

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.438 OF 2018
(For condonation of delay)**

Employees State Insurance Corporation Applicant
(Ori. complainant)

Vs.

1. Shri. Ashok Kumar Subburaj Respondent
Chettiar, Proprietor (Ori. Accused no.1)

2. M/s Vinayak Enterprises Respondent
(Ori. Accused no.2)

3. The State of Maharashtra ` Respondent

Mr. P.M. Palshikar for the Applicant.
Mr. A.A. Palkar, APP for the State.

Coram : NITIN W. SAMBRE, J.

Date : 5th December 2019

P.C.:

1. For the reasons disclosed in the application, delay stands
condoned. The application is allowed.

(NITIN W. SAMBRE, J.)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.509 OF 2019
(For Leave to Appeal)**

Employees State Insurance Corporation Applicant
(Ori. complainant)

Vs.

1. Shri. Ashok Kumar Subburaj Respondent
Chettiar, Proprietor (Ori. Accused no.1)

2. M/s Vinayak Enterprises Respondent
(Ori. Accused no.2)

3. The State of Maharashtra ` Respondent

Mr. P.M. Palshikar for the Applicant.
Mr. A.A. Palkar, APP for the State.

Coram : NITIN W. SAMBRE, J.

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1. The respondent-accused in CC No. 104/PW/2009 came to be acquitted vide judgment and order dated 13th December, 2017 passed by Metropolitan Magistrate, 25th Court, Mazgaon, at Sewree, Mumbai.

2. The submissions are irrespective of the quantum of the contribution to be paid by the employer, the complaint was very much maintainable. A support is drawn from the provisions of Sections 75 and 85 of the Employees State Insurance Corporation Act, so as to claim that once registration is granted and Code Number is allotted, it is the bounden duty of the employer to continue to pay the contribution. According to him, the number of employees and contribution to be paid in the matter of evidence and in the evidence of the complainant's witness PW-1, it has been established that the payment of contribution of Rs.1,60,875/- was not paid. As such an indulgence is sought.

3. I have perused the judgment impugned in the light of the submissions made.

4. With the assistance of the complainant's advocate, I have perused the complaint and the pleadings therein. The complaint is vague in nature to answer the charge alleged against the respondent-accused. To cover up the shortfall and vagueness, the complainant's

witness has deposed that for the wage period April 2006 to March 2008, the amount of contribution of Rs.1,60,000/- was not paid.

5. When the complainant's witness was subjected to cross-examination, he was unable to answer the number of employees, the period for which the contribution was not paid.

6. As there was no specific material on record to answer specific charge as regards non-payment of contribution, the order of discharge passed by the learned Magistrate appears to be just and proper, which is a possible view.

7. In the aforesaid background, leave refused. The application is rejected.

(NITIN W. SAMBRE, J.)