

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL No. 800 OF 2000**

C.K. Thapliyal,
Insurance Inspector,
Employees' State Insurance
Corporation, Panchdeep Bhavan,
Lower Parel,
Mumbai-400 013.

.. Appellant
(original complainant)

..VERSUS..

(1) Manohar J. Nagpal

(2) Smt. Kaushalya J. Nagpal

(3) Prakash J. Nagpal
All partners of M/s. Mona Plastics,
having its office at Doulat Udyog
Bhavan, Unit No.106,
I st Floor, Vadavalli Village Road,
Chembur, Mumbai-400 074.

(4) M/s. Mona Plastics,
having its office at Doulat Udyog
Bhavan, Unit No.106, 1st Floor
Vadavalli Village Road, Chembur,
Mumbai-400 074.

(original accused)

(5) State of Maharashtra.

.. Respondents

.....
Mr. H.V. Mehta, Advocate for Appellant,
Mr. Rajesh More, APP for Respondent No.5-State,
None for Respondent Nos.1 to 4.
.....

CORAM : S.B. SHUKRE, J.
DATED : 30th JULY, 2015.

ORAL JUDGMENT :

This is an appeal preferred against the judgment and order dated 22.2.1999 passed by the Metropolitan Magistrate, 46/25th Court, Mazgaon, Mumbai in Case No.184/ESIC/91, thereby acquitting the respondent nos.1 to 4 of the offence punishable under Section 85(a) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the 'ESI Act' for short).

2. Briefly stated facts of the case are as under :

The appellant, being Insurance Inspector appointed under the provisions of the Employees' State Insurance Corporation, had filed a complaint against the respondent nos.1 to 4 for their failure to pay to the appellant their contribution for

providing insurance coverage to their employees. The offence was punishable under Section 85 (a) of the ESI Act.

3. As considerable period of time passed by and the evidence of the complainant could not be completed, the learned Magistrate, relying upon the decision of **Raj Deo Sharma vs. State of Bihar** reported in **1998 Cri.L.J. 4596 (SC)**, (hereinafter referred to as Raj Deo Sharma, for short) acquitted the respondents of the offence punishable under Section 85 (a) of the ESI Act. The judgment and order were passed on 22.2.1999. Being aggrieved by this judgment and order, the appellant is before this court in the present appeal.

4. I have heard Mr. Mehta, the learned counsel for the appellant. Nobody appeared on behalf of the respondent nos.1 to 4 though served.

5. The case is about 15 years old and, therefore, in view of the mandate of Section 386 of the Code of Criminal Procedure, I am proceeding to hear and dispose of the present appeal on own merits of the case. I have also heard Mr. More, the learned APP for the respondent no.5-State.

6. Learned counsel for the appellant has stated that the facts of this case being identical with the facts of the case being Criminal Appeal No.153 of 2000, decided by this Court on 26.6.2015, in the sense that in the present case delay is also attributable to the conduct of the accused i.e. respondent nos.1 to 4, this case is covered by the said judgment. Learned APP for the respondent no.5-State has submitted that appropriate order may be passed in the facts of this case.

7. In the case of C.K. Thapliyal .vs. Sakharam R. Dalvi in Criminal Appeal No.153 of 2000, dated 26.6.2015, this court has found that in order to draw benefit from the case of Raj Deo Sharma (supra), it must be found by the court that the delay in recording of the prosecution evidence is not attributable to the conduct of the accused and if it is seen that the accused is responsible for the delay, he would not be entitled for the benefit of the said case.

8. It is seen from the rojnama of the case that particulars of offence were read over and explained to the respondent nos.1 to 4 on 18.12.1995 and, thereafter, the case was adjourned to

4.3.1996. After the date of 4.3.1996, this case came to be adjourned from time to time to various dates. The rojnama shows that there were several dates after 4.3.1996 on which both the witnesses were present and the respondents-accused were absent. Therefore, it cannot be said that delay which occurred in this case was not attributable to the conduct of the respondents-accused. It then follows, as rightly submitted by the learned counsel for the appellant, that the facts of the present case being identical with the facts of the case of C.K. Thapliyal .vs. Sakharam R. Dalvi and another (supra), the judgment rendered by this court in that case on 26.6.2015 would cover the issue involved in the present case. The appellant has made out a case for making interference with the impugned judgment and order which are not delivered by following the law of the land. The appeal deserves to be allowed.

9. The appeal stands allowed. The impugned judgment and order are hereby quashed and set aside. The case is remanded back to the trial court for proceeding further from the stage of recording of evidence of prosecution or the complainant, in

accordance with law. Appellant and Respondent Nos.1 to 4 are directed to appear before the trial court on **17.8.2015**.

JUDGE

Gulande, PA