



Crl.O.P.(MD) No.11134 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.02.2024

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THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.11134 of 2021

and

Crl.M.P.(MD) No.5676 of 2021

R.Balasubramanian
Proprietor,
M/s.Shri Ram Engineering,
356E, V.E. Road I Floor,
Thoothukudi – 2.

... Petitioner

Vs.

The Deputy Director in Charge,
Employees State Insurance Corporation,
Represented by
Social Security Officer, Legal,
Tirunelveli.

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in C.C.No.1143 of 2020 on the file of the learned Judicial Magistrate-I, Tirunelveli and quash the same as illegal.

For Petitioner : Mr.G.Aravinthan

For Respondent : Mr.I.Pinaygash



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ORDER

Seeking to quash the private complaint filed by the Employees State Insurance Corporation before the Judicial Magistrate Court No.I, Tirunelveli in C.C.No.1143 of 2020 the present Criminal Original Petition is filed.

2. The Employees State Insurance Corporation filed a private complaint against the petitioner/accused before the Judicial Magistrate Court No.I, Tirunelveli in C.C.No.1143 of 2020 for the offences punishable under Sections 85(a) & 85(c) of the Employees State Insurance Act, 1948 as the petitioner/accused failed to pay the employees' and employers' contribution of provident fund within the time specified under Regulation 31 of the Employees State Insurance (General) Regulations, 1950.

3. Mr.G.Aravinthan, learned counsel for the petitioner/accused would contend that there was a dispute between the petitioner/accused and one of his employees namely, Vijay Ananth, as the said employee had stolen some documents from his office and in this regard, a complaint was



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lodged with the Inspector of Police, Thoothukudi Central Police Station which came to be registered as F.I.R. in Crime No.574/2020. His further contention is that the petitioner/accused has been regularly paying contribution amount and for the period between February, 2010 and December 2010, he did not pay provident fund to the Employees State Insurance Corporation as envisaged under Section 40(1) of the ESI Act, 1948. His another contention is that he is ready to pay the amount and compromise the issue.

4. Per contra, Mr.I.Pinaygash, learned counsel for the respondent Employees State Insurance Corporation would contend that the petitioner/accused was issued with a show cause notice on 10.12.2019 and even after receiving the same, the petitioner/accused failed to remit the contribution amount to ESI Corporation as envisaged under Section 40(1) of the ESI Act, 1948 read with Regulation 31 of the Employees State Insurance (General) Regulations, 1950. The petitioner should pay the amount within the time stipulated in the Act, failing which a criminal proceedings would be initiated under Section 85(a) of the ESI Act, 1948.



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5. It is appropriate to extract hereunder Sections 85(a) & 85(c) of the ESI Act, 1948 which deems with punishment for failure to pay the contribution amount to the Employees State Insurance Corporation:

85. Punishment for failure to pay contributions, etc.—If any person—

(a) fails to pay any contribution which under this Act he is liable to pay, or

(b) ...

(c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or

...

he shall be punishable—

(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but—

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees: Provided that the Court may, for any adequate and special reasons to be recorded in the judgment,



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impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.

6. In the instant case, the petitioner/accused had admitted that he did not pay the contribution amount to the ESI Corporation for the period between February 2010 and December 2010. In fact, at the time of admission, the present petitioner/accused had given an undertaking before this Court that he would be settling the entire amount. On the said undertaking, this Court granted an order of interim stay on 11.08.2021. However, till date, the petitioner/accused did not pay any amount for the aforesaid period to ESI Corporation.

7. The contention of the learned counsel for the petitioner/accused that some of the documents were stolen by one of his employees from his office and therefore, the petitioner/accused was not in a position to pay the contribution amount cannot be accepted for the simple reason that the petitioner/accused had not stated what are the documents stolen by one of his employees from his office which prevented the petitioner/accused



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from paying the contribution amount to the ESI Corporation. In any event, it is a matter for trial. Therefore, I do not find any reason to quash the private complaint in C.C.No.1143 of 2020 on the file of the Judicial Magistrate Court No.I, Tirunelveli.

8. The learned Judicial Magistrate No.I, Tirunelveli is directed to complete the trial and dispose the case in C.C.No.1143 of 2020 as expeditiously as possible but not later than 6 months from the date of receipt of a copy of this order.

9. In the circumstances, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

01.02.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order

JEN

To
1.The Judicial Magistrate No.I,
Tirunelveli.



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- 2.The Social Security Officer, Legal,
Deputy Director in Charge,
Employees State Insurance Corporation,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA, J.

JEN

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