**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**
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Reserved on:14.02.2024
Pronounced on: 23.02.2024

I. CRM-M-36226 of 2018 (O&M)

Employees Provident Fund Organisation and others
.....Petitioners

Vs.

Narinder Singla .....Respondent

II. CRM-M-38374 of 2018 (O&M)

Shri Krishan Lal and others
.....Petitioners

Vs.

Narinder Singla .....Respondent

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Argued By:- Mr. Sanjay Tangri, Advocate for the petitioners in CRM-M-36226 of 2018.
Mr. Lovish, Advocate for Mr. H.S. Bhatia, Advocate for the petitioners in CRM-M-38374 of 2018.
Dr. Rau P.S. Girwar, Advocate with Ms. Archna Arora, Advocate for the respondent.

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DEEPAK GUPTA, J.

In the two petitions titled above, both filed under Section 482 Cr.P.C., prayer is made to quash complaint No. COMI/20/2018 (Annexure P-2) and the summoning order dated 11.07.2018 (Annexure P-3) passed by the Court of learned Judicial Magistrate Ist Class, Bathinda, whereby petitioners of both the petitions have been summoned to face trial under Sections 420/465/467/468/471/472/406/408/409/167/200/198/384/120-B IPC; and all the subsequent proceedings arising therefrom.

2. Complaint in question was filed by respondent No.2- Narinder Singla to summon and prosecute as many as eight persons, named below:-

Accused N:	Name of the Accused
1.	Krishan Kumar, Enforcement Officer, Employees Provident Fund (EPF) Office, Model Town, Phase-1, Bathinda
2.	Gurmeet Singh Sidhu C/o M/s Advantage HR Solutions, Near Thakural Hospital, Civil Lines, Bathinda
3.	Munish Garg, Office Clerk C/o M/s Advantage HR Solutions, Near Thakural Hospital, Civil Lines, Bathinda
4.	Krishan Lal Inspector, ESI Corporation, Office at Bathinda
5.	Kuldeep Bhagat, Assistant Provident Fund Commissioner, EPF Office, Model Town, Phase-1, Bathinda
6.	Sh. Dalbara Singh, Assistant Director, Regional Office, ESI Corporation, Sector 19-A, Madhya Marg, Chandigarh
7.	Poonam Arora, Office Superintendent, ESI Corporation, Sector 19-A, Madhya Marg Chandigarh
8.	EPF Organization, Bathinda through its Regional Provident Fund Commissioner Sh. S.C. Sharma

As will be evident from above, accused Nos.1, 5 and 8 are Officers of Employees Provident Fund Organization (for short, `the EPF Office'); whereas accused No. 4, 6 and 7 are the Officers of Employees State Insurance Corporation (ESI). Accused Nos.2 and 3 are from M/s Advantage HR Solutions, a consultancy firm.

3. CRM-M-36226 of 2018 (O&M) has been filed by accused Nos. 1, 5 and 8, i.e. the Officers of the Employees Provident Fund Organization; whereas CRM-M-38374 of 2018 (O&M) has been filed by accused N: 4, 6 and 7 i.e., the Officers of Employees State Insurance Corporation.

4.1 It was alleged by the complainant- respondent Narinder Singla that he is President of M/s Vivek Bricks Udyog Society, Village Lehra Khana, District Bathinda, which is a manufacturing unit of Fly-ash Bricks and supplying the same to government contractors and other firms. Bricks are manufactured/ prepared by hiring labour on contractual/ daily wage basis, without employing any permanent labour. It was alleged that the complainant had never applied for EPF nor approached the EPF Office by giving his Power of Attorney to any person; that in the year 2013, accused No.2 and 4 approached the complainant with dishonest intention to cause wrongful loss to him, proclaiming that complainant- Society had not applied for ESI Certification for his workers, though it was mandatory and that in case the certification was not sought, he (complainant) could be imprisoned. They induced the complainant to apply for ESI certification and further induced him to pay an amount of ₹50,000/- stating that they will complete the entire formalities including preparing the demand draft to be submitted in the department. It was alleged that believing their assurance, complainant paid an amount of ₹50,000/- to accused No.2 and 4 in presence of accused No.3 and they obtained signatures of the complainant on various blank printed forms and other relevant documents. They also obtained Registration Certificate of the Society informing him that they will prepare the documents required for ESI Certification by filling the blank papers. Complainant further alleged that he had never asked accused Nos. 2 and 4 for getting his daily wagers/ contractual labours covered under the Employees Provident Fund Act (for short, `the EPF Act'), as there were no permanent labours and even he had never deducted any provident fund from the daily wages given to the contractual labours and so, Employees Provident Fund Act and Employees State Insurance Act cannot apply to his establishment.

