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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NO. 668 OF 2000**

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

... Appellant

V/s.

1. Manohar J. Nagpal
2. Smt. Kaushlya J Nagpal
3. Prakash J. Nagpal
All Partners of M/s. Mona Plastics,
having its office at Doulat Udyog
Bhavan, Unit No. 106, 1st 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.

5. The State of Maharashtra

... Respondents

Mr. H.V. Mehta, for the Appellant.
Mr Deepak Thakre, APP for the State / Respondent No.5.
None for Respondents Nos. 1 to 4.

Coram : P.N.DESHMUKH, J.

Date : 8 May 2017

ORAL JUDGMENT

1. This Appeal is preferred against the common order dated 22nd February 1999 in Case No. 185/ESIC/91 passed by the learned Metropolitan Magistrate, 46/25th Court, Mazgaon, Mumbai thereby acquitting Respondents 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 Respondents 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. Before the Trial Court since considerable time has lapsed and as the evidence of complainant could not be completed the learned Magistrate relying upon the

ratio in the case of ***Raj Deo Sharma Vs. State of Bihar***¹ acquitted Respondents Nos. 1 to 4 under the impugned order which is under Appeal.

3. I have heard learned counsel for the Appellant. Nobody appeared on behalf of the Respondent Nos. 1 to 4 though served.

4. Considering the fact that the Appeal is more than 17 years old and in view of the mandate of Section 386 of the Code of Criminal Procedure, Appeal can be decided by considering the law as well as facts involved in it on its merits and accordingly after hearing learned counsel for the Appellant and learned APP for the Respondent No.5-State, same is disposed of.

5. Learned counsel for the Appellant has submitted that this Appeal is arising out of a common order passed by the learned Trial Court relying upon case of ***Raj Deo Sharma (Supra)***. The learned counsel for the Appellant has also invited my attention to Criminal Appeal No. 153 of 2000 decided by this Court on 26th

¹ 1998 Cri.L.J. 4596 (SC).

June 2015 and Appeal No. 800 of 2000 decided by this Court on 30th July 2015 having similar facts in the sense that in the present case delay is not attributed on the conduct of the accused i.e. Respondents Nos. 1 to 4 and as such facts involved in present Appeal are stated to be similar to above two Appeals. In earlier two Appeals as well as facts involved in present case, it is found that no delay is attributed on Respondents. 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 attributed to the conduct of accused and if it is seen that the accused is responsible for the delay he would not be entitled for benefit of the said case.

6. It is seen from the Roznama filed along with the present Appeal that no delay is attributed on the part of the Respondents. It, therefore, follows, as rightly urged by the learned counsel for the Appellant that the facts of present case since are similar to the facts involved in earlier two Appeals decided by this Court, this Appeal is necessarily to be allowed by setting aside impugned order.

7. Having regard to the facts involved as aforesaid and law laid down in the case of *P. Ramachandra Rao Vs. The State of Karnataka*² setting aside view taken in the case of *Raj Deo Sharma (Supra)*, following order is passed.

1. The Appeal is allowed.
2. The impugned order is quashed and set aside.
3. The case is remanded back to the trial Court for proceeding further from the stage of recording of evidence of prosecution or the complainant as per law.
4. Appellant and Respondents Nos. 1 to 4 are directed to appear before the Trial Court on 19th June 2017.

(P.N.DESHMUKH, J.)

² (2002) 4 SCC 578.