BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 27.11.2019
PRONOUNCED ON : 28.02.2020
CORAM:
THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.A.(MD)Nos.489 and 490 of 2006

Crl.A.(MD)No.489 of 2006

Muthu,
Insurance Inspector (Legal),
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road,
K.K.Nagar, Madurai -20. ... Appellant/ Respondent/Complainant

Vs.

1.C.R.K.Rammohan

2.M/s.Vashavi Garments /Vashavi Textiles,
No.274, Kamarajar Salai,
Madurai. ...Respondents/Appellants/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order passed in C.A.No.2 of 2004, dated 18.01.2006 by the Additional Sessions judge, Fast Track Court No.I, Madurai in C.C.No.808 of 2001, dated 10.12.2003 by the Judicial Magistrate No.II, Madurai.

For Appellant : Mr.K.C.Ramalingam,
Standing Counsel
For Respondents : Mr.M.Ajmal Khan,
Senior Counsel,
for M/s.Ajmal Associates.

Crl.A.(MD)No.490 of 2006

Muthu,
Insurance Inspector (Legal),
Employees State Insurance Corporation,
Sub Regional Office,
4th Main Road,
K.K.Nagar, Madurai -20. ... Appellant/ Respondent/Complainant

Vs.

1.C.R.K.Rammohan
2.M/s.Vashavi Garments /Vashavi Textiles,
No.274, Kamarajar Salai,
Madurai -9. ...Respondents/Appellants/Accused

Prayer: Criminal Appeal filed under Section 378 of Criminal Procedure Code, to set aside the order passed in C.A.No.5 of 2004, dated 18.01.2006 by the Additional Sessions judge, Fast Track Court No.I, Madurai in C.C.No.807 of 2001, dated 10.12.2003 by the Judicial Magistrate No.II, Madurai.

For Appellant : Mr.K.C.Ramalingam,
Standing Counsel

For Respondents: Mr.M.Ajmal Khan,
Senior Counsel,
for M/s.Ajmal Associates.

COMMON JUDGMENT

The appeals are filed as against the judgment passed by the Additional District and Sessions Judge, Fast Track Court No.I, Madurai in C.A.Nos. 2 of 2004 and 5 of 2004 dated 18.01.2006 respectively. As against the same, the appellant/complainant, the Employees State Insurance Corporation [in short 'ESI Corporation'] filed the present appeals.

2.The brief facts of the case are that the appellant ESI Corporation is a Statutory Body, constituted under Section 3(1) of the Employees State Insurance Act, 1948 [Herein after shall be referred to as 'ESI Act'] is under the obligation of collecting the contribution from the principal employer as well as employees salary, to provide medical facilities and to provide cash benefits to the employees and family members.

2.The Inspector of the appellant ESI corporation visited the shops run by the first respondent on 22.09.1997 and found that the respondents have employed 21 employees on wages in their shops. The Inspector prepared a visit note dated 22.09.1997 that the respondents were running three units in different names in the ground floor, first floor and third floor, as follows:

" Vasavi Textiles : Sale of Shirting and Suiting
(Ground Floor)
Partners: Ram Mohan, Ramesh, Kannan & Vijayakumar
Vasavi Silks : Sale of Silk Sarees, III Floor
Partners: Ram Mohan, Ramesh, Kannan % Vijayakumar
and C.K.R.Birunda
Vasavi Garments : Sale of ready made dress
materssials, I Floor
Partners: Ram Mohan, Kannan, Vijayakumar and
C.R.Kuthumachary"

3.The respondents have commenced their business on 05.09.1997 and have employed 21 employees in their shops and their shops come under the ESI coverage as per Section 1(5) of the ESI Act.