4.2 Complainant alleged further that about two and half years back, he received notice from EPF Department, Bathinda regarding non-payment of EPF dues, despite the fact that he had never applied for EPF. On making inquiries, he was shocked to know that accused No.2 in connivance with accused No.1 and 3 had furnished forged and fabricated documents with EPF and ESI Departments by filling/ preparing the documents in their own handwriting and by forging/ fabricating the signatures of the complainant. Twenty workers were shown to be employed with the complainant, though at no point of time, he had ever employed more than 5/6 workers and that too on contractual/ daily wage basis. It was alleged that by misusing blank signed documents of the complainant, accused No.2 had provided his own e-mail ID in the application form.

4.3 Later on, Shri K.K. Sharma, Assistant Provident Fund Commissioner issued a letter dated 16.05.2013 to accused No.1 to deliver the coverage letter in respect of the complainant's Society but the said letter was never delivered to the complainant and that stamp of his Society and signatures were manipulated by way of scanning. It was also alleged that the complainant had never paid any EPF nor had moved any application; that no ESI Officer or EPF Officer had every visited the Office of the Society of the complainant and that all the documents were forged/ fabricated in connivance with each other by the accused.

4.4 Complainant moved an application to the Senior Superintendent of Police, Bathinda to take action against the accused but in vain. With all the above allegations, complainant prayed for summoning the accused under Sections 420/465/467/ 468 /471/ 472/ 406/ 408/ 409/ 167/ 200/198/384/120-B IPC.

5. After recording preliminary evidence, learned Judicial Magistrate Ist Class, Bathinda, passed the impugned summoning order dated 11.07.2018 (Annexure P-3) against all the accused.

6.1 Assailing the above said order by way of **CRM-M-36226 of 2018**, accused No.1, 5 and 8 i.e. Officers of the Employees Provident Fund Organisation submit that respondent *(complainant)* is in fact President of Vivek Bricks Udyog Society, which is an establishment under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952 (for short, "the EPF & MP Act") under PF Code No. Pb/BTI/40111 w.e.f. 01.03.2013. Said Establishment failed to remit the statutory PF dues for the period March, 2013 to December, 2015 in accordance with the EPF &MP Act and so, proceedings under Section 7-A of the said Act were initiated against the respondent for assessment of the dues. After granting opportunity of hearing and complying with the principles of natural justice, an amount of ₹7,62,424/- was found due against the Society of the respondent vide assessment order dated 07.03.2018, copy of which is Annexure P.1.

6.2 It is contended further that proceedings under Section 7-A of the EPF Act were initiated in the year 2016. Respondent was summoned to appear on 09.02.2016. However, when the assessment proceedings were at the final stage, petitioner filed this false and frivolous complaint on 12.01.2018; and that without applying its judicious mind, learned Judicial Magistrate Ist Class, Bathinda passed the impugned summoning order on 11.07.2018.

6.3 Seeking quashing of the summoning order, it is contended that it is cryptic, non-speaking and without application of mind. The complaint and the subsequent proceedings are malicious, instituted by the respondent with the malafide intention to obtain favourable orders. The Employees Provident Fund and Miscellaneous Provisions Act, 1952 is a social welfare legislation, which has been enacted for making provisions for the future of the industrial workers after they retire or for their dependents in case of their early death. Employees Provident Fund Organization is a statutory organization, set up under the Act, which has been given the mandate to administer the Act and the three schemes enacted thereunder. It is submitted that any establishment engaged in any one or more of the industries specified under Schedule I to the Act or any activity notified by Central Government, in the Official Gazette, employing 20 or more persons is covered under the Act and is required to comply with the provisions of the Act and the Schemes by remitting PF Contribution in respect of the eligible employees employed by it and is required to submit returns on regular basis and that in case of default by the Establishment, the Act provides for initiation of proceedings under Section 7A of the Act.

