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

CRA-S-1094-SB of 2006
Date of Decision: 30.10.2017

Shri Kamal Bhushan 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 J.R.D. Gram Udyog Samiti (Regd.), Mansa, in terms of Section 2(17) of the Act, was responsible to deposit the contribution for the period ending September, 2001 of his employees to the Employees State Insurance Corporation (hereinafter referred to as 'the Corporation'), as required under Section 44 of the Act read with Regulation 26 of the Employees State Insurance (General) Regulation, 1950. The appellants did not deposit the same in utter contravention of the provisions of Section 85(e) read with Section 85(ii) 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 September again said April, 2001 to September, 2001. The present complaint has been filed by Rakesh Kumar, Inspector. The said Inspector is still in service. I have no personal knowledge regarding the facts of this complaint. No notice was served by me or in my presence upon the accused. I have no proof such as postal receipt of posting the alleged notice to the accused. I have visited the factory in question only in last month and prior to that I never visited the factory. I do not know how many workers were working in the factory during the disputed period and I also do not know how much pay each worker or these workers were drawing at the relevant time. It is correct that the rice sheller is not seasonal factory. The ESI was enforce in revenue limits of Mansa due to number of factories and not due to Spinning Mill. The Sheller in question falls within the revenue limits of village Mansa Kalan. It is incorrect that sheller in question does not fall within the revenue limits of Mansa Kalan. It is also incorrect that the sheller falls in the revenue limits where ESI is not applicable. It is correct that ESI is not applicable to seasonal factory.”*

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