IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-1150-SBA of 2000
Date of Decision: 11.05.2017

Employees State Insurance Corporation and another
....Appellants

Versus

Shri Rajiv Khanna (President) and another
....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. G.D. Gupta, Advocate, for the appellants.
None for the respondents.

RAMENDRA JAIN, J.

Complainant – Employees State Insurance Corporation (hereinafter referred to as 'the Corporation') has filed the instant appeal under Section 378(4) of the Criminal Procedure Code against the judgment dated 08.10.1999 passed by learned Sub Divisional Judicial Magistrate, Abohar, acquitting the respondents in a complaint case filed under Section 85(a) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act').

2. The appellant-Corporation by way of a complaint under Section 85(a) of the Act sought prosecution of the respondents on the allegations that respondent No.2-Club and its President-respondent No.1 being its principal employer, though was covered under Section 2(17) of the Act, but failed to deposit the contribution in compliance of Sections 39, 40(1) and 43 of the Act read with Regulation 31 of the Employees' State Insurance (General) Regulations, 1950 for the period from 10/95 to 9/96 and thus,

were punishable under Section 85(a) of the Act. After summoning, the learned Sub Divisional Judicial Magistrate, Abohar, served notice of accusation under Section 85(a) upon respondent No.1 to which he pleaded not guilty and claimed trial. The appellant-Corporation in support of its case examined Sh. B.L. Batta, its Inspector as PW-1 and Tulsi Ram, Insurance Inspector as PW-2. Respondent No.1 in his statement under Section 313 Cr.P.C. denied all the prosecution allegations and pleaded his false implication. In defence, he examined DW-1 Neeraj Kumar and proved documents Ex.D-1 to D-3.

3. After hearing both the sides, learned trial Court acquitted the respondents vide judgment dated 08.10.1999 holding that the complainant-Corporation failed to prove its case against the respondents.

4. Learned counsel for the appellant contended that the learned trial Court has erred in law in acquitting the respondents as the respondents were liable to be punished for non-compliance of provisions of Section 85(a) of the Act. Learned Magistrate was not empowered to deal with the question as to whether the respondent-club was covered under the Act at the relevant time, as the same was in the exclusive domain of the Employees Insurance Court under Section 75 of the Act. Learned Magistrate was only supposed to look into the fact that whether the respondents were liable to be punished under Section 85(a) for non-deposit of contribution with the appellant-Corporation. Hence, the exercise of power by the learned Magistrate beyond his jurisdiction has rendered the impugned judgment illegal.

5. I have given my thoughtful consideration to the submissions made by learned counsel for the appellant.

6. From the perusal of record it is amply clear that the respondent-Club was not covered under the provisions of the Act as the appellants-Corporation has failed to bring on record any code/registration number allotted to the respondents by it. It is needless to mention here that upon registration of an establishment with the Corporation a code number is allotted to the same. However, since the respondent-Club was not covered under the Act, therefore, no code number was allotted to it. Earlier notice issued to the respondents for deposit of contribution from 11/94 to 9/95 was duly replied by the respondents vide Ex. D-2 that the provisions of the Act were not applicable to the respondent-Club, therefore, it was not liable to deposit the contribution to the Corporation. Instead of taking any decision on the reply of the respondents, Corporation filed the present complaint demanding contribution from 10/95 to 9/96. PW1 B.L. Batta, Inspector of the Corporation in his cross-examination stated that he never inspected the premises of the respondent-Club nor he was able to tell as to how many workers were employed by the Club. He further admitted that no notice was ever issued by the Corporation to cover the Club under the provisions of the Act. This witness even could not explain in his cross-examination as to from which date the provisions of the Act had become applicable to the respondent-Club. Even the appellant-Corporation did not lead evidence to the effect that the respondent-Club in which manner was covered under the Act. In view of above factual aspect of the case, the present complaint was nothing, but sheer abuse of process of law as the Corporation has miserably failed to prove as to how the respondent-Club was covered under the provisions of Act and how it was liable to deposit contributions with the Corporation. Learned Magistrate was very much empowered to look into

the factual aspect of the case as to whether the notice was validly issued. Therefore, the complaint filed by the Corporation has rightly been rejected by the trial Court. I have gone through the impugned judgment and found no illegality or perversity in the same. Consequently, the same is affirmed.

7. In view of above, finding no merit in the appeal, same is dismissed.

(RAMENDRA JAIN)
JUDGE

May 11, 2017
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No