4.Based on the inspection note, a show cause notice was issued by the Deputy Regional Director for the following defaults:

> *"1.Failed to pay contribution amount of Rs.69713/- failed to pay any amount of contributions for the period from 12/99 to 9/2000, which were required to be paid within 21 days of the last calendar month, in which the contributions fall due under Section 40 read with sections 39, 42 & 43 and First Schedule to the Act and Regulation 31 of the ESI (General) Regulations.*
>
> *2.Failed to submit return of contribution in quadruplicate in FORM-6 along with the receipted copies challans in respect of all your employees to the appropriate office which is the Sub Regional Office at 1-B Old Post Office Street, Tallakulam, Madurai -2 within the period stipulated under Regulation 26 of the ESI (General) Regulation in respect of contribution period ended 3/2000 and 9/2000.*
>
> *3.Failed to obtain the requisite particulars required for the Declaration Forms and submit the Declaration Forms with return of Declaration Forms in Duplicate in Form 3 to the appropriate office of the corporation within stipulated time as required under Regulation 14 of the ESI (General) Regulation 1950 read with Section 38 and 44 of ESI Act 1948.*
>
> *4.Failed to produce ledgers and other connected records to our Insurance Inspector for his verification on Section 45 (2) of the ESI Act."*

5.But the respondents failed to submit the return of contribution in Form-6 as required under Section 44(1) of the ESI Act r/w the Regulation 26 of the ESI Regulations and therefore, as per the powers conferred under Section 86(1) of the ESI Act, the prosecution was initiated as against the respondents under Section 85 of the ESI Act, 1948 in the year 2001 before the Judicial Magistrate No.II, Madurai by filing two private complaints (i) in C.C.No.807 of 2001 for non remittance of contribution of the employees for the period 12/1999 to 9/2000 and (ii) in C.C No.808 of 2001 for non submission of return for the period from 3/2000 to 9/2000.

6.In conclusion of the trial, the learned Judicial Magistrate No.II, Madurai, by order dated 10.12.2003 found the respondents guilty, convicted and sentenced them to undergo six months rigorous imprisonment and to pay sum of Rs.5,000/-, in default one month rigorous imprisonment was also ordered in C.C.No.807 of 2001 and in C.C.No.808 of 2001 passed an order of sentence till raising of the Court and to pay a sum of Rs.4,000/- as fine with default sentence of three months rigorous imprisonment.

7.As against the conviction and sentence imposed by the learned Judicial Magistrate No.II, Madurai in C.C.Nos.807 of 2001 and 808 of 2001, dated 10.12.2003, the respondents preferred the appeals in C.A.Nos.5 and 2 of 2004 before the Additional Sessions Judge, Fast Track Court No.I, Madurai and the appellate Court by judgment dated 18.01.2006 set aside the conviction and sentence imposed by the trial Court and acquitted the accused from the charges levelled against them. Aggrieved over the same, the complainant/appellant ESI Corporation preferred the criminal appeals before this Court.

8.Heard Mr.K.C.Ramalingam, learned Standing Counsel appearing for the Appellant / ESI Corporation and Mr.M.Ajmal Khan, learned Senior Counsel representing M/s.Ajmal Associates, appearing for the respondents.

9.The learned Counsel for the appellants in support their appeals raised the following grounds:

i. On inspection of the respondents' shops on 22.09.1997, the Inspector of the appellant ESI Corporation found 21 employes working in the respondents' business shops though the shop was divided as 1) Vasavi Textiles (Ground Floor), 2) Vashavi Garments (I Floor) and 3) Vashavi Silk Sarees (II Floor).

ii. The Management was one and the same and was also functioning under the same roof with the same entrance and 21 employes were working in all the three shops and therefore, the shops are covered under Section 1(5) of the ESI Act and liable to pay the contribution to the ESI Corporation under Section 40(1) of the ESI Act and also liable to maintain the registers under Section 44(1) of the Act.

iii. The trial Court on appreciating the materials placed on record rightly found the respondents guilty, but the appellate Court without assigning any valid reasons acquitted the respondents on flimsy grounds that the number of employees employed were not substantially proved by the appellant/complainant.

