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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-218-MA-2018 (O&M)

DATE OF DECISION : 17.07.2023

Employees' State Insurance Corporation**...Applicant**

Versus

Vinod Kumar Grover and another**...Respondents****CORAM : HON'BLE MR. JUSTICE ARUN MONGA**

Present : Mr. Anil Shukla, Advocate,
For applicant/appellant.

ARUN MONGA, J. (ORAL)

This is an application seeking leave to appeal against judgment dated 08.09.2017 passed by learned Additional Chief Judicial Magistrate, Sirsa, vide which accused were acquitted

2. Succinct facts of the present case, as noted by learned trial Court in the impugned judgment, are as under:

“ Brief facts as stated in the complaint are that the complainant-Corporation acts under the statutory provision as laid down in the Employees State Insurance Act, 1948. The accused is the principal employer and continues to the employer of M/s M.C.S Electronics. He has failed to pay the contribution as required under Sections 39, 40 (1) and 43 of the ESI Act, 1948 read with Regulation 31 of the Employees' State Insurance (General) Regulation 1950 for the period from 10/08 to 01/13 amounting to Rs.2,69,377/- as specified in the Employees State Insurance Act 1948 which is an offence punishable under Section 85 (a) of the Employees' State Insurance Act, 1948. Hence, prayed that accused be accordingly punished under Section 85(a) of the Employees' State Insurance Act, 1948 and directed to pay the contribution and a share of fine and compensation be allowed to the corporation under Section 357 of the Cr.P.C”

3. After appreciating the evidence on record, vide impugned judgment dated 08.09.2017, learned Court below did not find sufficient material on record to frame charge against the accused persons (respondent herein) and acquitted them.

4. Aggrieved, applicant-complainant filed the present application seeking leave to appeal against aforesaid impugned judgment.

5. Impugned order dated 09.12.2019 is, *inter alia*, premised on the following reasoning:

“xxx

9. *The present complaint has been filed against the accused by the complainant on the grounds that he failed to pay the contribution as required under Section 39, 40 (1) and 43 of the ESI Act, 1948 read with Regulation 31 of the Employees' State Insurance (General) Regulation, 1950 for the period 10/8 to 01/13, amounting to Rs.2,69,377/- as specified in the Employees' State Insurance Act, 1948. The inspection report has been placed on file as Ex.C2 and Ex.C3, which finds mention that the unit was surveyed and Baldev Singh, representative was found present and 11 employees were found working. The same also bears the signatures of said Baldev Singh. However, said Baldev Singh has not been examined by the complainant in the evidence and admittedly, the checking was not conducted in the presence of the accused. The complainant witness Raj Kumar (PW2) stated that Baldev Singh had told him that he is the manager but again said that Baldev Singh had not been examined. He even admitted that they are not in possession of any document that BaldevSinghw as authorized person of the company. Merely, because baldev Singh had signed on the letter head of the company, it cannot be inferred that he was authorized as such in the absence of any evidence to this effect. Moreover, the witness Mahender Kumar Garg (PW1) who was though not present at the time of checking also admitted that there is no electricity connection since 15.11.2011 in the premises/ company. Even otherwise, the inspection took place on 19.09.2002 and the period for which the alleged contribution allegedly not deposited pertains to the period 10/8 to 01/13. Moreover, the record of the payment made to the employees allegedly working in the factory after the alleged deduction has not been produced, in the absence of which, the case is not proved against the accused.*

10. *In view of the aforesaid discussion and observation, this Court is of the view that the complainant has failed to prove its case against the accused beyond reasonable doubt. So, accused is acquitted of the notice served upon him. His bail bond/surety bond stands discharged. File be consigned after due compliance.”*

6. Perusal of the aforesaid shows that the impugned order is based on cogent reasoning after appreciating the evidence on record in right perspective.

7. It is a settled law, as has been held in *C. Antony Vs. K.G. Raghavan Nair*¹, that even if a second view on appreciation of evidence is possible, the Court will not interfere in the acquittal of the accused unless the judgment suffers from any perversity. In the cases of acquittal, there is double presumption in their favour; first the presumption of innocence, and secondly the accused having secured an acquittal, the Court will not interfere until it is shown conclusively that the inference of guilt is irresistible.

8. In *Anil Kumar Gupta vs. State of U.P.*², it was held as under:

“This Court held that “the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence, cannot constitute a valid and sufficient ground to interfere an order of acquittal unless it comes to the conclusion that the approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal, the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative, the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then-and then only-reappraise the evidence to arrive at its own conclusions.

(emphasis supplied)

11. This Court following the decision in *Ramesh Babulal Doshi*, further observed that ‘there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial court, would have taken the other view. While reappraising the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice.”

¹ 2002(4) RCR (Criminal) 750 SC

² 2001(2) RCR(Criminal) 292 SC

8. In the instant case, findings recorded by learned trial Court are based on correct appreciation of evidence and do not suffer from any infirmity and perversity much less illegality. Thus, no grounds for interference are made out. As an upshot, application seeking leave to appeal is hereby dismissed.

9. Pending application(s), if any, shall also stand disposed of.

JULY 17, 2023
Shalini

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No