



Crl OP No. 6377 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **21.06.2023**
PRONOUNCED ON : **26.06.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 6377 of 2021
and
Crl.M.P. No. 4251 of 2021

1. M/s.Chennai Radha Engineering Works (P)Ltd.,
Rep. by its Managing Director,
V.R. Senthil Kumar,
No. 40, Sapthagiri Colony,
Jafferkhanpet,
Chennai – 600 083.

2. V.R. SenthilKumar ... Petitioners

Versus

Employees' State Insurance Corporation,
Having its Regional Office at No. 143,
Sterling Road, Chennai – 34, represented by,
Superintendent (Legal), ESI Corporation,
Regional Officer, ESI Corporation,
Chennai – 600 034.

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. No. 1228 of 2020 pending on the file of II Metropolitan Magistrate Court, Egmore, Chennai and quash the same as illegal.



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For Petitioners : Mr. Shivakumar for
M/s. K.M. Vijayan Associates.

For Respondent : Mr. S.P. Srinivasan.

ORDER

The petition is to quash the complaint filed for the offence under Section 85(g) punishable under Section 85(ii) of the Employees' State Insurance Act, 1948 (Central Act XXXIV of 1948) [hereinafter referred to as 'the ESI Act' for the sake of convenience].

2. It is alleged in the complaint that the first accused (first petitioner) is the immediate employer registered under the ESI Act and the second accused (second petitioner) is its Managing Director, and the third and fourth accused are the principal employer and its Chief Engineer respectively; that the accused had taken a person in employment on 01.07.2019 and did not provide the temporary identification certificate on the same day and submitted the declaration form only on 08.07.2019 after the employee died due to an accident on 08.07.2019; that since the accused had delayed the submission of the declaration form and the accident report, the petitioners are liable for the violation of Regulation 12 of the Employees' State Insurance (General)



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Regulations, 1950 [hereinafter referred to as 'the ESI Regulations' for the sake of convenience].

3. (a) The learned counsel for the petitioners submitted that the petitioners had not delayed the submission of the declaration form. The employee was taken into employment on 01.07.2019, as stated in the complaint, and a temporary photo identity card was issued on the same day. However, the declaration form could not be submitted immediately as per the ESI Regulations since the concerned employee did not furnish the original aadhaar card.

(b) The learned counsel further submitted that as per Regulation 14 of the ESI Regulations, the employer shall send the declaration forms along with the temporary identification certificate within ten days of the date on which the particulars were furnished. Since the particulars were furnished on 01.07.2019, i.e. on the date of appointment, the petitioners had ten days to submit the declaration form, and they have submitted it before ten days, i.e. on 08.07.2019. However, unfortunately, the employee died on 08.07.2019. Since the petitioners had ten days time, the non sending of the declaration form before the death of the employee

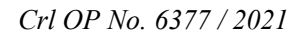


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on 08.07.2019 cannot be said to be in violation of Regulation 12 of the ESI Regulations. The learned counsel further submitted that since the registration of the employee was accepted by the respondent, his family members were paid compensation. The learned counsel, therefore, submitted that the impugned prosecution is liable to be quashed.

4. The learned counsel for the respondent, on the other hand submitted that regulation 12 of the ESI Regulations not only speaks about the sending of the declaration form but also about preparing the temporary identification certificate. In the instant case, even admittedly, the petitioners did not prepare the temporary identification certificate as the employee did not furnish the original aadhaar card. In view of the admission made by the petitioners, it cannot be said that the petitioners have not violated Regulation 12 of the ESI Regulations. Hence, the impugned complaint cannot be quashed, and the points raised have to be adjudicated only before the trial Court.

5. This Court finds that the crux of the allegation is that the petitioners had submitted the declaration form as required under Regulation 12 of the ESI Regulation belatedly. The allegations are



“8. It is pertinent to mention that the insurable employment was on 01/07/2019, date of accident was 08/07/2019 and date of death was 08/07/2019, whereas the accused had submitted the online Declaration form only on 08/07/2019 and Accident Report on 09/07/2019 after the death of the employee. Thus the Accused had delayed the submission of Declaration form and the Accident Report. The Employer is liable for violation of Reg. 12 of ESI (General) Regulations 1950.”

***“Section 12:Declaration by persons engaged
after the appointed day -***

(1) The employer in respect of a factory or an establishment shall, before taking any person into employment in such factory or establishment after the appointed day, require such person (unless he can produce an Identity Card or other document in lieu



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thereof issued to him under these regulations) to furnish, and such person shall on demand furnish to him, correct particulars required for the Declaration Form 1 including the Temporary Identification Certificate. Such employer shall enter the particulars in the Declaration Form 1 including the Temporary Identification Certificate and obtain the signature or the thumb-impression of such person and also complete the form as indicated thereon.

(2) Where an Identity Card is produced under sub-regulation (1), the employer shall make relevant entries thereon.

14. Declaration Forms to be sent to appropriate Office - *The employer shall send to the appropriate Office by registered post or messenger, all Declaration Forms without detaching the Temporary Identification Certificate prepared under these regulations together with a return in duplicate in Form 3 within ten days of the date on which the particulars for the Declaration Forms were furnished.*

From the above, it is seen that the petitioners had time to send the declaration form till 10.07.2019. Hence, merely because the employee



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died on 08.07.2019, it cannot be said that the petitioners have violated Regulation 12 of the ESI Regulations. Since the time given is ten days and the petitioners have furnished the declaration form within ten days, this Court is of the view that the petitioners cannot be held liable for violation of Regulation 12 of the ESI Regulations punishable under Section 85(ii) of the ESI Act. Hence, the impugned complaint is liable to be quashed.

6. Accordingly, this Criminal Original Petition is allowed by quashing the proceedings in C.C. No. 1228 of 2020 pending on the file of II Metropolitan Magistrate Court, Egmore, Chennai. Consequently, the connected Miscellaneous petition is closed.

26.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The II Metropolitan Magistrate Court,
Egmore,



Chennai.

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SUNDER MOHAN, J

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Dated: 26.06.2023