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Crl.A.No. 239 OF 1999
ITEM No.106

Court No. 4

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO.239 OF 1999

C.K. Gopalakrishnan Appellant(s)

VERSUS

Employees State Insurance Corporation Respondent(s)

Date : 21/04/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. T.L.V. Iyer, Sr.Adv.
Mr. Gopala Krishnan R.,Adv.
Mr. Subramonium Prasad,Adv.

For Respondent (s)Mr. V.J. Francis,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is partly allowed in terms of the signed order.

(Neena Verma) (Vijay Aggarwal)
Court Master Court Master
Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.239 OF 1999

C.K. Gopalakrishnan
...Appellant

Versus

Employees State Insurance Corporation
...Respondent

O R D E R

The above appeal has been filed against the judgment of a learned Single Judge of the High Court of Kerala dated 30.06.1998 in Criminal Appeal No.219 of 1994 whereunder the learned Single Judge has, while reversing the verdict of acquittal returned by the learned Sessions Judge, has restored the conviction and sentence imposed by the learned Trial Judge. The learned Trial Judge, Judicial Ist Class Magistrate, Cannanore, taking note of the default committed in the payment of contributions relating to the Mills in question under the Act, has found the appellant guilty and sentenced him to undergo simple imprisonment for one month and, in addition, to pay a fine of Rs.2,000/- under Section 85(i)(b) of the Employees State Insurance Act, 1948, as it was in force at the relevant point of time. Heard the learned counsel appearing on either side. Learned counsel appearing on either side tried to justify their respective stand adverting to

the relevant portions of the judgments of the courts below in support thereof. Though, Mr. T. L.V. Iyer, learned senior counsel for the appellant tried to contend that the appellant may not even satisfy the definition of 'Principal Employer', as contained in Section 2 (17) of the Act, as was held by the learned Sessions Judge, we are unable to persuade ourselves to agree with the said claim. The inclusive definition, viewed in the context or the nature of activities performed and the position admittedly held in the hierarchy of officers of the Mill in question would very much fall within the said definition.

At the same time, so far as the punishment of sentence is concerned, keeping in view the fact that the amounts have been subsequently paid and other peculiar facts found noticed by the courts below, we consider that interest of justice would be better served if only the sentence of fine alone is allowed to stand and that the simple imprisonment of one month need not be inflicted. The amount of fine is said to have been already paid as well. The punishment of simple imprisonment for one month alone is set aside and to this extent, the appeal shall stand partly allowed and the decision of the High Court shall stand modified.

.....J.

(DORAISWAMY RAJU)

.....J.

(ARIJIT PASAYAT)

New Delhi,
April 21, 2004.