**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRA-S-2284-SB of 2007
Date of Decision: 11.05.2017

Employee State Insurance Corporation

....Appellant

Versus

M/s Classic Packages through its Manager and Principal Employer, Sh. Akshay Aggarwal (Partner)

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Adarsh Malik, Advocate, for the appellant.
None for the respondent.

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 21.01.2005 passed by learned Additional Chief Judicial Magistrate, Ludhiana, acquitting the respondent in a complaint case filed under Sections 406 and 409 of the Indian Penal Code.

2. The appellant-Corporation by way of a complaint under Sections 406 and 409 IPC sought prosecution of the respondent on the allegations that the respondent establishment run by its Principal Employer Sh. Akshay Aggarwal which was covered under the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') though deducted ESI contributions from his employees, but did not deposit the same amounting to ₹ 2026.50 ps. for the months of July, 1992, September, 1992 and April, 1993 to January, 1994. Hence, the respondent committed the offence of criminal breach of trust and thus, was liable to be punished under Sections 406 and 409 IPC. After recording preliminary and pre-charge evidence, the respondent was charge-sheeted under Section 406 IPC to

which he pleaded not guilty and claimed trial. The appellant-Corporation in support of its case examined its retired ESI Inspector H.S. Khanna as PW-1 and Rajesh Sood, ESI Inspector Legal as PW-2. Respondent in his statement under Section 313 Cr.P.C. denied all the prosecution allegations and pleaded his false implication. However, no evidence was led in defence by the respondent.

3. After hearing both the sides, learned trial Court acquitted the respondent vide judgment dated 21.01.2005 holding that the complainant-Corporation failed to prove its case against the respondent.

4. Learned counsel for the appellant contended that learned trial Court failed to appreciate that at the time of inspection of the premises of the respondent on 04.03.1994 and 07.03.1994, PW-1 Sh. H.S. Khanna, Inspector of the appellant-Corporation found that though the respondent had deducted the contribution for the months of 7/92 to 1/94 amounting to ₹ 2026.50 paise from the salary of his employees, but did not deposit the same with the appellant-Corporation and thus, committed offences punishable under Sections 406 and 409 IPC. Learned counsel further contended that there was ample evidence on record in the shape of inspection note (Ex.P1) and visit note (Ex.P2) prepared by PW-1 Sh. H.S. Khanna to prove that the respondent had mis-appropriated the contribution amount of ₹ 2026.50 paise for the months of July, 1992, September, 1992 and April, 1993 to January, 1994 and, thus, the acquittal of the respondent is bad in law. Consequently, the impugned judgment is liable to be reversed while accepting the appeal.

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

6. Undisputedly, criminal law was set into motion against the

respondent after a surprise visit in the premises of the respondents by Sh. H.S. Khanna, Inspector of the appellant-Corporation. According to PW1 H.S. Khanna, ESI Inspector, he visited the factory premises of the respondent on 07.03.1994 and 04.03.1994 and inspected the relevant record for the period 7/92 to 1/94 along with ledge cashbook for the period 3/92 to 3/93. However, the visit note bears the date as 4.3.94/7.3.94. In view of above anomaly, the complainant has failed to prove as to when its Inspector visited the factory premises of the respondent and when the report was prepared i.e. on 07.03.1994 or 04.03.1994. PW1 – H.S. Khanna during his cross-examination has categorically admitted that he did not know whether the contribution from the employees of the respondent was being deducted or not and further that the respondent was not present at the time of preparation of the report (Ex.P1) nor the signatures of the respondent were obtained on the report. There is no mention of the particulars such as names of the employees, their fathers' name, designation, complete address, rate of wages being drawn by them etc., in the said report. It was incumbent upon PW-1 to record the statements of persons working in the premises of the respondent or atleast he should have obtained their affidavits. That apart, if PW-1 Mr. H.S. Khanna did not adopt any such exercise at the time of his survey, in that event appellant-Corporation was required to complete that exercise by obtaining affidavits of the persons working in the premises of the respondent before issuance of any notice to the respondent. Since no such relevant material was annexed or supplied to the respondent by the appellant-Corporation with notice, therefore, in the considered opinion of this Court, it was not legally required for the respondents to reply to the show cause notice or to file any return simply to satisfy the whims and fantasies of the officers of appellant-Corporation. The trial Court has rightly recorded that the prosecution has utterly failed to prove its case against the accused beyond any reasonable doubt. Therefore, I am of the considered opinion that respondent-accused has rightly been acquitted of the charge. I have gone through the impugned judgment and found no illegality or perversity in the same. Consequently, the same is affirmed.

7. Moreover, after listing of this appeal on the regular board for arguments, notice was issued to the respondent several times. However, the same could not be served for want of correct address. Therefore, the survival of respondent is doubtful. More so, on 30.03.2017 it was made clear that in case no efforts are made to serve the respondent by the appellant, in that eventuality the appeal would be dismissed for want of prosecution. Despite above specific order, since no efforts were made by the appellant to furnish the correct address of the respondent, therefore, the appeal is liable to be dismissed for want of prosecution on this count. Even otherwise, if the appeal is accepted, it is not going to serve any purpose as the respondent is not available nor its whereabouts are known.

8. 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