, Hyderabad (for brevity "the Tribunal"), registered against them for the offences punishable under Sections 85(a) r/w. (i)(a) and 85(e) of the ESI Act, 1948 (for brevity "the ESI Act").

The petitioners are Accused Nos.1 and 2 in Prosecution Case No.87 of 2004. Petitioner No.1 is an incorporated Company engaged in the business of manufacture of Electrical Laminations and it was a Small Scale Industry covered under Section 2(12) of the ESI Act. Petitioner No.2 is the Managing Director of the said Company. The 2nd respondent – Employees' State Insurance Corporation has filed a private complaint before the Tribunal against the petitioners/A.1 and A.2 as they failed to deposit the employer's and the employees' share of contribution amounting to Rs.14,812/- for the period from October, 2002 to November, 2002 and from January, 2003 to November, 2003 in ESI Fund A/c.No.1 within the stipulated time. The above said amount includes the amount of Rs.3,989/-

deducted by the petitioners from the employees during the above said period. Thus they have committed offence punishable under Sections 85(a) r/w. (i)(a) and 85(e) of the ESI Act. Basing on the said complaint lodged by the 2nd respondent – Corporation, the Tribunal took cognizance of the offence and issued summons to the petitioners.

It is the case of the petitioners that vide proceedings No.P-11/14/32/97-Rev.II, dated 06.07.2006, the 2nd respondent – Corporation has issued an Amnesty Scheme for withdrawal of criminal cases filed under Sections 84 and 85 of the ESI Act against the insured persons and employers. Under the said Scheme, the 2nd respondent – Corporation agreed to close the cases by withdrawing the same on payment of the amount due with interest/penalty and damages. As per the said Amnesty Scheme, the petitioners have paid the entire amount of Rs.14,812/- comprising of employer's contribution and also the employees' contribution by way of a Demand Draft dated 28.12.2006 in favour of the 2nd respondent – Corporation and the same was accepted by it. Thereafter, the 2nd respondent – Corporation also levied damages of Rs.13,004/- vide order dated 24.01.2007 and addressed a letter dated 02.03.2007 directing payment of Rs.7,334/- towards interest under the ESI Act and the said amounts were paid by the petitioners by way of a Demand Draft. It is further stated that the matter has been settled

with the 2nd respondent – Corporation as the petitioners have paid the entire amount as demanded under the Amnesty Scheme and, therefore, nothing remains for adjudication in this matter and the 2nd respondent – Corporation has to withdraw the case as per the Amnesty Scheme and close the matter.

Heard learned counsel for the petitioners/A.1 and A.2 as well as the learned Additional Public Prosecutor appearing for respondent No.1 – State and also the learned Standing Counsel for the 2nd respondent – Corporation. Perused the material on record.

Learned Standing Counsel for the 2nd respondent – Corporation submits that a Memo dated 06.11.2015 under Section 321 of Cr.P.C. has been filed by the 2nd respondent – Corporation for withdrawal of Prosecution Case No.87 of 2004 in pending before the Tribunal, however, in view of interim orders of stay granted by this Court on 07.12.2011 in this criminal petition, no orders could be passed by the Tribunal in Prosecution Case No.87 of 2004.

Having regard to the facts and circumstances of the case, learned counsel for the respective parties sought for closing of all further proceedings in the light of the Memo dated 06.11.2015 filed by the 2nd respondent – Corporation before the Tribunal for withdrawal of Prosecution Case No.87 of 2004.

There is no dispute with regard to the filing of Memo dated 06.11.2015 before the Tribunal. In view of the facts and circumstances of the case, no adjudication is required in this criminal petition.

Accordingly, recording the submissions of the learned counsel for the respective parties, this Criminal Petition is disposed of directing the Tribunal to pass appropriate orders in Prosecution Case No.87 of 2004 in terms of the said Memo dated 06.11.2015. Interim order dated 07.12.2011 passed by this Court shall stand vacated.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.



GUDISEVA SHYAM PRASAD, J

01.05.2018.
Msr

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