

**HIGH COURT OF ORISSA,
CUTTACK**

CRIMINAL APPEAL NO. 183 OF 1990

From the judgment dated 30.01.1990 passed by Sri S.K. Dash, Judicial Magistrate First Class, Bhubaneswar in 2 (C) C.C. Case No. 2 of 1988/Trl.No.791 of 1989.

E.S.I. Corporation
Appellant

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Versus

Brajakishore Panigrahi & Anr

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Respondent

For appellant : M/s. J.K.Tripathy, S. Mishra &
B.V.B. Das.

For respondents : M/s. S.P. Mishra, A.R. Dash,
A.K. Mishra & N.N. Satpathy
for R-1

M/s. S.C. Mohanty, G.K. Behera
& G.R. Nayak for R-2.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of judgment : 22.07.2009.

PRADIP MOHANTY,J. This appeal is directed against the judgment and order dated 30.01.1990 passed by the Judicial Magistrate First Class, Bhubaneswar in 2 (C) C.C. Case No. 2 of 1988/Trl. No.791 of 1989

acquitting the respondents of the charge under Section 85(g) of the Employees State Insurance Act.

2. The case of the prosecution is that M/s Hirakhanda Engineers (P) Ltd, Rourkela was a factory as per the provision of E.S.I. Act and Code No.441838 had been allotted to it by the E.S.I. Corporation. Accused-respondent no.1 being the Managing Director and accused-respondent no.2 being the Director were the principal employers of the said factory. On 27.07.1987, the respondents failed to produce the records of the factory before the Deputy Regional Director, E.S.I. Corporation, Bhubaneswar for inspection and thus they violated the provisions of E.S.I. Act. After obtaining necessary sanction from the competent authority, P.R. was submitted against the respondents.

3. The plea of the defence was complete denial of the demand of records by the E.S.I. authority and their specific plea was that the prosecution was barred by limitation.

4. In order to prove its case, the prosecution examined as many as three witnesses and exhibited 20 documents. P.W.1 is the Deputy Regional Director of E.S.I. Corporation, P.W.2 is the Inspector of E.S.I. and P.W.3 is the Insurance Inspector of E.S.I. On the other hand, defence examined none.

5. The learned J.M.F.C., Bhubaneswar, who tried the case vide his judgment dated 30.01.1990 acquitted the respondents of the charge under Section 85 (g) of E.S.I. Act with a finding that the prosecution was

barred by limitation and the sanctioning authority had not applied his mind before according sanction.

6. Learned counsel for the appellant assailed the judgment on the following grounds:

- (i) The sanction order and the prosecution report clearly stated that the respondents failed to produce the records on 27.07.1987, the limitation runs from 28.07.1987, i.e., the date on which the offence was committed. The learned Magistrate took cognizance on 04.01.1988, i.e., within six months. Therefore, the prosecution is not barred by limitation.
- (ii) The sanctioning authority had applied his mind and thereafter granted sanction of Prosecution.

7. Perused the record and the provisions of the E.S.I. Act. In the instant case, P.W.1 stated that he inspected the factory on 18.06.1987 and demanded the records but the respondents did not produce the same. He proved the sanction order Ext.10. In cross-examination he admitted that on 18.06.1987, the respondents failed to produce the registers for the first time before him. He also admitted that no Inspector had visited the factory to verify the registers. P.Ws.2 and 3 also corroborated the statement of P.W.1. From the above, it is crystal clear that the offence under Section 45 of the E.S.I. Act had been committed on 18.06.1987 for which they were liable under Section 85(g) of E.S.I. Act. Since P.W.1 had visited the factory

on 18.06.1987, when the respondents failed to produce the records, limitation is to be calculated from that date. Section 86(3) of the E.S.I. Act, which deals with limitation, is quoted below:

“86(3). No Court shall take cognizance of any offence under this Act except on a complaint made in writing in respect thereof, within six months of the date on which the offence is alleged to have been committed.”

8. From a bare reading of the aforesaid provision, it is crystal clear that no court shall take cognizance after six months. In the instant case, prosecution was launched on 04.01.1988 and the Magistrate took cognizance on the same day, i.e., 04.01.1988. Under the statute, there is no provision for condonation of delay. Thus, launching of prosecution report and taking cognizance by the Magistrate were after expiry of six months. The sanction order (Ext.10) was also obtained after the expiry of the period of the limitation.

9. In view of the above, this Court is not inclined to interfere with the impugned judgment. Accordingly the appeal is dismissed.

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PRADIP MOHANTY, J.