iv. The notice issued in Form No.C- 11 dated 22.09.1997 was not challenged by the respondents. The respondents without challenging the said notice by filing ESIOP under Section 75(1)(g) of the ESI Act, they have no locus to dispute the coverage.

v. The documents filed before trial Court establish the fact that the first respondent is the principal employer of the second respondent firm and they have been functioning in a common building with a common entrance and also using a common telephone number for all the three firms.

vi. The electrical service connection for all the three firms also stand in the name of the first respondent and the building was also common by a joint family and all these establishments were started on the same day on 05.09.1997 and the document ExP5 filed on behalf of the appellant ESI Corporation establishes the same.

vii. There is no physical separation of the units and all the three units were functioning under the same roof and the first respondent Rammohan, partner of the three firms has taken notice and counter signed the visit note dated 22.09.1997 issued by the Inspector of appellant ESI Corporation for all the three units.

10.Per contra Mr.M.Ajmalkhan, learned Senior Counsel submits though there were three units, the units were running in different firms in the building in different names as 1) Vasavi Textiles (Ground Floor), 2) Vashavi Garments (I Floor) and 3) Vashavi Silk Sarees (II Floor).

11. A vague complaint has been made by referring certain names as employees without ascertaining whether any such persons are working and without even verifying any such persons exist. The father name and address of those alleged employees were not collected and placed before the trial Court.

12.By referring the definition under Section 2(12) of the ESI Act, the learned Senior Counsel submits that 'Factory' means any premises including the precincts thereof a) Whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power of is ordinarily so carried on, or b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed.

13.It is not the case of the appellant either before the trial Court or before the appellate Court that the establishments run by the respondents use power for the manufacturing process.

14.The appellant ESI Corporation filed the complaint against Vashavi Garments and Vashavi Textiles, but did not file any complaint as against the Vashavi Silk Sarees, when the appellant claims that 21 employees were found working at the time of inspection in all the three units. The non filing of the complaint as against the third unit, Vashavi Silk Sarees would demolish the entire case of the appellant ESI Corporation.

15.All the three units were with different partnership firm with different partners and the prosecution was initiated only as against the first respondent alone, leaving other partners and this first respondent is only a partner in the firm.

16.The learned Senior Counsel in support of his case also placed reliance upon the following judgments:

1.Employee State Insurance Corporation Vs S.K.Agarwal, reported in AIR 1998 SC 2616.

2.Pon Venkatesh. K and Another Vs Employees' State Insurance Corporation 2009 (2) LLJ 675.

17. This Court paid its anxious consideration to the rival submissions made on either side and also perused the materials placed on record.

18.Before dwelling into the merits of the case, since the appeals are filed as against an judgment of acquittal, it is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in ***V.Sejappa v. State [(2016) 12 SCC 150]***, wherein the Hon'ble Supreme Court has followed its own decision in ***Muralidhar v. State of Karnataka [(2014) 5 SCC 730]***. The guidelines issued in the said decision are extracted hereunder:

> *"23. ...*
>
> *... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;*
>
> *(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;*
>
> *(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the*

part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

19.In yet another decision in the case of ***Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]***, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, 'substantial and compelling reaons', good and sufficient grounds', 'very strong circumstances', distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by trial Court."

20.Bearing in mind, the principles laid down by the Hon'ble Supreme court in deciding an appeal against acquittal, this Court carefully analysed the available evidence and records.

21.The appellant ESI Corporation filed this private complaint based on the inspection note dated 22.09.1997 that at the time of inspection at the respondents' shops, the Inspector of the appellant ESI Corporation found three units namely, 1) Vasavi Textiles (Ground Floor), 2) Vashavi Garments (I Floor) and 3) Vashavi Silk Sarees (II Floor) were running in a building at Door No.274, Kamarajar Salai, Madurai – 9. All the three units were functioning in the same address and the electricity connection stand in the name of the first respondent and the building was also common by a single joint family. The document ExP6 filed by the prosecution gives details of the partners of the said firm, which are as follows:

