

33 28.07.  
Ct 2023

237

rup

**CRR 228 of 2017**  
**With**  
**IA NO: CRAN 5 of 2018 ( Old No: CRAN 644 of 2018)**

**Bijoy Chand Gupta**  
**Versus**  
**Employees' State Insurance Corporation & Anr.**

Mr. Mainak Lal Podder. ... for the petitioner.

Mr. Tilak Mitra.  
.... For the opposite party/ ESI.

Affidavit of service filed by the petitioner be kept with the record.

This revisional application has been filed with a prayer for quashing the proceedings being Case No.C-62 of 1984 initiated under Section 85(g) read with Section 85A of the Employees State Insurance Act, 1948 pending before the learned Metropolitan Magistrate, 3<sup>rd</sup> Court, Calcutta.

A complaint was lodged by the Insurance Inspector of Employees' State Insurance Corporation against Shri B.L. Gupta, Shri K.C. Gupta and Shri A.C. Gupta all are partners and Shri Bijoy Chand Gupta, factory incharge of M/s. Calcutta Industries, 101, B.T. Road, Calcutta-50 on the ground of failure to submit contribution cards under the Regulation 26 of the E.S.I.(General) Regulation, 1950 together with return in from no. 6 within the specified period under the Regulation. That is why the complaint

was lodged against all the persons named above for committing offence punishable under Section 85(g) read with Section 85A of the Employees State Insurance Act, 1948 (hereinafter referred to as the Act).

Mr. Mainak Lal Podder, learned advocate appearing on behalf of the petitioner has submitted that out of four accused persons three namely, B.L. Gupta, Shri K.C. Gupta and Shri A.C. Gupta died and Shri Bijoy Chand Gupta, factory incharge is now facing the trial.

Mr. Podder submitted that proceedings is liable to be quashed on the ground that petitioner Bijoy Chand Gupta is not the principal employer within the meaning of Section 2(17). Mr. Podder further submitted that factory incharge had no responsibility of management of the factory. Therefore, petitioner is not liable to be booked under penal provision of this Act.

Mr. Tilak Mitra, learned advocate appearing on behalf of the private opposite party no.1 has drawn my attention to the penal provision of Section 85(g) and submitted that the petitioner is also liable to be punished for the offence.

Mr. Mitra further submitted that Section 2(17) of the Act clearly shows that every person incharge of the management of the factory comes within the purview of Section 2(17) of the Act.

On careful perusal of the definition clause of this Act, I do not find any designation under the

nomenclature of “factory incharge”.

In this regard, I would like to reproduce of Section 2(17) of the Act as follows:

**“2(17) “principal employer” means-**

- (i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948, the person so named;**
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department;**
- (iii) in any other establishment, any person responsible for the supervision and control of the establishment;”**

Therefore, the provision itself shows that even occupier of the factory can be considered within the meaning of “principal employer”.

Provision of Section 2(17) (i) can be expounded that a person either being owner or occupier of the factory in any manner, can be considered as “principle employer”.

Admittedly petitioner being a factory incharge cannot be considered as a person beyond the meaning of “principal employer”.

In the aforesaid view of the matter, I find hardly any merit of this revisional application, which is liable to

be dismissed.

Accordingly CRR 228 of 2017 stands dismissed.

Interim order, if any, also stands vacated.

Pending application, if there be any, stands dismissed.

Urgent photostat certified copy of the order, if applied for, be given to the parties on usual undertakings.

All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

***(Bibhas Ranjan De, J.)***