

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 3235 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/EW/2006 pending on the file of 25th Metropolitan Magistrate Court, Mazgaon, at Sewree, Mumbai instituted by the Respondent No.1 and the Order dated 15th July, 2015 passed below Exhibit 10 by the learned Magistrate, rejecting the Application of the Petitioner for discharge under Section 245 of the Code of Criminal Procedure and Order dated 8th May, 2017 passed by the learned Sessions Judge,

Greater Mumbai, rejecting the Criminal Revision Application No. 1040 of 2015 and confirming the Order dated 15th July, 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(a) punishable under Section 85(i)(b) 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 herein had employed 21 employees and did not pay the interest accrued on the contribution of the employees for a period of six years and therefore, the present complaint has been lodged.

Thus, it is the matter on record that the Petitioner did not pay the interest on the contribution of funds of the employees for a period of six years and therefore, 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 on 15th July, 2015 below Exhibit 10, which has been upheld by the learned Sessions Judge in Criminal Revision Application No.1040 of 2015 by its Order dated 8th 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 are not employed by the Petitioner and only 6 persons were employed and therefore, the provisions of Employees' State Insurance Act, 1948 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 further *prima facie* indicates that, there is sufficient material 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.)