6.4 It is contended further that all the Officers, as mentioned in Section 7A of the Act, conducting inquiry have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 and that if a person is aggrieved against any order passed under Section 7A of the Act, he has right to prefer an appeal to the Tribunal constituted under Section 7-D of the Act within the prescribed statutory period. The petitioners have further referred to Section 18 of the Act to contend that no suit, prosecution or other legal proceedings can lie against any authority referred to in Section 7A of the Act for anything done in good faith and in pursuance of the Act, scheme etc.

6.5 Learned counsel for the petitioners have also contended that bare perusal of the complaint (Annexure P2) would reveal that no offence whatsoever is made out; that the petitioners acted in good faith as per the provisions of the Act within the ambit of law and so, the impugned complaint and the summoning order deserve to be quashed in view of legal position explained by Hon'ble Supreme Court in ***State of Haryana Vs. Bhajan Lal, Supp(1) Supreme Court Cases 335***.

7. The respondent- complainant in his short reply to the petition, defended the impugned order and prayed for dismissal of the complaint. Learned counsel has also referred to ***Sonu Gupta Vs. Deepak Gupta, 2015(2) RCR Criminal 32,*** so as to contend that at the stage of cognizance and summoning the accused, Magistrate is only required to find out as to whether prima-facie case has been made out and that at this stage, Magistrate is not required to consider the defence version or material or documents nor he is required to evaluate the merits of the material or the evidence.

8.1 In **CRM-M-38374 of 2018 (O&M),** filed by accused No.4, 6 and 7 of the complaint i.e. Officers of the Employees State Insurance Corporation, it is contended that Establishment of the respondent is covered under the provisions of Employees State Insurance Act, 1948 (for short, `the ESI Act') under ESI Code No.12000617680001099 w.e.f. 01.03.2013. Said establishment of the respondent failed to remit the statutory dues for the period April, 2015 to May, 2016 in accordance with ESI Act and so, proceedings under Section 45A of the Act were initiated against the respondent for assessment of the dues and after following the due procedure provided under the Act and providing proper opportunities of hearing, an amount of ₹64,626/- was found due against the Establishment of the respondent vide assessment order dated 21.02.2017 (Copy Annexure P.1). It is submitted that said proceedings under Section 45A of the Act were initiated in 2016. Respondent was summoned to appear on 01.08.2016. He chose not to appear and rather chose to file a false and frivolous complaint.

8.2 Assailing the impugned summoning order, it is contended that no offence is made out, that Employees State Insurance Act, 1948 is a social welfare legislation enacted for making provisions for the employees so as to provide them benefits at the time of sickness, employment accident etc., and that every factory or establishment, which comes within the limits of jurisdiction of the ESI Act, as and when notified in the Official Gazette, employing 20 or more persons is covered under the Act and is required to comply with the provisions of the Act and the Schemes in respect of eligible employees and that in case of default committed by the Establishment and non-disclosure of documents and records required for assessment of the contribution by the Social Security Officer, said Establishment is liable to be proceeded under Section 45A of the ESI Act.

8.3 It is submitted further that respondent himself had approached the ESI Corporation for issuance of the ESI Code Number vide letter Annexure P.4. Respondent filled employees registration form for covering his Establishment. ESI Corporation issued implementation letter dated 14.05.2013 confirming the registration of the Establishment of the respondent vide Annexure P.6 and so, the contention of the respondent-complainant to the effect that his Establishment has been wrongly covered under the ESI Act is totally false and incorrect.

8.4 These petitioners further contend that under Section 45A of the Act, the Regional Director, Deputy Director and Assistant Director have been granted the powers to determine the amount due from the employer under the provisions of the Act and they have been further authorised to conduct such enquiries as may be deemed necessary and if any person is aggrieved by any order passed under Section 45A of the Act, he has a right to prefer an appeal to the Tribunal constituted under Section 45-AA of the Act within the prescribed statutory period.

8.5 Still further, it is submitted that the authorities referred to in Section 45 and Section 45A of the Act, are deemed to be public servants within the meaning of Section 21 of IPC as per Section 93 of the Act and so, if they act in discharge of their official and statutory duty under ESI Act, no prosecution can be launched against them without any sanction. It is further submitted that petitioners acted in good faith as per the provisions of the ESI Act and so, the impugned order passed by learned Magistrate to summon the petitioners is absolutely illegal. These petitioners also refer to parameters laid down in ***Bhajan Lal's case (supra)*** and prayed for quashing the complaint as well as the impugned summoning order.

9. The respondent- complainant in his reply defended the summoning order on the similar grounds as in the first petition and prayed for dismissal of the petition.

