IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.25382 of 2017 (O&M)
Date of Decision: 15.10.2019

ARUN JAIN

...Petitioner

Vs.

EMPLOYEES STATE INSURANCE CORPORATION AND ANOTHER

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. Abhilaksh Grover and Mr. Arman Midha, Advocates, for the petitioner.

Mr. Vikas Suri, Senior Standing Counsel, for respondent No. 1.

RAJIV NARAIN RAINA, J. *(Oral)*

1. The sole grievance raised in this petition is against the order of the Chief Judicial Magistrate, Faridabad, dated 26.09.2017 in a criminal prosecution lodged by the Employees State Insurance Corporation against the petitioner, namely, Arun Jain, Director-cum-Principal Employer, for failure to deposit contributions over the period October, 2011 to May, 2012.

2. The complaint has been filed under Section 85(A) of the Employees' State Insurance Act, 1948, making a prayer that the Official Liquidator be summoned because during the pendency of the trial the Company has gone into liquidation. The application was moved by the petitioner under Section 290 read with Section 357 of the Companies Act, 2013. The criminal prosecution was lodged on 02.08.2013. The Chief Judicial Magistrate, Faridabad, while dismissing the application of the petitioner has held in its reasoning after perusing Section 85 (A) of the Employees' State

Insurance Act, 1948 that on failure to pay contributions, the person is liable for punishment upto 3 years which shall not be less than 1 year and shall also be liable to pay a fine of Rs.10,000/-. The case in trial is purely criminal in nature, which may result in conviction or acquittal of the accused, but the subject matter is not in respect of the assets of the Company. Sections 290 and 445 of the Companies Act come into play only when criminal proceedings are in relation to the assets of the Company. The trial Court is not concerned with the assets of the Company, that is in the domain of the Official Liquidator after winding up to discharge the debts of the Company in liquidation.

3. The Chief Judicial Magistrate, Faridabad, has relied upon the decision in **Jose Antony Kakkad Vs. Official Liquidator, High Court of Kerala and another,** reported in **MANU/KE/0052/2000**. The case in the Kerala High Court involved a prosecution under Section 138 of Negotiable Instruments Act. The Court held that the purpose of the Companies Act and Negotiable Instruments Act is different and especially after amendment in Chapter XVII of Central Act 66/1988. With the amendment, Parliament will be presumed to be conscious of the provisions of Section 446 of the Companies Act.

4. The limited issue raised in this petition is only whether the Official Liquidator can be summoned. One of the arguments raised by Mr. Grover is that the petitioner is a Director of the Company and the provisions of the Act mandate that company should also be a party.

5. There is no doubt that the Company is a party in the complaint. I see no role of the Official Liquidator in the trial sufficient for him to be called upon to join the criminal trial. Thus, I find no valid reason to interfere under

Article 226 of the Constitution of India against an interlocutory order passed by the trial Court in a criminal trial on application filed by the petitioner dismissing it for the right reasons.

6. The petition is accordingly dismissed.

7. I may remark that trial court reliance on **Jose Antony Kakkad (Supra)** at the instance of the applicant was not necessary in making of the order, as it is distinguishable on facts, but the net result is legal and valid and is not open to be disturbed.

15.10.2019 **[RAJIV NARAIN RAINA]**
Mangal/Vimal **JUDGE**

Whether speaking/reasoned: Yes
Whether reportable: Yes/No