



W.P.No.18758 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDER RESERVED ON: 29.01.2024

ORDER PRONOUNCED ON: 15.03.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.18758 of 2023

and

WMP.No.18005 of 2023

R.A.Samy,
S/o. Ramajayam,
No.20 & 21, Ranganathan Street,
T. Nagar, Chennai-600 017.

...Petitioner

Vs.

1.Employees State Insurance Corporation,
Having its Regional Office at
No.143, Sterling Road, Chennai-34,
Represented by Social Security Officer (Legal),
Chennai-600 034.

2.M/s.Shanmuga Stores,
rep. by Shri.R.A.Samy,
S/o.Ramajayam,
No.20 & 21, Ranganathan Street,
T. Nagar, Chennai-600 017.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue Writ of Certiorari calling for the records in C.C.No.6567 of 2022 on the file of the II Metropolitan Magistrate, Egmore, Chennai and



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quash the same.

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For Petitioner : Mr.M.Vijayakumar

For Respondents : Mr.S.P.Srinivas

for R1

No appearance for R2

ORDER

The writ petition is filed for a writ of Certiorari to call for the records on the file of the II Metropolitan Magistrate, Egmore, Chennai.

2. The facts in a nut shell are that the petitioner is an establishment registered with the respondent corporation in code No.51-00-090432-000-1102. In pursuance of the order passed under Section 45-A of the E.S.I Act on 18.05.2022 for the period from 06/2018 to 06/2021 a criminal prosecution was initiated for default of payment of EPF dues punishable under Section 85(i)(b) of the E.S.I Act against the petitioner's establishment, Shanmuga Stores. The said complaint was registered in C.C.No.6567 of 2022 on the file of the II Metropolitan Magistrate, Egmore, Chennai which is the subject matter of challenge in the present writ petition. The petitioner disputed the receipt of the Form C-18 Adhoc notice dated 08.09.2021 and also the show cause notice dated 21.02.2022 proposing the assessment for



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the period from 06/2018 to 06/2021. According to the petitioner the said notices were served on Shanmuga Stores, a completely different entity owned by different Directors. According to the petitioner, the 1st accused namely Shanmuga Stores unit of R.A.Samy Trading Pvt. Ltd. in code number 51-00-090432-000-1102 stopped its business activity as early as in the year 2012 itself and hence the compliant was liable to be quashed. It was the further case of the petitioner that the company was taken over by the order of the NCLT in IBA/332/2019 dated 30.04.2019 and one Ashok Kumar Seshadri was appointed as Interim Resolution Professional. Therefore according to the petitioner, in the absence of a Director for the 1st accused company, the impugned order was liable to be quashed.

3. The respondent on the other hand stated that R.A.Samy, the petitioner herein was a proprietor of Shanmuga Stores, 2nd respondent herein and the said establishment was allotted with separate ESI code number. It was further stated that Shanmuga Stores was a proprietorship concern of R.A.Samy, petitioner herein, whereas R.A.Samy Trading Pvt. Ltd., was a company registered under the Companies Act and it had



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absolutely no link with Shanmuga Stores. According to the respondent the petitioner deliberately referred to the NCLT proceedings of R.A.Samy Trading Pvt. Ltd. in IBA/332/2019 eventhough the proceedings had no nexus with Shanmuga Stores. According to the respondents in the absence of documents or evidence to show that Shanmuga Stores was a unit of R.A.Samy Trading Pvt. Ltd., the reliance on the IBA proceedings were unsustainable. The respondent further stated that petitioner had not informed about the change of character and nature of operations of the establishment and as per ESI records Shanmuga Stores continued to be a proprietorship concern and was covered under Section 1(5) of the E.S.I. Act. The respondent denied the contention of the petitioner that Form C-18 Adhoc notice dated 08.09.2021 and show cause notice dated 21.02.2022 were not received by the petitioner. According to the respondent the said contentions of the petitioner were mischievous, made with a view to cause confusion in the Court. The respondent also raised objection on the maintainability of the writ petition stating that the petitioner had an alternative and effective remedy under the Criminal Procedure Code and the same could be sought before the Hon'ble II Judicial Metropolitan



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Magistrate, Egmore, Chennai.

