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Crl.R.C.No.1354 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.06.2023 & 19.06.2023

PRONOUNCED ON : 10.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE RMT. TEEKAA RAMAN

CRL.R.C.No.1354 of 2019

Employees State Insurance Corporation,
Rep. By its Branch Manager / Inspector,
ESI Corporation (Local) Officer,
Karungalpalayam, Erode-3.

... Petitioner/Complainant

-Vs-

V.K.Venkatachalam,
Proprietor,
M/s.Thirumurugan Industrial Works,
No.19, Sathy Road,
Erode-630 003.

... Respondent / Respondent

PRAYER: Criminal Revision Case is filed under Section 397 & 401 of Cr.P.C., against the judgment dated 02.01.2019 passed in Crl.A.No.136 of 2018 on the file of the II Additional District Court, Erode confirming the order passed by the learned Judicial Magistrate No.1, Erode in STC No.10746 of 2006 and to set aside the same.



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For Petitioner : Mr.G.Bharadwaj

For Respondent : Mr.Neethu Karthikeyan

ORDER

Employees State Insurance Corporation has filed this revision.

2. Brief facts leading to the filing of the complaint is as follows:

(i) The Employees State Insurance Corporation as a complainant has filed STC No.10746/2006 before the learned Judicial Magistrate No.I, Erode, against the respondent accused for the alleged offence under Section 85(e) r/w 85(ii) r/w 86 of the Employees State Insurance Act, 1984.

(ii) According to the complainant, the accused is the owner of M/s. Thirumurugan Industrial Works, functioning at D.No.19, Sathy Road, Erode and it is a factory as defined under ESI Act and as per Section 44 of ESI Act read with 4 and 26 of the Employees State Insurance (General) Regulation, 1950 and the accused has not furnished the contribution of the employees



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under Form-6 which he ought to have filed for the year 31.03.2004 and 30.09.2004 and 42 days have already lapsed. Hence, a show cause notice was issued on 09.12.2004 and till date he has not filed the Form-6 and accordingly, after obtaining prior permission, the case has been instituted.

3. On securing the attendance of the accused and having denied the charges, the matter was put to trial and one Tamil Mani was examined as PW1 was examined and Ex.P1 to P6 were marked. Ex.P2 is the show cause notice and Ex.P3 is acknowledgment therefor.

4 As per the evidence of PW1, one Koodalingam had inspected the factory run by the accused on 22.07.1999 and found that 15 contract workers and 19 workmen and 2 persons directly employed by the accused, i.e., in total 36 employees were working in the industry and therefore, he had issued Ex.P6, Survey Report calling upon the details of the persons and their father's name and address and even thereafter the accused has not filed the Form-6.



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5. The case of the defence is that they totally denied the averments and also denied that Ex.P6-Survey Report could not be looked into due to non-examination of the author of the document and for service of Ex.P6 upon the accused, no acknowledgment has been produced before the Court and hence relied upon the judgment of this Court in **Crl.A.No.154 of 2002 dated 29.10.2008** [ESIC Vs. M/s.Sri Raghavendra Theatre and another] and in **Crl.A.No.680 of 2002 dated 10.06.2010** [ESIC Vs. M/s.Vasam Spinning Mills P. Ltd., and another].

6. Heard the learned counsel appearing on either side and perused the documents.

7. In Crl.A.No.154 of 2002, when the Employees State Insurance Corporation failed to prove the total number of employees, employed on the date of inspection and furnish the enclosures to the report to show the details of calculation containing ESI contribution collected from the employees by the employer, to come to a conclusion whether there is any default



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committed by the employer in remitting 7.25% of contribution from out of total ESI contribution collected from the employees, this Court has confirmed the judgment of the trial Court. Further, there is no material placed before the trial Court to show that the show cause notice was served upon the accused. So also in the Crl.A.No.680 of 2002, a similar point has been upheld.

8. In the instant case, both the Courts below have rightly come to the conclusion that no details are available as to whether the Inspector Koodalingam has conducted the inspection and prepared the survey report, which is a sheet anchor for the prosecution and in the said report [Ex.P6] details of the persons and their employment and any contribution paid thereon, were not furnished.

9. Furthermore, both the Courts below have categorically held that in the absence of details of the contribution said to have been collected by the alleged employer and in the absence of any details about the employees and



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their particulars, the survey report Ex.P5 is totally unreliable. Further, with regard to the alleged inspection, in the absence of any acknowledgment regarding the report either from the accused or from the Manager or even from the alleged employer, both the Courts below has rightly relied upon the above said judgments and acquitted the accused.

10. As stated supra, there is no acknowledgment for the service of the survey report-Ex.P6 and hence it caused serious doubt as to whether Ex.P6-survey report said to have been prepared by one Mr.Koodalingam or not and is surrounded with suspension and the said report also lacks various particulars as stated supra and it was neither served upon the accused nor upon the Manager nor even the signature of any one of the alleged employees said to have been present at the time of the alleged inspection by the said Koodalingam, is obtained.

11. Furthermore, Koodalingam was not examined and no reason was assigned by the prosecution for non examination of Koodalingam, who is a



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material witness and hence, both the Courts have rightly come to the conclusion that the prosecution is not sustainable for the above deficiencies.

12. Thus, taking into consideration the scope of the revision against the order of concurrent finding and in the absence of any legal point and in view of the law settled in the above stated decisions, I find no merits in the Criminal Revision Case and the same is dismissed. The judgment dated 02.01.2019 passed in Crl.A.No.136 of 2018 on the file of the II Additional District Court, Erode and the order passed by the learned Judicial Magistrate No.1, Erode in STC No.10746 of 2006, are confirmed.

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Index: Yes / No
Speaking/Non-Speaking order
Neutral Citation: Yes/No.
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RMT. TEEKAA RAMAN, J.

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To

1. The II Additional District Court,
Erode.
2. The Judicial Magistrate No.1,
Erode.
3. The Public Prosecutor,
High Court, Madras.

Pre-delivery Judgment made in
CRL.R.C.No.1354 of 2019

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