> "I. Vashavi Textiles (Ground Floor)
> (Door No.274)
> Partners:-
> 1.Ram Mohan (Age 49) S/O.C.R.Krishnamachary
> 2.Ramesh (Age 23) S/O.Ram Mohan
> 3.Kannan (Age 22) S/O.Ram Mohan
> 4.Vijayakumar(Age 21 S/O.Ram Mohan
> All residing at 40-B, Lakshmipuram,
> 2nd street, Madurai-1.
>
> II.Vashavi Garments (First Floor)
> (Door No.274)
> Partners:-
> 1.Ram Mohan (Age 49) S/O.C.R.Krishnamachary
> 2.Ramesh (Age 23) S/O.Ram Mohan
> 3.Kannan (Age 22) S/O.Ram Mohan
> 4.Vijayakumar (Age21) S/O.Ram Mohan
> 5.C.R.Krishnamachary (76),
> S/O.Ramantha Iyer.
> All residing at 40-B, Lakshmipuram, 2nd Street,
> Madurai-1.
>
> III. Vashavi Silk Sarees (second Floor) (Door No.274)
> Partners:-
> 1.Ram Mohan (Age 49), S/O.C.R.Krishnamachary
> 2.Ramesh (Age 23),S/O. Ram Mohan
> 3.Kannan (Age 22), S/O.Ram Mohan
> 4.Vijayakumar (Age 21) S/O.Ram Mohan
> 5.Smt.C.K.R.Birunda(45) W/O.Ram Mohan
> All residing at 40-B,
> Lakshmipuram 2nd street, Madurai."

22. Admittedly, all the three units were running in different names and with different registration numbers. The partners are also different in some of the firms. One Mr.C.R.Krishnamachary, S/O. Ramanatha Iyer, who was a partner in Vashavi Garments was not a partner in Vashavi Textiles as well as in Vashavi Silk Sarees.

Similarly, one Smt.C.K.R.Biruna, wife of Ram Mohan, who was a partner in Vashavi Silk Sarees was not a partner in Vashavi Textiles as well as in Vashavi Garments.

23.The first respondent is also a partner in all the three firms. But there is no document to substantiate that he was the managing partner of the said firms. The prosecution was initiated as against the first respondent alone and no prosecution was initiated as against other partners. Though it was claimed by the appellant ESI Corporation that all the three firms were using a common electricity service connection and common telephone connection, which was not established by the appellant ESI Corporation by producing any document in this regard.

24.As rightly pointed out by the learned Senior Counsel, it is the case of the appellant ESI Corporation that at the time of inspection of the respondents' shops there were 21 employees working in all the three firms and the names of those employees were also mentioned in the visit note. But the prosecution was initiated as against Vashavi Textiles and Vashavi Garments and no prosecution was initiated as against the third unit Vashavi Silk Sarees. Further, the father name and the address of those employees were also not collected and placed before the Court.

25.The respondents have challenged the recovery notice issued by the appellant ESI Corporation under Section 75(1)(g) of the ESI Act before the ESI Court (Labour Court, Madurai) in ESIOP.NO.110 of 2001 and the same was allowed by order dated 13.08.2012 and the notice of the appellant Corporation dated 01.08.2000 was set aside and the matter was remanded back to the respondents for fresh disposal on the ground that the order was passed without an opportunity and the appellant Corporation has not followed the procedure in accordance with law. Pursuant to the same the respondent were provided with a opportunity of personal hearing on 07.03.2013 and further the order was passed by the Deputy Director of ESI Corporation under Section 45 (A) of ESI Act on 10.04.2014 and the same is under challenge before ESI Court (Labour Court), Madurai in ESIOP No.186 of 2014 and the same is still pending.