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4. The learned counsel for the petitioner assailed the impugned order on three grounds. Firstly, that Shanmuga Stores, the 1st accused in the impugned compliant stopped its business activity in the year 2012 and therefore the impugned complaint was against the provisions of law. Secondly, the NCLT by order dated 30.04.2019 in company application by the creditor bank/ Union Bank of India appointed one Ashok Kumar Seshadri as Interim Resolution Professional and therefore petitioner was no longer a Director of the 1st accused company and hence the impugned compliant was unsustainable. Thirdly, the notices in Form C-18 Adhoc dated 08.09.2021 and the show cause notice dated 21.02.2022 were not served on the petitioner and as the compliant was based on the aforesaid notices the same was illegal and unsustainable.

5. The learned counsel for the respondent on the other hand in reply to the aforesaid objections submitted that Shanmuga Stores, the 1st accused was a sole proprietorship concern and was covered under Section 1(5) of the E.S.I Act. The learned counsel further submitted that the petitioner had



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deliberately mentioned the NCLT proceedings of R.A.Samy Trading Pvt.

Ltd., fully knowing that R.A.Samy Trading Pvt. Ltd. which was a company registered under the companies Act had absolutely no nexus with Shanmuga Stores, a proprietorship concern of the petitioner. The learned counsel further stated that the contention of the petitioner that Shanmuga Stores, 1st accused was not functioning since 2012 was not supported by any evidence and therefore the said contention was mischievous. On the objection of non receipt of the Form C-18 Adhoc notice and show cause notice, the learned counsel submitted that the said notices were issued and served on the petitioner and the acknowledgement in proof of the same was annexed in the typed set of papers. The learned counsel for the respondent apart from the above, raised the issue of maintainability of the writ petition on the ground of availability of alternative remedy under the Criminal Procedure Code.

6. I have heard both the learned counsels and I have perused the materials placed on record.



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7. The facts of the case are already narrated and they are not revisited. The core issue that falls for consideration and determination in the writ petition is whether the impugned order is sustainable ?

8. The main contention of the petitioner is that Shanmuga Stores, 1st accused for whose liability, the impugned order was passed is a unit of R.A.Samy Trading Pvt. Ltd. company and as R.A.Samy Trading Company Pvt. Ltd., was taken over by Interim Resolution Professional, no action could be initiated against the petitioner in the capacity of proprietor of Shanmuga Stores.

9. On the other hand, it is the contention of the respondent that the petitioner as the proprietor of 2nd respondent, Shanmuga Stores was registered with the 1st respondent corporation under E.S.I. Act, 1948, and the said concern was allotted with code number 51-90432-102 with effect from 31.08.2009. The said concern was carrying retail textile business at the time of its coverage. It is the further case of the respondent that as the said



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concern defaulted in paying ESI contributions, Form C-18 Adhoc notice dated 08.09.2021 for the period from 06/2018 to 06/2021 was issued and served on the petitioner. Thereafter Section 45(a) order was passed on 18.05.2022 for an amount of Rs.7,71,367/- after issuing the show cause notice dated 21.02.2022. Since the petitioner failed to make the payment, criminal action was initiated invoking Section 85(a) of the E.S.I Act. The respondent therefore contends that Shanmuga Stores, 1st accused was a sole proprietorship concern and the petitioner was the proprietor of the said concern, whereas R.A.Samy Trading Company was a company registered under the Companies Act and in the absence of any document or evidence to show that Shanmuga Stores was a unit of R.A.Samy Trading Company and also in the absence of any intimation of change of character and nature of operations to the 1st respondent, it is to be held that R.A.Samy Trading Pvt. Ltd. has absolutely no nexus with Shanmuga Stores. Therefore the NCLT proceedings initiated against the R.A.Samy Trading Company Pvt. Ltd., had absolutely no bearing on the liability of the Shanmuga Stores and the petitioner.



