

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

**CRIMINAL APPLICATION NO.608 OF 2018
(For condonation of delay)**

Employees State Insurance Corporation Applicant
(Ori. complainant)

Vs.

1. Shri. Krishna Choudhary Respondent
Proprietor (Ori. Accused no.1)

2. M/s Art Home 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.510 OF 2019
(For Leave to Appeal)**

Employees State Insurance Corporation Applicant
(Ori. complainant)

Vs.

1. Shri. Krishna Choudhary Respondent
Proprietor (Ori. Accused no.1)

2. M/s Art Home 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. Mr. Palshikar canvassed the point of the erroneous approach on the part of learned Metropolitan Magistrate while acquitting the respondent-accused. According to him, the factory is defined under Sub-Section 12 of Section 2 of the Employees State Insurance Corporation Act. The Act is applicable to such factories where number of employees are more than 10 for wages on any day of

the preceding twelve months and in any part of which a manufacturing process is being carried on. As such, according to him the only issue which should have been answered by the learned Magistrate is whether the definition of Factory covers the very establishment of respondent-accused.

2. I have perused the judgment impugned dated 21st March, 2018, wherein the respondent-accused is acquitted. While recording the quantum, the learned Magistrate has appreciated the evidence of the complainant's witness and has noticed that at a given time, number of employees were less than 10 and as such the establishment of accused is not covered within the definition of Factory as provided under Sub-Section 12 of Section 2 of the Employees State Insurance Corporation Act.

3. The findings recorded are based on appreciation of material evidence brought by the applicant- original complainant.

4. The view expressed by the learned Magistrate is a possible view. No indulgence is required. Leave refused.

(NITIN W. SAMBRE, J.)