

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3234 OF 2017

Nazma Khatum Kaloo Qureshi

....Petitioner.

Vs.

Employee's State Insurance
Corporation & Anr.

....Respondents.

Mr. Mateen Shaikh with Mr. Sajid Qureshi with Mr. Kshirsagar I/by
Mr. A.A. Siddiqui for the Petitioner.

Mr. P.M. Palshikar for the Respondent No.1.

Mr. S.S. Hulke APP, for the Respondent-State.

CORAM : A. S. GADKARI, J.

DATE : 18th SEPTEMBER, 2018.

P.C.:-

By the present Petition under Article 227 of the Constitution of India, the Petitioner has questioned the legality of CC No. 29/ES/2006 pending on the file of 25th Metropolitan Magistrate Court, Mazgaon, at Sewree, Mumbai instituted by the Respondent No.1 and the Order dated 5th August, 2015 passed below Exhibit 7 by the learned Magistrate, rejecting the Application of the Petitioner for discharge under Section 245 of the Code of Criminal Procedure and

Order dated 9th May, 2017 passed by the learned Sessions Judge, Greater Mumbai, rejecting the Criminal Revision Application No. 1041 of 2015 and confirming the Order dated 5th August, 2015 passed by the learned Magistrate.

2 Heard the learned counsel for the Petitioner, the learned counsel for Respondent No.1 and the learned APP. Perused the record.

3 The afore-stated complaint is lodged by the authorized representative of the Respondent No.1 for offence under Section 85(e) punishable under Section 85(ii) of the Employees' State Insurance Act, 1948 (the said Act) against the Petitioner, being the proprietress of M/s. Asra Hotel, Kurla (West).

 It is the case of the Respondent No.1 that, on the date of survey of the said hotel, it was revealed that, the Petitioner had employed 21 employees and the Petitioner herein had failed and neglected to submit the Return of contribution in Form No.6 in respect of the employees for the contribution period from 31st March, 2005 and 30th September, 2005. Thus, the failure to submit the said Return by the Petitioner, attracted the afore-stated provisions of the said Act and therefore, the present complaint is lodged.

4 The learned Metropolitan Magistrate, rejected the Application preferred by the Petitioner for discharge under Section 245 of the Code of Criminal Procedure by its Order dated 5th August, 2015 passed below Exhibit-7, which has been upheld by the learned Sessions Judge in Criminal Revision Application No.1041 of 2015 by its Order dated 9th May, 2017.

5 It is the contention of the learned counsel appearing for the Petitioner that, on the date of inspection, the alleged 21 employees were not employed by the Petitioner and only 6 persons were employed and therefore, the provisions of the said Act cannot be made applicable to her establishment.

6 The record clearly indicates that, on the date of conducting the survey by the concerned officer of the Respondent No.1, he found 21 persons employed in the eatery of the Petitioner and therefore, he effected detailed survey note in that behalf, which is on record. The Petitioner is required to prove her contention by leading sufficient evidence in rebuttal of the prosecution that on the date of conducting survey, there were only 6 persons employed with her establishment. The record *prima facie* indicates that, there is sufficient material available on record to proceed against the Petitioner for framing

charge and therefore, both the Courts below have rightly rejected the Application of the Petitioner for discharge and the said Orders does not suffer from any illegality or error therein.

7 Petition being devoid of any merits, is accordingly rejected.

(A.S. GADKARI, J.)