

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-529-SBA of 2004

Date of Decision: 11.05.2017

Employee State Insurance Corporation

....Appellant

Versus

Sh. Akshay Aggarwal and another

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. Adarsh Malik, Advocate, for the appellant.
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 30.01.1999, acquitting the respondents in a complaint case filed under Section 85(e) of the Employees State Insurance Act, 1948 (hereinafter referred to as 'the Act'), passed by learned Judicial Magistrate Ist Class, Ludhiana.

2. The appellant-Corporation by way of a complaint under Section 85(e) of the Act sought prosecution of the respondents on the allegations that the respondent No.1 being the principal employer of respondent No.2 - M/s Classic Packages though was covered under the Section 2(17) of the Act but failed to pay its contribution to the Corporation in compliance of Sections 39, 40(1), 43 of the Act read with Regulation 31 of the Employees State Insurance (General) Regulations, 1950 for the period from September, 1997 to March, 1998 and thus, were liable to be punished under Section 85 (e) of the Act. After summoning, the learned Judicial Magistrate Ist Class, Ludhiana, served notice of accusation under Section 85(e) upon the

Respondent No.1 to which he pleaded not guilty and claimed trial. The appellant-Corporation in support of its case examined its Inspector Sh. J.C.

Dhingra, as PW-1. The respondent in his statement under Section 313 Cr.P.C. denied all the prosecution allegations and pleaded false implication and that no notice was received by him. However, the respondent did not lead any evidence in his defence.

3. After hearing both the sides, learned trial Court acquitted the respondent vide judgment dated 30.01.1999 on the ground that the respondent has already been convicted for the offences of failure to pay the contribution for the period from April, 1992 to September, 1992, therefore, he could not be convicted for the same offence twice.

4. Learned counsel for the appellant contended that the learned trial Court has wrongly mentioned the period as April, 1992 to September, 1992, though the relevant period for which the respondents have committed offence under Section 85(e) of the Act is September, 1997 to March, 1998 and thus, the impugned judgment mentioning the wrong facts being illegal is liable to be set aside. Learned counsel further contended that learned Magistrate failed to appreciate that the offence under Section 85(a) of the Act in which the respondent was convicted was distinct from the present one under Section 85(e) of the Act and thus the acquittal of the respondent on the ground that he cannot be vexed twice for the same offence, is illegal.

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

6. The above mistake in the impugned judgment mentioning the period from April, 1992 to September, 1992 instead of September, 1997 to March, 1998 seems to be a typographical mistake. However, the same does not effect the merits of the case, because PW1 J.C. Dhingra, Inspector of the Corporation, in his cross-examination has admitted that he never inspected

the respondent-firm personally and even he does not know as to which Inspector had visited the factory premises of the respondent. Except above

sole witness, appellant did not examine any other witness to show that respondent-firm was ever visited by any officer of the appellant-Corporation or its record was ever inspected and it was found that the respondents have not filed the returns of the contribution to the Corporation for the period from September, 1997 to March, 1998. Since there was not iota of evidence on record to prove the guilt of the respondent, therefore, the respondents have 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 respondents several times. However, the same could not be served for want of correct address. Therefore, the survival of respondents is doubtful. More so, on 30.03.2017 it was made clear that in case no efforts are made to serve the respondents by the appellant, in that eventuality the appeal would be dismissed for want of prosecution. Despite the above specific order, the appellant-Corporation did not make any effort to furnish the correct address of the respondent to effect service upon them, 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 respondents are not available nor their whereabouts are known.

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

May 11, 2017
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No