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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.792 OF 2000.**

N. K. Kate,	]	
Insurance Inspector,	]	... <u>Appellant.</u>
Employees State Insurance Corporation	]	Ori. Complainant
Panchadeep Bhavan, Lower Parel	]	
Mumbai 400 013	]	

V/s.

1. Smt. Sushilaben R. Shah	]	
2. Chandrakant Shah	]	
3. M/s Premier Industrial Traders	]	
Address for all:		
17, Kewal Industrial Estate	]	 <u>Respondents</u>
Senapati Bapat Marg,	]	Respondent Nos
Lower Parel	]	1 to 3 orig.
Mumbai 400 013	]	accused.
	]	
4. State of Maharashtra	]	

Mr. H. V. Mehta, Advocate, for the Appellants.

Mr. S. R. Naidu, I/by C.R. Naidu, for the Respondent Nos 1 to 3.

Mrs. Rajeshri Gadhvi, APP for the State.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 28TH AUGUST, 2015.

ORAL JUDGMENT :

1. This appeal takes an exception to the judgment and order dated 25th June, 1999, in Case No.241/ESIC/91 delivered by Metropolitan Magistrate, 25th Court, Mazgaon, Mumbai, thereby acquitting respondents, for the offences punishable under Section 85(a) of the Employees State Insurance Act.

2. The brief facts of the appeal can be stated as follows :-

The appellant is the Insurance Insurance, working in the office of Employees State Insurance Corporation at Mumbai. Respondent Nos 1 and 2 are the partners and occupiers of respondent No.3 factory named and styled as, "Premier Industrial Traders". The said factory is covered under the provisions of Employees State Insurance Act and has been assigned Employer Code No.31/18770. As per the appellant,

respondent Nos 1 and 2 have failed to pay contribution for the wage period August, 1983 which was payable on or before 21.9.1983, as required under Section 39 and 40 of the E.S.I. Act. Hence, notice was issued to them for compliance. However, respondent Nos 1 & 2 failed to comply therewith. Hence after obtaining necessary sanction dated 9.7.1991, prosecution was launched against them, for the offence punishable under Section 85(a) of the E.S.I. Act.

3. On appearance of the respondents, particulars of the plea were read over and explained to them. They abjured the guilt and claimed trial.

4. In support of its case the appellant has examined himself and Shri. Shashikant Vakil, Deputy Regional Director. Through their evidence, sanction order and the office copy of the notice were proved on record. The defence raised by the respondents was that for determination of contribution number of employees and their wages are necessary. The factory was visited in the year 1985. Hence they were not liable for criminal

prosecution for the alleged non payment of contribution. On appreciation of this evidence, the trial Court was pleased to accept defence raised by the respondents and acquitted them, by the impugned judgment and order.

5. In this appeal, I have heard learned counsel Mr. H.V. Mehta for the appellant, learned counsel Mr. Naidu, for respondent Nos 1 to 3 and Mrs. Gadhvi, APP for the State. On their submission, the only point which arises for my consideration is, "Whether at the relevant time respondents were liable for payment of contribution of Employees State Insurance?".

6. In the instant case, the period involved pertains to the year 1983. However, the evidence of P.W.1 Shashkant Vakil shows that the factory was visited in the year 1985. It is not known how many employees were employed during the prosecution period. It is not explained what were the wages during the prosecution period. The number of the employees and

their wages are necessary for determination of contribution. In the absence of such particulars on record, the view taken by the trial Court was that the appellant has failed to prove its case against respondent beyond reasonable doubt.

7. The view taken by the trial Court being possible and reasonable view, the appeal is without merits, hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

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