10. I have considered the submissions of both the sides and perused the record.

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11. As per allegations made in the complaint (Annexure P2), establishment of the respondent- complainant is not covered under the EPF

Act nor he got it registered under the said Act and that various blank printed forms and documents obtained by respondents No.2 and 4 by way of inducement, were forged and fabricated.

12.1 It is noted from the order dated 7.3.2018 (Annexure P1) that Assistant Provident Fund Commissioner ('APFC') of EPFO initiated proceedings against the Establishment of the respondent, as it had failed to remit the insurance funds contribution and administrative charges for the period July, 2015 to December, 2015. It was noticed that said Establishment was duly covered under the EPF and MP Act, which has been allotted a PF Code w.e.f 01.03.2013. The respondent had been summoned to appear before Assistant Provident Fund Commissioner, Regional Office, Bathinda on 09.02.2016 for the first time.

12.2 The proceedings would reveal that respondent- complainant appeared before the Assistant Provident Fund Commissioner through his Advocate Shri Rippan Garg, for the first time on 11.04.2016 and then also subsequently on various dates. Shri Narinder Singla, i.e. Respondent-complainant himself appeared on several dates and put forth his stand.

12.3 The submissions made by the Establishment of the respondent, and also that of Shri Gurmeet Singh Sidhu, Shri Munish Kumar Garg on behalf of M/s Advantage HR Solutions, Bathinda *(arrayed as accused Nos.2 and 3 in the complaint)* were duly recorded in the order dated 07.03.2018 (Annexure P.1) of Assistant Provident Fund Commissioner, which read as under:-

> **"Submissions of the establishment:-**
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> Sh. Rippan Garg, Advocate appeared on behalf of establishment on 11-04-2016, 12-07-2016, 16-08-2016, 26-09-2016, 17-10-2016, 07-11-2016, 09-01-2017. He requested to give a short date for production of records.

On dated 02-08-2016, Mr. Garg gave his submission in writing that the establishment was not coverable but the Assessing Officer advised him to produce records before the next date.

Sh. Narinder Singla, President appeared on behalf of establishment on 27-02-2017, 20-03-2017, 24-04-2017. He disputed the coverage of the establishment but as per office records file, the establishment had employed 20 persons on 01-03-2013 and the coverage performa, F-5A, Business No., Owner details, Pan Card, Driving Licence, VAT Form are duly signed by Mr. Narinder Singla, President of the establishment. As of now the establishment is disputing the coverage. He further submits that the coverage letter was never received by him rather the signature and the stamp of the establishment was scanned by some other person.

Sh. Narinder Singla, President appeared along with Sh. Kuldeep Singla (Advocate) on 22-05-2017, 05-06-2017, 12-06-2017, 03-07-2017, 24-07-2017, 04-09-2017, 06-11-2017.

Sh. Kuldeep Singla, Advocate appeared on behalf of establishment on 22-05-2017 and submitted that M/s Vivek Bricks Udyog Society, Lehrakhana, Bathinda had approached Mr. Gurmeet Singh Sidhu for ESIC Code Number. He further submitted that all the documents signed by Mr. Narindra Singla, President were done in good faith. The delivery report of the coverage letter was not signed by Mr. Narinder Singla, President of the establishment rather they were scanned. He also submitted that the P.F. Inspector never visited their establishment. He also submitted that the letter dated 08-05-2015 was not sent by the establishment.

Submissions of Sh. Gurmeet Singh Sidhu, Sh. Munish Kumar Garg and Sh. Harinder Singh Sidhu on behalf of M/s Advantage HR Solutions Bathinda & Barnala:

Sh. Gurmeet Singh Sidhu, Prop. of M/s Advantage HR Solutions Bathinda appeared on 22-05-2017 and submitted that he never visited the establishment of the employer rather Mr. Harish Singla along with Mr. Narinder Singla visited his office as he needed ESIC Number as well as EPF Number for floating tender advertised by M/s Trident Barnala.

Sh. Gurmeet Singh further submitted that his profession is to provide consultancy to the employer as a professional. He also submits that all the documents were signed by Mr. Narinder Singla for obtaining ESI N Number and EPF Number and all this was done in the presence of Sh. Munish Kumar Garg his employee. He also submitted that M/s Vivek Bricks Udyog Society Bathinda had carried out work with M/s Trident Barnala and Mr. Harinder Singh Sidhu, Consultant was looking after the work of Mr. Narinder Singla/ Vivek Bricks Udyog Society Bathinda."

