

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.2844 OF 2004

Ajay Krishna Lakhanpal & ors. .Applicants

Vs.

Employees' State Insurance Corporation & anr. .Respondents

Mr.Niranjan Mundargi i/b. M/s. Hariani & Co., Advocate, for the
Applicants

Mr.Arfan Sait, APP, for the Respondent No.2 – State

CORAM : SMT.ANUJA PRABHUDESAI, J.

DATE : 16.02.2016

PC.

. By this application filed under Section 482 of the Code of Criminal Procedure the Applicants have challenged the order dated 13.06.2003 passed by the learned Metropolitan Magistrate, 25th Court at Mazgaon, Mumbai in Criminal Case No.17/E/2003.

2. The brief facts necessary to decide this application are as under :-

The Applicant Nos.1 and 2 are the Directors of the Applicant No.3 – establishment which is covered under the provisions

of the Section 1(5) of the Employees' State Insurance Act, 1948. The Respondent No.1 through its Insurance Inspector filed a complaint against the aforesaid Applicants for the offence punishable under Section 85(g) of the Act. The allegations against the Applicants herein are that the Insurance Inspector had visited the establishment on 20.03.2002 and that the Applicants herein failed to produce the records for the period from April, 1997 to March, 1998 for inspection under Section 45 of the Act. The Applicants failed to produce the records viz. ledgers/cash books for the period from April, 1997 to March, 1998 as required under Section 45(2) of the Act. The Respondent No.1, therefore, claimed that the Applicants had committed the offence punishable under Section 85(g) of the Act. The Joint Director accorded sanction for prosecution and hence, the complaint came to be filed before the learned Metropolitan Magistrate, 25th Court at Mazgaon, Mumbai.

3. By order dated 13.06.2003, the learned Metropolitan Magistrate issued a process for the offence punishable under Section 85(g) of the Employees' State Insurance Act. Being aggrieved by the said order, the Applicants have approached this Court in its inherent

jurisdiction under Section 482 of the Code of Criminal Procedure.

4. Heard Mr.Mundargi, the learned counsel for the Applicants and Mr.Sait, the learned APP for the Respondent No.2 – State. None present for the Respondent No.1 despite opportunity given.

5. I have perused the records the considered the submissions advanced by the learned counsel for the Applicants.

6. The Respondent No.1/Complainant is a statutory body constituted under Section 3(1) of the Employees' State Insurance Act, 1948. The Inspector of the Respondent No.1, who had visited the Applicant No.3 – establishment on 20.03.2002 had alleged that the Applicants had failed to produce the records viz. ledgers/cash books for the period from April, 1997 to March, 1998 for inspection. The Inspector, therefore, lodged a complaint for the offence punishable under Section 85(g) of the Act.

7. The uncontroverted documents placed on record by the Applicants reveal that the Inspector of the Respondent No.1 had earlier visited the premises on 12.11.1999 and had inspected the ledger/cash books for the period from April, 1997 to March, 1998. The observation sheet dated 12.11.1999 further reveal that the Inspector had verified all the documents for the period commencing from April, 1997 to March, 1998 and thereafter, had calculated Ad-hoc contribution of Rs.4,023/-. A copy of the Challan dated 08.12.1999 reveals that the Applicant No.3 had deposited the said contribution of Rs.4,023/.

8. The visit note dated 20.02.2002 reveals that the Inspector had again visited the establishment on 20.02.2002 and had called for the inspection of the same documents. The Applicant had informed the Inspector that the premises were sold and they were in the process of shifting to, new premises at Andheri(W), Mumbai and had requested for time to produce the records for inspection. The Inspector had acceded to the request and had visited the premises on 20.03.2002. The visit note dated 20.03.2002 reveals that the

Inspector had lodged a complaint on 11.03.2003 i.e. even before the date of inspection scheduled on 17.04.2002. The complaint was, therefore, pre-mature. Even otherwise, the records reveal that same documents were earlier produced and were verified by the Inspector. The Applicant had informed the Inspector that the documents would be produced as soon as the shifting process was over. The Applicant had sought time till 2nd week of April, 2002. Accordingly, the Inspector had fixed the date for inspection on 17.04.2002. These facts were duly communicated vide reply dated 03.10.2002 to show cause notice dated 11.09.2002. Copies of previous notes and challan were also forwarded. The sanctioning authority has, accorded sanction totally overlooking these facts and has sanctioned prosecution against the Applicant for not producing the documents which were earlier inspected. This reflects total non application of mind.

9. In view of the above and in the facts & circumstances, the order dated 13.06.2003 whereby the learned Metropolitan Magistrate issuing process against the Applicants for the offences punishable under Sections 85(g), 85(ii)(a) of the ESI Act is liable to be quashed

& set aside.

10. Under the circumstances and in view of the above, the Criminal Application is allowed. The impugned order is hereby quashed & set aside. Rule is made absolute in the aforesaid terms.

(ANUJA PRABHUDESAI, J.)