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

CRA-S-1092-SB of 2006
Date of Decision: 30.10.2017

Shri Narinder Paul and another

....Appellants

Versus

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. R.V.S. Chugh, Advocate, for the appellants.
Mr. Rana Harjasdeep Singh, AAG, Punjab.

RAMENDRA JAIN, J.

Through this appeal, the appellants have assailed the judgment of conviction and order of sentence dated 08.03.2006 holding appellant No.1 guilty under Section 85(a) of the Employees State Insurance Act, 1948 (in short as the 'Act') and sentencing him till the rising of the Court and pay fine of ₹ 5,000/-, in default of payment of fine to undergo rigorous imprisonment for 14 days.

Briefly stated, according to respondent No.2 – complainant's Inspector, appellant No.1, as principal employer of appellant No.2 – M/s D.D. Rice Mills, Mansa, in terms of Section 2(17) of the Act, was responsible to deposit the contribution for the period from April, 2001 to September, 2001 due on 21st of each of the following month, according to the prescribed rates in the Act, of his employees to the Employees State Insurance Corporation (hereinafter referred to as 'the Corporation'), as required under Sections 39, 40 and 43 of the Act read with Regulation 31 of the Employees State Insurance (General) Regulation, 1950. The appellants did not deposit the same in utter contravention of the provisions of Section

85(a) of the Act, therefore, was liable to be punished.

With these broad allegations, the Insurance Inspector of the Corporation filed a complaint in the Court against the appellants. Accordingly, appellant No.1 was summoned to face trial and was charge-sheeted under Section 85(a) of the Act vide order dated 03.05.2004. The complainant-Corporation in support of its case examined sole witness i.e. its Inspector, namely, Satya Narain as PW1, who in his cross-examination totally demolished the case of the Corporation by testifying in the following terms: -

> *“..........The present complaint relates to period prior to my posting. The present complaint has been filed by Rakesh Kumar, Inspector, who is still in service of the Corporation. I have no personal knowledge regarding the facts stated in the complaint. No notice was served by me or in my presence upon the accused nor I have got any proof such a postal receipt of posting the alleged notice to the accused. I visited the factory in question only last month and prior to that I never visited the factory. I do not know how many workers have been working in the factory during the disputed period. I also do not know how much pay each or those workers were drawing at the relevant time......... It is incorrect that Rice Sheller is a seasonal factory. ESI is applicable to the factory situated within the revenue limits of Mansa due to number of factories and due to Spinning Mills. The Sheller in question falls within the limits of village Mansa Kalan. It is incorrect that the factory in question is not within the revenue limits of Mansa Kalan. It is incorrect that ESI is not applicable to the factory in question and to the area in which the factory in question.”*

From the above deposition of the complainant's sole witness, it is clearly evident that there is no iota of evidence on record against the appellants, therefore, the trial Court has wrongly and illegally convicted the appellant under Section 85(a) of the Act till rising of the Court. Instead, the appellants ought to have been acquitted by the trial Court.

In view of the discussion above, appeal is allowed. Judgment of conviction and order of sentence dated 08.03.2006 are set aside and the appellants are acquitted of the charge.

(RAMENDRA JAIN)
JUDGE

October 30, 2017
R.S.

Whether speaking/reasoned Yes/No

Whether Reportable Yes/No