



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD)No.8397 of 2015 and

M.P. (MD)No.1 of 2015

D.P.N.Spinners (P) Ltd.,
Rep. through its Office Manager,
Eriode Road, Srirampuram(PO),
Vedasandur - 624 702.

... Petitioner/Accused No.2

Vs.

Employees' State Insurance Corporation,
Having its Sub-Regional Office at
4th Main Road, K.K.Nagar,
Madurai - 20, Represented by
Insurance Inspector(Legal),
Sub-Regional Office, ESIC,
4th Main Road, K.K.Nagar,
Madurai - 20.

... Respondent/Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in STC No.1193 of 2002 on the file of the Judicial Magistrate No.VI, Madurai, quash the proceedings initiated against the petitioners.

For Petitioner : Mr.V.O.S.Kalaiselvam

For Respondent : Mr.P.Ganapathy Samy

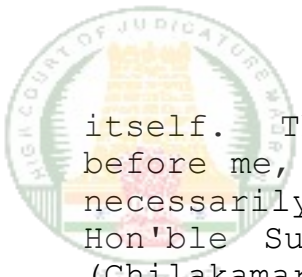
O R D E R

This criminal original petition has been filed to quash S.T.C.No.1193 of 2002 on the file of the Judicial Magistrate No.VI, Madurai.

2. The complainant is the Employees' State Insurance Corporation. The case of the complainant is that the assessee Company has not complied with its statutory obligations under the Act and that therefore it is liable to be prosecuted. It has been specifically averred in paragraph No.7 of the complaint that no Return of Contributions in Form No.6 was submitted for the period from September 2000 to March 2001. That is the cause of action stated in the complaint.

3. The petitioner's counsel would point out that in the order passed under Section 45(A) of the ESI Act on 16.06.2011, it has been clearly mentioned that the employer has been covered under the Act with effect from 01.04.2001. He would therefore contend that when the coverage of the Act itself is only with effect from 01.04.2001, the petitioner cannot be made liable for not filing the return for the period from September 2000 to March 2001.

4. This Court called upon the learned Standing counsel appearing for the Corporation to place any material indicating that the Company in question stood covered even from the prior date. The learned Standing counsel appearing for the Corporation placed number of materials before me indicating that the assessee Company came under the coverage of the ESI Act with effect from 01.11.1999



itself. Thus, in view of the conflicting factual materials placed before me, I am of the view that the petitioner herein will have to necessarily establish his defence before the Court below. The Hon'ble Supreme Court in Crl.A.No.1082 of 2019 dated 31.07.2019 (Chilakamarthi Venkateswarlu and others V. State of Andhra Pradesh and others) has held that while exercising its power under Section 482 of Cr.P.C., the High Court cannot assume the role of the trial Court and appreciate the factual aspects.

5. In this view of the matter, leaving open all the contentions and the defences of the petitioner, the criminal original petition stands dismissed.

6. It is made clear that this Court has not gone into the merits of the matter. The complaint is of the year 2002. Therefore, the learned trial Magistrate is directed to conclude the case on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order.

7. The personal appearance of the first accused before the Court below is dispensed with. The learned trial Magistrate shall insist on the personal appearance of the first accused only when it is absolutely necessary and imperative. The first accused shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the first accused can be represented through his counsel. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pmu

To:

1. The Judicial Magistrate No.VI, Madurai.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.O.S.KALAISELVAM, Advocate (SR-96223[F] dated 05/11/2019)

Crl.O.P.(MD)No.8397 of 2015 and
M.P.(MD)No.1 of 2015
05.11.2019