13. It is, thus, clear that the allegations, which have been made by the respondent- complainant in his complaint Annexure P2 were also put forth by him before the EPF authorities. After considering submissions of all the parties and providing opportunity of hearing, it was found vide order dated 7.3.2018 (Annexure P1) that Establishment of the respondent – complainant had submitted documents on 12.03.2013 for allotment of EPF Code; that all the documents were duly signed by Narinder Singla- President of the Society; and that the EPF Act was applicable on the Establishment of the respondent. Liability of ₹7,62,424/- was found against the respondent by way of order dated 07.03.2018.

14. What is important to notice is that appearance on behalf of the complainant had been made before the EPF authorities for the first time on 11.04.2016 and it continued to appear before the authorities subsequently. However, before the final order could be pronounced, the respondent – complainant, pre-empting that adverse could be announced against him, filed complaint (Annexure P2) on 12.01.2018, which has been evidently filed with a malafide intention to wriggle out of from the liability.

15. Further, Section 7A of the EPF Act reads as under:-

> "**7A. Determination of moneys due from employers.**—(1)The Central Provident Fund Commissioner, any Additional Central Provident Fund Commissioner, any Deputy Provident Fund Commissioner, any Regional Provident Fund Commissioner, or any Assistant Provident Fund Commissioner may, by order,—
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> (a) **in a case where a dispute arises regarding the applicability of this Act to an establishment, decide such dispute;** and
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> (b) determine the amount due from any employer under any provision of this Act, the Scheme or the Pension. Scheme or the Insurance Scheme, as the case may be, and for any of the aforesaid purposes may conduct such inquiry as he may deem necessary.
>
> (2)The officer conducting the inquiry under sub-section (1) shall, for the purposes of such inquiry, have the same powers as are vested in a court under the Code of

> Civil Procedure, 1908 (5 of 1908), for trying a suit in respect of the following matters, namely:—
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> (a) enforcing the attendance of any person or examining him on oath;
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> (b) requiring the discovery and production of documents;
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> (c) receiving evidence on affidavit;
>
> (d) issuing commissions for the examination of witnesses, and any such inquiry shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of the Indian Penal Code (45 of 1860)."

16. Not only above, Section 7-I of the Act provides for an appeal to the Tribunal. It reads as under:-

> **7-I. Appeals to Tribunal.--**(1) **Any person aggrieved by** a notification issued by the Central Government, **or an order passed by** the Central Government or **any authority,** under the proviso to sub-section (3), or sub-section (4), of section 1, or section 3, or **sub-section (1) of section 7A**, or section 7B [except an order rejecting an application for review referred to in sub-section (5) thereof], or section 7C, or section 14B, **may prefer an appeal to a Tribunal against such** notification or **order**.
>
> (2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed."

17. Conjoint reading of above said provisions i.e., Section 7A and Section 7-I of the EPF Act, make it clear that the authorities as mentioned in Section 7A of the Act are empowered to decide any dispute regarding the applicability of this Act to an establishment. The Act further provides for filing an appeal before the Tribunal under Section 7-I of the Act, if any person is aggrieved by an order passed by any authority, under sub-section (1) of section 7A.

18. In the present case, instead of taking the statutory route i.e., waiting for the order to be passed in the pending proceedings before the EPF authorities, where complainant had already raised the dispute about applicability of his establishment under EPF Act; or filing the appeal under Section 7-I of the Act before the Tribunal, the respondent - complainant

preferred to take a malicious route by filing the criminal complaint before the court of jurisdictional magistrate, to haul up the authorities, acting within the purview of law.

19. Not only above, it is further important to notice Section 18 & 18A of the EPF Act ,which reads as under:-

> "**18. Protection of action taken in good faith.—No suit, prosecution** or other legal proceeding shall lie against the Central Government, a State Government, the Presiding Officer of a Tribunal, **any authority referred to in section 7A**, an Inspector or any other person for anything which is **in good faith done or intended to be done in pursuance of this Act,** the Scheme, the Pension Scheme or the Insurance Scheme."
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> **18A. Authorities and inspector to be public servant.—**The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

20. The afore-said provisions make it clear that no prosecution can lie against the Presiding Officer of a Tribunal or any authority referred to in Section 7A of the Act for anything done in good faith or intended to be done in pursuance of the Act, the Scheme, the Pension Scheme or the Insurance Scheme. Besides, the authorities referred in Section 7A of the Act are public servants within the meaning of Section 21 of the IPC.

