BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 09.07.2021

DELIVERED ON : 26.07.2021

CORAM:
THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**
Crl.O.P.(MD)Nos.19691 & 19692 of 2019
CRL.M.P(MD).Nos.11511, 11515, 11510, 11514 of 2019

P.Nagarajan ... Petitioner in both petitions

Vs.

Employees State Insurance Corporation,
Having its Sub-Regional Office at 2nd West
Street, K.K.Nagar, Madurai,
Rep.by the Superintendent (Legal) ESI Corporation,
2nd West Street, K.K.Nagar,
Madurai-20. ... Respondent in both petitions

PRAYER in CRL.O.P.No.19691 of 2019: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.39 of 2014 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

PRAYER in CRL.O.P.No.19692 of 2019: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to C.C.No.56 of 2014 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

In both petitions:

For Petitioner : Mr.B.Prahalad Ravi
For Respondent : Mr.I.Pinaygash

COMMON ORDER

Since a common question of law and issue arise for consideration in these matters, they are taken up together, heard and disposed of through this common order.

2. Crl.O.P.No.19691 of 2019 has been filed to call for the records relating to C.C.No.39 of 2014 on the file of the Judicial

Magistrate No.VI, Madurai and quash the same.

3. Crl.O.P.No.19692 of 2019 has been filed to call for the records relating to C.C.No.56 of 2014 on the file of the Judicial Magistrate No.VI, Madurai and quash the same.

4. In both the petitions, the petitioner and the respondent are one and the same.

5. The case of the prosecution in Crl.O.P(MD).No.19691 of 2019 is that the petitioner is the Managing Director of the second accused factory namely M/s.Siva Cotton Mills (India) Private Limited. The Factory is covered under the Employees State Insurance Act, as per Section 1(4) read with Section 2(12) and the notification issued by the Government of Tamil Nadu under Section 1 (5) of the said Act. A distinctive code number 57-00-020992-000-0101 was also assigned to the said Factory. Therefore, the said Act read with the Employees State Insurance (Central) Rules, 1950 and the ESI (General) Regulations, 1950 is applicable to the said Factory. The first accused namely P.Nagarajan is the Principal Employer of the said factory. As per the Principal Employer, he should pay the employer's contribution and employees' contribution to each and every employees. A contribution must be paid within the time which is stipulated under Regulation 31 of the ESI (General) Regulations, 1950. But the accused failed to pay the employees' contribution of Rs.91,163/- (Rupees Ninety One Thousand One Hundred and Sixty Three Only) and the employer's contribution for the period from February 2010 to December 2010 in accordance with the above said provisions. So, this omission on the part of the accused is an offence punishable under Section 85(a) of the said Act, 1948. Therefore, the complaint has been filed seeking punishment for the offence punishable under Section 85(a) of the ESI Act, 1948. Pending the above said complaint, this petition has been filed.

6. Similarly, in Crl.O.P(MD).No.19692 of 2019, the Principal Employer is required to submit a Return to the Corporation in respect of the employees employed in the said Factory in Form-6, as per Regulation 26 of the ESI (General) Regulations, 1950. But, the employer namely the accused herein failed to file a Return in Form-6 for the period ended on 03/08, 03/10, 09/10 within the time. Therefore, the accused have committed an offence under Section 85(e) of the said Act. Seeking punishment for the above said offence, a complaint has been lodged. Thereafter, the present petition has been filed.

7. In the counter affidavits filed by the respondent in both the petitions, the very same averments that has been made in the complaint have also been reiterated.

