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CrI.OP.No.32269 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CrI.OP.No.32269 of 2012

M/s.Maersk Global Service Centre (India)
Pvt Ltd., Rep. by its Authorised Signatory,
Yathi Venkatesh,
Prince Infocity,
Floor 10, 11 & 12, No.286/1,
Kandhanchavadi,
Old Mahabalipuram Road,
Chennai 600 096

... Petitioner

Vs.

Employees State Insurance Corporation
Having its Regional office at
No.134, Sterling Road, Chennai-34
Rep by Superintendent Legal,
ESI Corporation,
Chennai-34

... Respondent

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records in CC.No.5146 of 2011 on the file of the II Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For Petitioner : Mr.Adeesh Anto

For Respondent : Mr.G.Bharadwaj



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ORDER

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This matter has been listed today under the caption 'entire bundle not available cases'.

2. This Criminal Original Petition has been filed to call for the records in CC.No.5146 of 2011 on the file of the II Metropolitan Magistrate, Egmore, Chennai and to quash the same.

3. Heard, the learned counsel appearing on either side.

4. The respondent filed complaint for the offence under Section 85(g) punishable under Section 85 (ii) of the Employees State Insurance Act, 1948 (central Act, 34 of 1948). The first accused company is registered under the Companies Act. The second accused is the Assistant General Manager -HR who is in charge and responsible for the conduct of the business of the establishment at the time of commission of offence. As per Regulation 11 of ESI(General) Regulations, 1950, the employer in respect of the factory or an Establishment shall require every employee in such factory or establishment to furnish to him either before or on the appointed day, correct particulars



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required for the purpose of Form-I (declaration form) such employer shall enter the particulars in the declaration form including the temporary identification card and obtain the signature or thumb impression of such employee and also complete the form as indicated therein. As per Regulation 14 of the ESI (General) Regulation, 1950, the employer shall send to the appropriate office by registered post. The insured person was taken into insurable employment on 01.05.2010 itself, but the declaration form along with accident report was submitted to the Branch Manager, Branch Office, Adyar on 25.11.2010 posthumously after the date of accident. The insured person while coming to duty on 24.08.2010 on his own motorcycle to attend duties in night shift, met with a road accident. He sustained head injuries on 24.08.2010 and died on 24.09.2010. Therefore, failure of submitting declaration form on time and even so without the signature of the insured person is an offence prescribed under the Regulation 11 & 14 of ESI (General) Regulation, 1950. Therefore, the respondent filed complaint.

5. The learned counsel for the petitioner would submit that the impugned complaint has been preferred for non compliance of the statutory regulations i.e. Regulations 11 and 14 of the Employees State Insurance



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(General) Regulations, 1950. He further submitted that in order to attract the offence under Section 85 (g) of the ESI Act, there must be a contravention or non compliance of any of the Regulations in the Act. The petitioner had intimated and kept the respondent always informed that the employee (Late)D.Raju had been employed and in roll. The petitioner had been paying the contribution to be made as per ESI Act. On receipt of the same, the respondent had provided the employee with an ESI No.5120753443. Therefore, the petitioner had acted as per the requirements of the Act and not any contravention to it. Hence, there is no question of non compliance. As such, the complaint is filed with bald allegations for non compliance of statutory regulations without making out single ingredient.

6. On perusal of records, this Court finds that the grounds raised by the petitioner can be considered only before the trial court and not before this court under Section 482 of Cr.P.C. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of



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the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. The Hon'ble Supreme Court of India dealing in respect of the very same issue in **CrI.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both



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sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under



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Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

9. In view of the above discussion, this Court is not inclined to quash the proceedings in CC.No.5146 of 2011 on the file of the II



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Metropolitan Magistrate, Egmore, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of three months from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

- 1.II Metropolitan Magistrate,
Egmore, Chennai
- 2.Superintendent Legal,
Employees State Insurance Corporation
Having its Regional office at
No.134, Sterling Road, Chennai-34
ESI Corporation,
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