



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Criminal Appeal No.350 of 2014

Employees State Insurance Corporation,
having its Regional Office at No.143, Sterling Road,
Chennai - 34, Rep. By Branch Manager,
Branch office ESI, Corporation, Salem

..Appellant / Respondent

Vs.

R.Kanagasabapathi
Proprietor M/s.R.Kanagasabapathy Shanthi,
Sago Factory situated at Pappankutti Thottam,
Muthukkalipatty, Rasipuram Taluk,
Namakkal District 537 401

.. Respondent/Appellant

Appeal filed under section 378 (1) of Code of Criminal Procedure,
to set aside the judgement and decree in C.A.No.93 of 2008 dated
21.07.2012 acquitting the respondent in C.C.No.682 of 2004 on the file of
Judicial Magistrate V, Salem.

For Appellant	:	Mr.G.Bharadwaj
For Respondent	:	Mr.M.J.Srinivas



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JUDGMENT

This Criminal Appeal has been filed by the Employees State Insurance Corporation aggrieved by the judgement and order passed by the Principal District Judge, Salem in Crl A No.93 of 2008 dated 21.07.2012.

2. The brief facts of the case are as follows :-

- The respondent is the proprietor of M/s.Kanagasabapathy Shanthi Sago Factory, which is covered under ESI Act. The respondent failed to pay the contributions determined under Section 45 A of the Employees State Insurance Act (hereinafter called as the Act) for various periods. In view of the same, the non-payment of the contributions, resulted in an offence under Section 85 (a) of the Act punishable under Section 85 (i) (b) of the Act. Accordingly, the appellant filed a complaint against the respondent before the Judicial Magistrate, Salem, and the same was taken on file in CC



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No.682 of 2004. After trial, the respondent was convicted under Section 85 (i) (b) of the Act and was sentenced to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- and in default to undergo one month simple imprisonment.

- Aggrieved by the above order passed by the Trial Court, the respondent filed an appeal before the Principal District Judge, Salem in Crl A No. 93 of 2008. The Appellate Court on re-appreciation of evidence and after considering the findings of the Trial Court, set aside the order passed by the Trial Court through judgement and order dated 21.07.2012. Aggrieved by the same, the present criminal appeal has been before this Court by the Employees State Insurance Corporation.

3. Heard Mr.G.Bharadwaj, learned counsel for the appellant and Mr.M.J.Srinivas, learned counsel for respondent.



4. The learned counsel for the appellant submitted that there were three orders passed under Section 45A of the Act determining the contribution payable by the respondent for the period from 22.06.2002 to 30.09.2002, 01.10.2002 to 31.03.2003 and 01.04.2003 to 30.09.2003. The learned counsel submitted that these orders passed against the respondent had become final and the respondent did not pay the contribution as determined by these three orders and hence, automatically the offence gets attracted under Section 85(a) of the Act punishable under Section 85 (i) (b) of the Act. The learned counsel submitted that the Appellate Court should not have interfered with the order of conviction and sentence passed by the Trial Court since there is a statutory presumption on the non-payment of the contribution with regard to the commission of the offence.

5. The learned counsel for the appellant submitted that the Court below had heard the Public Prosecutor while disposing of the criminal appeal and whereas insofar as cases relating to ESI Corporation is concerned, it is not conducted by public Prosecutor and the same is conducted only by the counsel representing the Corporation. In view of



the same, there was no opportunity for the corporation to put forth their case before the Court below. The learned counsel further submitted that the respondent had paid the entire contribution amount due and payable on 14.02.2012 and the respondent has also been paying the further contributions till date. By bringing this fact to the notice of this Court, the learned counsel for appellant submitted that the same will not in any way take away the offence committed by the respondent and at the best, it can only come to the aid of the respondent while deciding the sentence.

6. Per contra, the learned counsel for respondent submitted that the sanction order was given for the offence punishable under Section 85(i) (b) of the Act. Whereas, even as per the case of the appellant corporation, the respondent is punishable for the offence under Section 85(a) of the Act and the punishment is provided under Section 85 (i) (a) of the Act. Admittedly, no sanction was obtained for proceeding against the respondent for punishment under Section 85(i) (a) of the Act. The learned counsel therefore submitted that the very sanction order based on which the prosecution was launched against the



respondent is vitiated and was rightly interfered by the Court below. The learned counsel confirmed the fact that the contribution amount that was due and payable was subsequently settled by the respondent in the year 2012 itself. Hence, the learned counsel requested this Court to take in to consideration the said fact while deciding this appeal.

7. There is no dispute with regard to the fact that orders were passed under Section 45A of the Act determining the contribution payable by the respondent for three periods. These orders were never put to challenge and the same became final. The ESI Act makes it clear that non-payment of contribution by itself will result in an offence under the Act. In otherwords, the statute itself presumes the commission of an offence, once the contribution is not paid as determined by the authority. The respondent seems to be questioning the conviction and sentence imposed by the Trial Court on the technical ground of sanction order. Apart from that, there is no substantive ground raised by them to establish before this Court as to how the non-payment of contribution will any way take away the criminal offence attributed under the Act.



8. Considering the submissions made by the learned counsel for the appellant to the effect that the standing counsel appearing on behalf of the appellant was not heard by the Court below, this Court would have remanded the matter back to the file of the Appellate Court for fresh hearing. However, such a futile exercise need not be undertaken in this case, since the respondent has already deposited the contribution amount in the year 2012 itself.

9. The undisputed facts in this case shows that the respondent has not paid the contribution amount as determined by the authorities and hence, the same is an offence under Section 85(a) of the Act. In view of the same, this Court while confirming the conviction, is inclined to interfere with the sentence imposed against the respondent, since the contribution amount has been subsequently paid by the respondent.

10. In the light of the above discussion, the respondent is convicted for offence under Section 85(a) of the ESI Act and the respondent shall undergo simple imprisonment till rising of the Court and the fine amount imposed by the Trial Court hereby stands confirmed. It



is brought to the notice of this Court that the fine amount has already been deposited by the respondent.

11. In the result, this Criminal Appeal is partly allowed to the extent indicated herein above.

21.02.2023

Internet : Yes/No
Index : Yes / No
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To

1. The Principal District Judge, Salem.
2. The Judicial Magistrate V, Salem
3. The Public Prosecutor
High Court, Madras.



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N.ANAND VENKATESH.,J

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