8. A simple question which has been raised in these petitions is that whether the Company has to pay the contribution for the period 2/10 to 12/10 to the employees fund?. Since the Company which has been facing charges has become defunct in the year 2008 itself,

there is no obligation on the part of the Company to pay contribution for the period from 2/10 to 12/10 and so, the offence is not attracted. Now, the question arise for consideration is that whether such plea can be raised in this petition. In the typed set of papers, the petitioner filed the order passed by the Board for Industrial and Financial Reconstruction dated 04.10.2008. The Board in paragraph No.5 has observed that after going into the materials that has been placed before the Bench, it was satisfied to conclude that the Company has become sick as per Section 3(1)(o) of SICA and accordingly, it has been declared as sick industry as on 31.03.2004. The Bench further observed that the settlement of the Company's dues was yet to be negotiated with its secured creditors and as such, it may not be possible for the Company to work out a scheme under Section 17(2) of SICA on its own. Therefore, the provisions of Section 18 of SICA should be explored in public interest in relation to the Company. Therefore, by virtue of the powers conferred under Section 17(3) of SICA, the Bench appointed SIPCOT as the operating Agency (OA) with directions to prepare a revival scheme for the Company. The cut-off date for the scheme was also mentioned as 31.03.2007.

7. The learned counsel appearing for the petitioner would heavily rely upon the proceedings of the Board for making contention that since the Company has become sick as on 31.03.2007, the question of contribution to the employees' contribution scheme as well as for filing Return is out of place and completely a misconceived offence. However, though it has become sick on 31.03.2007, it appears that the Company continued to function and the same was completely locked out only from the year 2014. It is also evident from the letter written by the Company to the Superintendent (Legal) Sub-Regional Office, ESI Corporation, Madurai that "the Company was declared as sick company in Case No.131 of 2020 from 2014 mill was lock out".

8. Next question arises for consideration is that whether the liability is wiped out?. For that purpose, the respondent would rely upon the guidelines which have been issued for the preparation of rehabilitation Scheme and the same is enclosed along with the proceedings of the Board. In this regard, the guideline No.12 reads as under:

> *"The Company shall note that protection of Section 22 (1) of SICA will not be available to it against withholding of any of the workers dues, including EPF & EBIC dues (other than damages levied, if any), gratuity, wages for the working period etc. It shall not default in the timely payment of any such dues on the ground that its case is pending with the BIFR".*

9. In view of the above, it is very clear to the effect that

Section 22(1) of SICA will not be available to the petitioner against the workers' dues, EPF etc., for the working period. Further, it is also stated that it should not default in the timely payment of such dues on the ground that the case is pending with the Board. After the declaration of the petitioner's company has become sick, the SIPCOT was appointed as the Operating Agency to work out the possibility of re-construction. Further, the Company was locked out only from the year 2014. Therefore, the petitioner has not escaped from the liability towards the payment of wages, EPF etc, as per the above said regulations. Till the company was locked out, the above said liability has to be undertaken only by the petitioner's company and it cannot escap from the liability by stating that the Company has been declared as sick from 31.03.2007.

10. As rightly contended by the learned counsel appearing for the respondent, it is a beneficial legislation and the petitioner could not be escaped from paying the contribution to the employees'. Therefore, the complaint cannot be quashed on the grounds mentioned in the petition and the petitioner Company has to face the trial proceedings.

11. During the course of arguments, the learned counsel for the petitioner would submit that he made a representation dated 14.10.2016 to withdraw the criminal complaint that has been filed by the Corporation. But, thereafter on 11.07.2017, a letter has been addressed to the petitioner Company to produce the documents showing the closure of Unit and they have also sent the proceedings of the Board. However, there was no response.

12. As mentioned earlier, even as per his own letter, it is stated that the Company was locked out only from the year 2014. Therefore, till 2014, the responsibilities and liabilities of the Company as mentioned in the regulations deemed to have continued. Therefore, the contention on the part of the petitioner in this regard cannot be taken into account.

13. Accordingly, the Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are also closed. The trial in both cases shall be continued to its logical end.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. Employees State Insurance Corporation,
   Having its Sub-Regional Office at 2nd West
   Street, K.K.Nagar, Madurai,
   Rep.by the Superintendent (Legal) ESI Corporation,
   2nd West Street, K.K.Nagar,
   Madurai-20.

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

+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-24249[F] dated 28/07/2021)

Crl.O.P.(MD)No. 19691 & 19692 of 2020
26.07.2021

MGJ(02.08.2021) 5P 4C