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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.803 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, Kawal 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.245/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 Inspector, 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, 1982, September, 1982, and October, 1982 which were payable on or before 21.9.1982, 21.10.1982 and 21.11.1982, respectively, 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 has also examined one 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 respondent was that during the relevant period, they were not running the factory and they had let out their premises to the firm known as Weld Well Plastics. 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 the 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 running the factory so as to become criminally liable for payment of contribution of Employees State Insurance?".

6. P.W.1 Shashikant Vakil, Deputy Regional Director of the Employees State Insurance Corporation, in his evidence has admitted that the Code No.31 /18770 was given to M/s Weld Well Plastics and during wage period of August, 1982, M/s Weld Well Plastic was running the business. He has further admitted that from October, 1982, respondent had taken over the said factory. Hence it necessarily follows that during wage period of August, 1982, September, 1982 and October, 1982, respondent Nos.1 to 3 were not running the business in the said factory. Hence they cannot be held liable for criminal prosecution, for non payment of contribution under E.S.I. Act. In my considered opinion,

therefore, the trial Court has rightly held that the appellants had failed to prove its case against the respondents. The appeal, therefore, holds no merit and hence stands dismissed.

[DR. SHALINI PHANSALKAR-JOSHI, J.]

C E R T I F I C A T E

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