

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.738 OF 2001

THE REGIONAL DIRECTOR)
EMPLOYEES STATE INSURANCE CORPN.)...APPELLANT

V/s.

M/S.HOTEL HORIZON PVT.LTD. & ANR.)...RESPONDENTS

Shri H.V.Mehta, Advocate for the Appellant.

Shri Diwakar A. Dwivedi, Advocate for Respondent No.1.

Ms.R.M.Gadhvi, APP for the Respondent - State.

CORAM : ABHAY M. THIPSAY, J.

DATE : 22nd DECEMBER 2015.

ORAL JUDGMENT :

1 The appellant Employees State Insurance Corporation
is the original complainant. It had filed a complaint against one
Harishchandra N. Sharma and respondent no.1 herein – a private
company – alleging commission of offences punishable under

Sections 85(a) and 85(e) of the Employees State Insurance Act 1948 (E.S.I. Act). The said Harishchandra Sharma was the Chairman and Director of respondent no.1 herein and was mentioned as accused no.1 in the said complaint case which was numbered as CC.No.107/ESIC/1995. During the pendency of the case, the original accused no.1 Harishchandra Sharma passed away. The case, therefore, proceeded only against the present respondent, who was mentioned as accused no.2 in the said complaint.

2 Though the case was pending, there was no progress in the matter. Under the circumstances, by an order dated 27th November 2000, the learned Metropolitan Magistrate, 25th Court, Mazgaon, acquitted the respondent no.1, by virtue of the directions given by the Supreme Court of India in the case of Common Cause vs. Union of India and Others, 1996(4) Supreme Court Cases 33. The Magistrate observed that the maximum punishment provided for the offence under Section

85(a) of the E.S.I. Act was of imprisonment for a period of 3 years. He also observed that the maximum punishment provided for the offence punishable under Section 85(e) of the E.S.I. Act was imprisonment for one year. The Magistrate observed that, though the case was pending since 1995, there had been no progress in the matter, that no Charge had been framed, and that, the delay caused was not attributable to the dilatory tactics adopted by the accused. Holding so, he passed an order of acquittal.

3 Being aggrieved by the said order of acquittal, the original complainant has, after obtaining special leave of this court, filed the present appeal.

4 I have heard Shri H.V.Mehta, the learned counsel for the appellant. I have heard Shri Diwakar A. Dwivedi, the learned counsel for respondent no.1. I have heard Ms.R.M.Gadhvi, the learned APP for the State. I have gone through the impugned order and the record of the trial court carefully.

5 The impugned order is not without flaws. In the judgment delivered in the aforesaid case of **Common Causes (supra)** known as **Common Causes-I**, Their Lordships of the Supreme Court of India had laid down that the period of pendency was to be calculated from the date on which the accused are summoned to appear before the court. The impugned judgment does not show as to the date on which the accused persons were summoned to appear before the court of the learned Magistrate, and does not contain any discussion to indicate that the Magistrate had calculated the pendency in that manner.

6 Anyway, from the roznama of the case, which is forming part of the record of the case, it is clear that the accused no.2 i.e. respondent no.1 herein, a company, was appearing before the Magistrate through its advocate since the year 1997. Thus, that the trial had not commenced even though a period of two years had been passed from the date of the appearance of the accused before the court, is correct.

7 The learned counsel for the appellant contended that considering the nature of the offence, it should be treated as an '*economic offence*'; and that, if treated as an economic offence, it was saved from the operation of the directions of the Supreme Court of India, as clarified by the Supreme Court of India, in paragraph 4 of the aforesaid judgment in the said **Common Causes-I case (supra)**. This was a point canvassed before the Magistrate, who observed that merely because payment of money was involved, the offence in question could not be termed as an '*economic offence*.'

8 The view of the Magistrate cannot be said to be unreasonable, or contrary to law. Even if much can be said about the applicability of the directions given by the Supreme Court of India in the **Common Causes-I case**, to the type of offences in the present case, still, it is not clear that the offence punishable under Section 85 of the E.S.I. Act would be excluded from the directions given in paragraph 3 of the said judgment, or that, the offences

punishable under the E.S.I. Act would be covered by paragraph 4 of the said reported judgment in the said **Common Causes-I case**.

9 In the background of the fact that the view taken by the Magistrate does not seem to be erroneous or contrary to law, I have examined the matter further. The contribution in question, has now, admittedly, been paid. The penalty imposed for failure to pay the contribution has also been paid. As observed by the learned Magistrate in his order, remedy to recover the contribution if unpaid, has been provided to the complainant by Section 45-B of the E.S.I. Act. The prosecution was instituted in the year 1995. The impugned order came to be passed in the year 2000. There has been a time gap of more than 15 years between the date of the impugned order and today. I am informed that the respondent hotel has been closed down and does not carry business, any more.

10 The learned counsel for the appellant, considering all the relevant aspects of the matter, submits that, the respondent

no.1 should pay costs of Rs.10,000/- to the appellant, as the present appeal has remained pending before this court for about 15 years. It would be difficult to give such a direction, but the learned counsel for respondent no.1 readily agrees, on instructions, to pay such costs and states that respondent no.1 shall deposit an amount of Rs.10,000/- in the Employees State Insurance Fund within two weeks from today. This statement made by the learned counsel for respondent no.1 is accepted as an undertaking given to this court.

11 Since the impugned order cannot be said to be suffering from any error or illegality and since in any event, the view of the matter as taken by the Magistrate is a possible view, no interference with the impugned order is called for.

12 The appeal is dismissed.

(ABHAY M. THIPSAY, J.)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment /Order.**