21. As the authorities referred in Section 7A of the Act are public servants within the meaning of Section 21 of the IPC, so, as per Section 197 of the Code of Criminal Procedure, no court can take cognizance of any offence alleged to have been committed by him, while acting or purport to act in discharge of his official duty, except with the previous sanction of the central or state government, as the case may be.

22. Apart from above, in ***E.S. Sanjeeva Rao Vs. Central Bureau of Investigation (C.B.I), Mumbai and others, 2013(1) RCR (Criminal) 284,*** it has been held by a Division Bench of Bombay High Court that Regional Provident Fund Commissioner, while passing an order under Section 7A of

the EPF & MP Act, is a Judge within the definition of Section 19 of the Indian Penal Code, and Section 2 of the Judges Protection Act, 1985; and that prosecution of such a person, on the basis of the order passed under Section 7A, is barred in view of Section 77 IPC or Section 3(1) of the Judges (Protection) Act, 1985.

23. In view of the above discussed legal position, the impugned summoning order dated 11.07.2018 (Annexure P-3) can not be sustained, as it appears to have been passed without adverting to the statutory bar contained in the EPF Act to be read with Section 197 Cr.PC.

24. Consequently, the complaint as well as the summoning order deserve to be quashed, as the complaint is apparently malicious and vexatious, having been filed by the respondent – complainant with a malafide intention to wriggle out of his statutory liability under the EPF Act by dragging the officers under EPF & MP Act into this criminal prosecution.

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25. Accused Nos. 4, 6 and 7 as arraigned in the complaint, have filed this petition. They are the Officers of the Employees State Insurance Corporation. Perusal of the paper book would reveal that vide an order dated 21.02.2017 (Annexure P1), liability of ₹64,626/- was found against the establishment of the respondent - complainant for non-payment of its contribution for the period from April 2015 to May, 2016 as per the provisions of ESI Act, 1948. The order Annexure P1 was passed under Section 45A of the ESI Act much prior to the filing of the complaint Annexure P2. Section 45AA provides for establishment of an Appellate Authority and preferring of an appeal against the order passed under Section

45A of the Act within the prescribed period of 60 days. Section 45AA of the Act reads as under:-

> **"45AA. Appellate authority.**
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> *If an employer is not satisfied with the order referred to in section 45A, he may prefer an appeal to an appellate authority as may be provided by regulation, within sixty days of the date of such order after depositing twenty-five per cent. of the contribution so ordered or the contribution as per his own calculation, whichever is higher, with the corporation:*
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> *Provided that if the employer finally succeeds in the appeal, the Corporation shall refund such deposit to the employer together with such interest as may be specified in the regulation."*

26. Instead of filing an appeal under Section 45AA of the Act, the respondent, taking a malicious route, filed the complaint Annexure P2, seeking summoning and prosecuting the officers under the ESI Act.

27. Section 93 of the Act reads as under:

> **"93. Corporation officers and servants to be public servants.**—All officers and servants of the Corporation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)."

28. Thus, as per Section 93 of the Act, all officers and servants of the Corporation shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code. In these circumstances, as per Section 197 of the Code of Criminal Procedure, no court can take cognizance of any offence alleged to have been committed by such officers, while acting or purport to act in discharge of his official duty, except with the previous sanction of the central or state government, as the case may be.

29. In ***State of Haryana and others Vs. Ch. Bhajan Lal and others" 1992 AIR SC 604***, Hon'ble Supreme Court has laid down the guidelines as to the cases in which High Court should exercise its extraordinary power to quash the FIR or the complaint under Section 482 Cr.PC. It was held as under:

> "8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration, wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide of myriad kinds of cases wherein such power should be exercised:
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> "(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
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> (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
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> (c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
>
> (d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
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> (e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
>
> (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific

provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

30. In the present case, in view of entire discussion as above, this Court finds that complaint (Annexure P.2) and all the subsequent proceedings arising therefrom including impugned summoning order, are liable to be quashed, as these are at the least covered under guidelines No. (f) and (g) as laid down in ***Bhajan Lal's case (supra).*** As such, the complaint and the impugned summoning order are hereby quashed.

February 23, 2024 **(DEEPAK GUPTA)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No