26.In the judgment referred to by the learned Senior Counsel/ respondents the Hon'ble Supreme Court has held as follows:

> in Employees State Insurance Corporation Vs S.K.Agarwal in AIR 1998 SC 2616.
>
> *"5.The provisions of Section 40 in the light of these definition have been considered by various High Courts in order to decide whether a director of a limited company can be considered as the principal employer liable to pay contribution under Section 40. A division Bench of the Bombay High Court in the case Suresh Tulsidas Kilachand and ors etc Vs. Collector of Bombay and ors, etc*

(1984[17]Labour and Industrial Cases 1614) held that a director of a company by virtue of being a director is not principal employer contemplated by Section 2(17) of the ESI Act. He is no personally liable to pay employer's contribution under the Act. In the context of Section 2 (17) read with Section 2(15) the Court held that whether a person is occupier or not has to be ascertained with reference to whether he is in ultimate control over the factory. When the definition of principal employer in Section 2(17) refers to the "owner"or "occupier" of a factory, the principal employer can be either the owner of the occupier depending upon the facts of each case. When there is an owner of the factory that owner must be considered as the principal employer liable for contribution.

6.Under Section 40 of the words "owner" and Occupier" have been used disjunctively. The Court also referred to Section 100 of the Factories Act and said that even under the Factories Act, 1948, the Legislature has clearly contemplated that in the case of a factory, a company can be the 'occupier'. Therefore, when the owner of a factory is a company it is the company which is the principal employer and not its director. The Bomaby High Court overruled the judgment of the single judge of the Bombay High Court in so deciding.

7.The same view has been taken by the Madhya pradesh High Court in the case of Employee's State Insurance Corporation, Indore Vs Kailashcahndra and Ors. (1989[22] Labour and Industrial Cases 760]. The Madhya Pradesh High Court also said that when there is no default in payment of contribution by the company, the managing director, or other directors cannot be made personally liable. The contribution can be recovered from the company as the principal employer.

8.In the case of Employees' State Insurance Corporation, Chandigarh Vs Gurdial Singh and Ors(1991) [24] Labour and Industrial Cases 52], this Court held that the directors of a private limited company were not personally liable to pay the contributions under the Employee's State Insurance Act, 1948. The Court was considering a case where a private limited company was the owner of the factory and the occupier of the factory had been duly named under the Factories Act, 1948. The court said that the directors did not come within the definition of clause 1 of Section 2(17) of the Employee's State Insurance Act. This Court also disapproved of the decision *of a single Judge of the Bombay High Court which has been subsequently overruled by the Division Bench of the Bombay High Court in the case of Suresh Tulsidar Kilachand and Ors, etc. Vs Collector of Bombay and Ors etc V. Collector of Bombay and Ors etc (supra)"*

27. In Pon Venkatesh K and Another Vs. Employees' State Insurance Corporation 2009 (2) LLJ 675, the Hon'ble Supreme Court has held as follows:

"6.When that be so, the petitioners are not liable to pay the contribution. In this case, though, admittedly the petitioners have not paid the contribution as directed in the order passed under Section 45-A of the Act, in my considered opinion, it cannot be held to be a failure or violation, so as to attract an offence under Section 85 of the Act. Here, the non payment of the contribution as directed in the order under Section 45-A of the Act is pursuant to the order of stay granted by a competent Court and when that be so, the non-payment of contribution by the petitioners would not make out any offence under the Act, so as to warrant a trial. It is not proper on the part of the respondent to file the private complaint without getting the order of stay vacated by the Employees' Insurance Court.

7.However, the learned Counsel appearing for the respondent would rely on a judgment of this Court in Jayamohan Vs Manager, Employees' State Insurance Corporation FJR Vol.93 and submit that the ESOP.No.2 of 1995 before the District Judge, Kanyakumari District at Nagercoil, under Section 45-A of the Employee's State Insurance Act. Therefore, the questions involved in the civil matter in ESOP NO.2 of 1995 are not identical proceedings in C.C.No.124 of 1995 are not identical and they are distinct and different questions to be answered by different Courts of law. A mere obtaining of interim stay by the revision petitioner in IA.No.447 of 1995 in ESOP No.2 of 1995 will not prevent the criminal Court from proceedings with the case in C.C.No.124 of 1995 for the simple reason that the criminal Court or the Magistrate's Court cannot be bound by the order passed by the Civil Court, much more so when the criminal court is not a party to the stay proceedings in IA.No.447 of 1995 in ESOP NO.2 of 1995 or the obtaining of interim stay in IA.No.447 of 1995 is not a bar to prosecute or to continue the criminal proceedings in C.C.No.124 of 1995.

