THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEAL No.1254 OF 2007

JUDGMENT:

This Criminal Appeal is filed by the Employees' State Insurance Corporation aggrieved by the Judgment, dated 18.09.2016 passed in C.C.No.94 of 2005 on the file of the III Additional Chief Metropolitan Magistrate, Vijayawada, wherein the learned Magistrate acquitted both the accused of the charges under Section 85(a), (e) and (g) of the Employees State Insurance Act, 1948 (ESI Act, for brevity).

The factual matrix of the case is that the appellant Corporation through its Inspector filed the complaint under Section 85(a), (e) and (g) of the ESI Act stating that A.2 is the Managing Partner of A.1 firm, i.e., M/s.Ramakrishna Rice Mill, A.K.Nagar, Podalakuduru Road, Nellore, and A.2 is the principal employer of the rice mill within the meaning of Section 2(17) of the ESI Act. The Principal employer shall pay both the shares of contribution i.e., employee's share of contribution and employer's share of contribution, amounting to Rs.45,062/- covering the period from 01.06.2001 to 31.03.2003, and they failed to remit the same to the Corporation within the stipulated time. Thus, the accused were liable for punishment under Section 85(a), (e) and (g) of the ESI Act.

During the trial P.Ws.1 to 3 were examined and Exs.P.1 to P.19 were marked on behalf of the prosecution. P.W.1 was the Insurance Inspector (Legal). His evidence was that one Mr.Murthy, Insurance Inspector, has inspected the unit of the accused on 25.04.1998 and he observed twelve employees were working in the accused unit and the said Murthy prepared a visit note, vide Ex.A.1. The said Murthy also prepared Form C-10 and submitted the originals to the Office, vide Ex.P.2. Later, on the basis of Ex.P.2, Form C-11, dated 04.05.1998, was issued, vide Ex.P.3 and as there was no compliance, adhoc C-18, dated 06.10.2003, was issued for the period from June, 2001 to March 2003, vide Ex.P.4. However, Ex.P.4 was not served on the accused and it was returned and Ex.P.6 is the returned cover. Subsequently, Section 47-A notice was issued on 05.03.2004 for payment of the due amount of Rs.45,062/-, vide Ex.P.7. The said order was returned under Exs.P.8 and P.9, returned covers. P.W.1 further deposed that another Inspector, Venugopal visited the unit of the accused, but the accused failed to produce the records to him and refused to receive the enquiry report, vide Ex.P.10. The said Venugopal again visited the accused unit on 07.07.2003, but the accused failed to produce the record. Ex.P.12 is the enquiry report. Later, he sent inspection report to the accused, vide Ex.P.13. Thereafter, on 30.04.2014, a show cause notice, vide Ex.P.14, was issued by the Deputy Director. The same was returned and Exs.P.15 and P.16 are returned covered. Hence, sanction was obtained under Ex.P.17 and complaint was filed.

P.W.2, Mr.Murthy, inspected the unit of A.1 and prepared Ex.P.1, visit note. Ex.P.1 was only a carbon copy, but not the original visit note. The trial Court observed that non-filing of the original was fatal to the prosecution case. From the evidence of P.W.2, the trial Court further observed that though P.W.2 said to have inspected the premises, he failed to note the names of the workers of the accused factory. He admitted that he has not obtained the signatures of the workers in the inspection notes. The trial Court noted that if really more than twelve workers were working the factory of the accused on the date of inspection, P.W.2 must have obtained the signatures of the workers and also noted their names and particulars of the workers in his inspection notes. However, in the Inspection Notes, P.W.2 only mentioned that two drivers, one cleaner, one watchman, four lady coolies (daily wages) and other four coolies (contract labourers) were working. The trial Court also observed that among them four workers are on daily wages and four workers are contract labourers and there are no permanent workers. The trial Court also observed that Ex.P.1 cannot be looked into as it was only carbon copy but not the original. When Ex.P.1 is omitted, the whole case of the complainant can be thrown out.

P.W.3 was another Insurance Inspector and his evidence was that he visited the factory of the accused on 26.06.2003 and he prepared a visit note under Ex.P.11. The trial Court observed that Ex.P.11 does not contain the signature of the accused as he was absent on the day. The trial Court also observed that Ex.P.11 does not contain the particulars as to how many workers were working on the date of his visit. Thus, the trial Court noted that through P.W.3, the complainant could not prove its case. Insofar as defence is concerned, the trial Court noted that the specific case of the accused was that his Rice Mill was not covered under ESI Act as there were less than twelve workers in his mill. It is also his defence that P.W.1 obtained signatures of the accused on white paper and later he fabricated Ex.P.1. It is his case that except the present case, no other cases were lodged against the accused. Considering the material on record, the trial Court held that the main document relied upon by the complainant was Ex.P.1, which was only a carbon copy and it cannot be made as a basis to hold that the accused mill was employing more than twelve workers. The trial Court further held that from Exs.D.1 to D.22, more particularly, Exs.D.17 to D.22, it is clear that the accused factory contains only 5 to 6 workers from the date of inception of the mill and the said documents contain the signature of the Assistant Labour Officer. Therefore, Ex.D.17 to D.22 revealed that only 5 to 6 workers were working in the mill of the accused and therefore, the contention of the complainant that the accused comes under the purview of the ESI Act, cannot be believed. On all these findings, the trial Court acquitted the accused. Hence, the present Criminal Appeal.

During the hearing, learned counsel for appellant has produced a copy of the order, dated 13.03.2007 in E.S.I.O.P.No.75 of 2005 on the file of the Principal Senior Civil Judge, Nellore, to submit that the accused filed the aforesaid O.P., seeking a declaration that his rice mill is not liable for coverage under the provisions of the ESI Act and to set aside the orders of the respondents, under Section 45-A, dated 02.01.2003, under Section 45-G, dated 06.01.2003, and under Section 45-G, dated 24.03.2005, of the ESI Act, and direct the respondents to refund the amounts together with interest. A perusal of the said order would show that the respondents/accused herein and Food Corporation of India (FCI) contested the said O.P. The civil Court agreed with the contention of the respondents/accused and held that the respondent's mill will not come under the purview of the ESI Act and accordingly allowed the O.P and declared that the respondent's mill was not liable for coverage under the provisions of the ESI Act and also directed the respondents therein to refund the amount of Rs.75,381/- and another sum of Rs.88,657/-.

Thus, in view of the subsequent events i.e., passing of the order in E.S.I.O.P.No.75 of 2005 by a competent civil Court holding that the respondent's unit does not come under the provisions of the ESI Act, the contention of the appellant/Corporation that the respondents/accused would come under the purview of the ESI Act cannot be accepted. Even otherwise, the Judgment in C.C.No.94 of 2005 would show that the complainant could not establish before the trial Court by producing cogent evidence that when they visited the mill premises through their Inspectors, they found more than twelve persons working in the mill. As rightly observed by the trial Court, Ex.P.1, which is a crucial document relating to the inspection of the premises, is only a carbon copy and the complainant has not submitted any plausible explanation as to why the original inspection note was not produced. Further, the Inspector has not obtained the signatures of the employees to arrive at a conclusion that there were more than twelve workers working in the respondent's unit. The trial Court rightly acquitted the accused and I see no perversity or illegality in the Judgment passed by the trial Court.

In the result, the Criminal Appeal is accordingly dismissed confirming the Judgment, dated 18.09.2006, passed in C.C.No.94 of 2005 by the Court of the III Additional Chief Metropolitan Magistrate, at Vijayawada.

Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

U.DURGA PRASAD RAO, J

14.06.2018
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