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10. It is pertinent to note here that the petitioner as the sole proprietor of Shanmuga Stores earlier filed E.I.O.P.No.146 of 2021 challenging the 45(a) order dated 14.06.2019 for the period from 05/2014 to 11/2016. The respondent relying on the aforesaid E.I.O.P, submitted that two things were clear from the E.I.O.P.No.146 of 2021 namely, that the business activities of the petitioner did not stop since 2012 and further that Shanmuga Stores was a proprietorship concern and the petitioner was its sole proprietor. As rightly contended by the learned counsel for the respondent that if Shanmuga Stores, a proprietorship concern was a unit of R.A.Samy Trading Company Pvt. Ltd., then the petitioner would not have filed the E.I.O.P.No.146 of 2021 as the moratorium was declared by the NCLT with regard to the R.A.Samy Trading Pvt. Ltd. on 01.05.2019. The answer of the petitioner to the said contention was that an amendment petition to amend cause title was filed and pending before the ESIOP Court. It is pertinent to note that this fact has been brought out by way of additional written arguments.

11. It is also pertinent to note here that earlier the petitioner filed



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W.P.No.26624 of 2018 challenging the notice dated 11.09.2018. The said

W.P.No.26624 of 2018 challenging the notice dated 11.09.2018. The said writ petition was filed by the petitioner describing himself as R.Arumughasami, Director of R.A.Samy Trading (P) Limited. The said writ petition was disposed of by this Court on 11.01.2019, holding that the writ petition was not maintainable but with liberty to the petitioner to workout his remedy before the Tribunal. Thereafter on 30.04.2019, the NCLT admitted the company application of United Bank of India and appointed one Ashok Kumar Seshadri as Interim Resolution Professional. As moratorium was declared by the said order, the petitioner filed the E.I.O.P challenging the 45(A) order for the period from 05/2014 to 11/2016 in the name of Shanmuga Stores represented by R.A.Samy proprietor. The aforesaid facts would clearly show that the petitioner, as rightly contended by the respondent is trying to play mischief and cause confusion by mentioning the NCLT proceedings.

12. Be that as it may, the 1st accused, Shanmuga Stores represented by the petitioner as its sole proprietor was registered with the 1st respondent under the ESI Act on 31.08.2009 and allotted code number 51-90432-102.



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The respondent has taken a specific stand that, whenever there is change in character and nature of operation, the same had to be intimated to the corporation. Admittedly, the petitioner has not informed the change of Shanmuga Stores from a proprietorship concern to a unit of R.A.Samy Trading Pvt. Ltd., a company registered under the companies Act. Regulation 10(c) mandates that *'the employer of an establishment to which the act applies to whom code number is allotted shall intimate to the proper regional office, sub-regional office, divisional office or branch office. Any change in particulars furnished in Form 1, at the time of registration of the factory / establishment within two weeks of such change'* . Instructions to Form I reiterates the same by stating that the change of management like proprietorship, partnership etc. shall be informed within 7 days with valid copies of the related documents to the regional office and the concerned branch office of the corporation.

13. It is not the case of the petitioner that he has followed the procedure given in regulation 10(b). While so, the contention of the petitioner that the Shanmuga Stores was a unit of R.A.Samy Trading Pvt.



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Ltd., registered company cannot be countenanced. It is also further pertinent to note here that there is no dispute that a separate code number was allotted to Shanmuga Stores.

14. The other issue raised by the petitioner relating to the non service of notice, is belied by the acknowledgement cards produced by the respondent in the typed set of papers. Even the contention of the petitioner that the business was closed as early as in 2012 is not supported by any documents. In the absence of any documents supporting the said contention, the same is rejected.

In view of the above, I find no merits in writ petition and the same is dismissed. No costs. Consequently, connected WMP. is closed.

15.03.2024

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Index:Yes/No
Speaking Order: Yes/No
Neutral Citation:YesNo



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N.MALA.J.

dsn

To

1. Employees State Insurance Corporation,
Having its Regional Office at
No.143, Sterling Road, Chennai-34,
Represented by Social Security Officer (Legal),
Chennai-600 034.

2. The learned Judge,
II Metropolitan Magistrate, Egmore,
Chennai.

PRE-DELIVERY ORDER IN

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ORDER DELIVERED ON

15.03.2024