

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Neutral Citation No. 2024:PHHC:007068
CRM-M-21529-2013 (O&M)
Reserved on: January 16, 2024
Pronounced on: January 19, 2024

M/s Punjab Woolcombers Ltd. and another ...Petitioners

Versus

Employees State Insurance Corporation ...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present: - Mr. M.L. Saggar, Senior Advocate with
 Mr. Rohit Joshi and Mr. Sunny Saggar, Advocates
 for the petitioners.

Mr. Ashwani Talwar and Mr. Dishant Jindal, Advocates
for respondent-ESIC.

DEEPAK GUPTA, J.

By way of this petition filed under Section 482 Cr.P.C, petitioners have prayed to quash complaint case No.93 of 2007 titled as ***“Employees' State Insurance Corporation v. Shri N.K. Oswal and another”*** (Annexure P-1) seeking prosecution of the accused (petitioners herein) under Section 85 (a) of the Employees' State Insurance Act, 1948 (hereinafter referred at 'the ESI Act'). Petitioners further pray for quashing the summoning order dated 28.03.2007 (Annexure P-2) as passed by learned Judicial Magistrate 1st Class, Ludhiana and all the subsequent proceedings arising therefrom.

2. Establishment of the petitioners is covered under ESI Act. The allegations are that accused-petitioners failed to pay contribution to the Corporation (respondent-complainant) as required under Sections 39, 40(1) and 43 of the ESI Act read with Regulation 31 of the ESI (General) Regulations, 1950 for the wage period October, 2003 to March, 2004,

which is an offence punishable under Section 85(a) of the ESI Act.

3.1 Learned counsel for the petitioners contends that the petitioner Company had moved an application under Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. Though the reference was initially rejected vide order dated 19.06.2001, but the appeal was allowed on 26.11.2001. Fresh reference was filed for the financial year ending on 31.03.2000. Objections were invited from secured creditors. Punjab National Bank formulated a Draft Rehabilitation Scheme for revival of the company, which was received by the Board on 14.11.2006. The ESIC, i.e. respondent-complainant submitted its claim of ₹46 lacs as its dues from the company. After hearing the objections, a scheme for rehabilitation of the company was sanctioned vide order dated 06.09.2007. The sanctioned scheme qua the complainant-respondent provides as under:-

“iii) Employee State Insurance

1) To consider waiving of interest, penal interest, damages on the liability of the company as on cut off date and to accept the repayment of Principal amount of Rs. 30.55 lac dues outstanding as on cut off date, to be paid within three months after settlement of dues.

2) Since PWCL has deposited Rs. 27.60 lac in last one year, Dept to withdraw recovery proceedings/other cases initiated against the company and its directors.

3) Balance amount Rs. 2.95 lacs has been treated towards contingent liability of the company.

4) To withdraw court cases against company/promoters, if any.”

3.2 Learned counsel for the petitioners contends that in view of the aforesaid settlement, the amount in question was duly paid by the petitioners and so complaint in question was liable to be withdrawn by the respondent.

4. In its reply filed by the respondent, it is not disputed that amount of ₹27.6 lacs has already been paid by the petitioners. However, it is contended that even after payment of this amount, more amount was still outstanding.

5. Learned counsel for petitioner contends that a similar complaint regarding non-payment of its dues for a different period bearing complaint No.24374 of 2005 was filed, which in the similar circumstances has already been quashed by this Court vide order dated 12.07.2013 passed in CRM-M-1883 of 2011 (O&M).

6. In the aforesaid case, i.e. CRM-M-1883 of 2011, after noticing that amount of ₹27.6 lacs has already been paid by the petitioners, as per settlement between the parties with regard to the Employees State Insurance, it was held by this Court as under:-

“Since the petitioners had performed their part of the settlement arrived at between the parties, respondent should have withdraw the complaint in question. The complaint in question was filed by the respondent with regard to dishonour of cheque dated 27.12.2004 in the sum of 2,00,000/-. Punjab Wool Combers Limited Company was declared a Sick Industrial Company and the matter with regard to Employees State Insurance was duly settled vide Annexure P4 dated 6.9.2007. In these circumstances,

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continuation of criminal proceedings against the petitioner would be nothing but an abuse of process of law.”

7. In view of aforesaid factual position, when learned counsel for the respondent is unable to refute the contentions raised by the counsel for the petitioners, the present petition is hereby allowed. Criminal complaint No.93 of 2007 titled as ***“Employees’ State Insurance Corporation v. Shri N.K. Oswal and another”*** (Annexure P-1) under Section 85 (a) of the ESI Act along with the summoning order dated 28.03.2007 (Annexure P-2) passed by learned Judicial Magistrate 1st Class, Ludhiana and all the subsequent proceedings arising therefrom, stand quashed.

January 19, 2024
Sarita

(DEEPAK GUPTA)
JUDGE

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