8.The view expressed in the above judgment is not applicable to the facts of the present case. In the reported case, on the date when the prosecution was launched, there was *no stay order granted by the competent Employees' Insurance Court. Though, there was no stay, the employer did not pay the contribution in time. Therefore, the prosecution was launched and cognisance was taken. The learned Judge, Therefore, held that here was nothing illegal in taking cognisance on the, private complaint filed, since the stay order granted was only subsequent to the launching of the prosecution In that view of the matter, the learned Judge was of the view that the prosecution can go on. But, in the case on hand, the very operation of the order made under Section 45 A of the Act was stayed even before the launching of the private complainant. Thus, when there is such an order of stay granted by a competent Court, it shall go without saying that the order is not operative and therefore, the petitioners are not liable to pay contribution and thus their failure to pay the contribution is not an offence.*

9.The learned Counsel appearing for the respondent would rely on an unreported judgment of this Court in Crl.O.P.Nos.20253 to 20256 of 2001, wherein a learned single Judge of this Court has expressed that:

Since the prosecution was launched by the Inspector of Insurance before the competent court that cannot be stayed merely because the accused approached the Employees' Insurance Court for a declaration; later is more or less a civil proceedings and it cannot prevent the prosecution nor can it postpone the prosecution.

I have gone through the said judgment carefully. But the said, view is not applicable to the facts of the present case for the reason that in the said case, there was no stay granted by the Employees' Insurance Court as it has been done in the case on hand. Since, the order made under Section 45-A of the Act was still in force in the said case, the learned Judge has expressed the view that prosecution is maintainable, since, the failure of the accused in that case to pay the contribution amounts to an offence."

10.As narrated above, in this case, stay order was granted by the Employees Insurance Court on July 23, 2003 and the sanction order to prosecute the petitioners itself, was issued only on February 26, 2004 and the prosecution was launched much later on April 12, 2004. Thus, in my considered opinion, there is no prima facie case warranting a trial against the petitioners and so the entire proceeding is liable to be quashed."

28.It is to be noted that though the show cause notice was issued to all the three units, the sanction was accorded only to prosecute the two units, namely, Vashavi Textiles and Vashavi Garments. There is no proper explanation from the prosecution in this connection, why sanction was accorded to prosecute only two units, when show cause notice was issued to three units.

29.Moreover, if all the three units are taken into consideration and assuming there were 21 employees in the respondents' shops, the shops would be covered under the ESI Act. But, when only two units are taken into consideration and their employees are considered, the respondents' shop would not be covered under the ESI Act. Since, the show cause notice was issued to three units and sanction was accorded to prosecute only two units, it appears that the appellant Corporation has not initiated the prosecution in a proper manner.

30.In view of the discussion held above, this Court is not inclined to interfere with the judgments of the appellate Court and this Court finds no merits in the appeals. Accordingly, the criminal appeals are dismissed. The judgment of the Additional Sessions Judge, Fast Tract Court No.I, Madurai in C.A.Nos.5 and 2 of 2004 dated 18.01.2006 are confirmed. The fine amount paid if any, shall be refunded to the respondents.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.II, Madurai.

2.The Chief Judicial Magistrate, Madurai.

3.The Additional Sessions Judge, FTC -I, Madurai.

Copy to

The Record Keeper (2 Copies),
Criminal Section,
Madurai Bench of Madras,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-9471[F] dated 02/03/2020)
+1cc to Mr.Ramalingam, Advocate SR.NO.9471

judgment made in
Crl.A.(MD)Nos.489 and 490 of 2006
.02.2020

VB (24.07.2020) 13P 8C