

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM M-29215 of 2023 (O&M)
Date of Decision: 02.02.2024

Pawandeep Khatri ...Petitioner
Vs.
Employees State Insurance ...Respondents
Corporation Limited and another

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. R.S. Rai, Sr. Advocate with
Mr. Gautam Dutt, Advocate and
Mr. Mayank Mathur, Advocate
for the petitioner.

Mr. Anil Shukla, Advocate with
Mr. Vishal Mehta, Advocate
for respondent No. 1.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to quash the complaint bearing No. COMA 4594/2022 dated 02.06.2022 titled as **“Employees State Insurance Corporation Vs. M/s Jet Sparkel Facility Management (P) Ltd.”**, (Annexure P-1), summoning order 08.07.2022 (Annexure P-2) passed by the Judicial Magistrate 1st Class, Chandigarh and all consequential proceedings arising therefrom.
2. The Employees State Insurance Corporation Limited (hereinafter referred to be as **‘the ESIC’**) had filed the complaint

(Annexure P-1) under Section 85(g) of the Employees State Insurance Act 1948 (hereinafter referred to be referred as '**the ESI Act**') against M/s Jet Sparkel Facility Management Private Limited (hereinafter to be referred as '**the Company**') and the present petitioner by alleging that the petitioner/accused is the principal employer of the Company. The petitioner is incharge and responsible for the day to day affairs of the Company in terms of Section 2(17) of the ESI Act. As per the complainant, in view of Section 38 of the ESI Act read with regulations 12, 14 and 15 of the Employees State Insurance (General) Regulations 1950, all the employees, within the meaning of Section 2(9) of the ESI Act, in an establishment have to be insured within 10 days of their appointment. Subsequent to their registration, contribution of all the coverable employees is required to be made every month, as per Section 39 of the ESI Act read with Regulation 31-A of the Employees State Insurance (General) Regulations 1950. As per Section 40 of the ESI Act, the principal employer is required to pay contribution in respect of every employee whether directly employed by him or through an immediate employer. The ESIC officials visited the site on 13.08.2021 in the presence of the petitioner and instructed the employer to prepare the record for verification on 20.09.2021. The intimation (Annexure C-3) in this regard was duly signed by the petitioner/proprietor. However, on 20.09.2021, the records were not produced for inspection and the proprietor/principal

employer, i.e., the petitioner was given another opportunity to produce the record of the establishment from 01.07.2016 to 31.07.2021 and a notice under Section 45(2) of the ESI Act had been issued for the said date. Again on 12.11.2021, the record was not produced and last opportunity was granted to produce the record. The copy of the opportunity dated 12.11.2021 was duly signed by the present petitioner. Thereafter, on 03.08.2021, ESIC officials again visited the site for the purpose of inspection of record and contacted the principal employer/director and authorized officials of the Company including the petitioner, but the petitioner and other officials did not produce the record again. Finally, a show cause notice under Section 85(g) of the ESI Act was issued to the principal employer on 08.03.2022, asking her to show cause within a period of 15 days as to why the principal employer of the Company may not be prosecuted for violating the requirement of the ESI Act and Employees State Insurance (General) Regulations 1950. The said show cause notice dated 08.03.2022 was dully delivered at the address of the principal employer. In spite of repeated instructions/show cause notice, no compliance was made by the principal employer of the Company regarding the production of the relevant records and after obtaining the necessary sanction, the present complaint was filed under Section 85(g) of the ESI Act against the petitioner and the Company.

3. Learned senior counsel appearing on behalf of the petitioner vehemently argued that the various notices dated 11.08.2021, 13.08.2021, 20.08.2021 and 12.11.2021 as mentioned in the complaint (Annexure P-1) were never served on the present petitioner. He further contended that the petitioner was not in India at the relevant time and there was no question of service of notices/show cause on her. He further contended that from a perusal of the passport of the petitioner, it was apparent that the petitioner had migrated to Australia in March 2019 and had come to India in 2022. Even, a comparison of her signatures on the passport with the signatures, which were appended on the notices would show that the signatures on the notices actually did not belong to the petitioner. He further contended that even, the petitioner was not a Director of the Company at the time of the issuance of relevant notices. He further contended that in fact the petitioner did not have cordial relations with her husband due to certain differences in their matrimonial life and she was wrongly shown to be a Director of the Company. In fact, her husband Gaurav Khatri was running affairs of the Company and the cheques were always issued by him and not by the present petitioner. Even, the sanction for prosecution had been obtained for prosecuting both the Directors and only the petitioner was arrayed as an accused in the present case. He further contended that in fact the petitioner came to know about the filing of the complaint when Ms. Usha

Rawat, authorized representative of the Company, had forwarded the e-mails on 03.03.2023 sent by the complainant/respondent department on the e-mail of the Company. Even, the Company was initially incorporated by Jatinder Singh Ahluwalia, father of the petitioner in the year 2011 and he was not the person, who was looking after the affairs of the Company. In the year 2013, Jatinder Singh Ahluwalia made the petitioner a Director in the Company, as he wanted that she should have some stake in the Company after him. After his retirement, the entire business of the Company was taken over by Gaurav Khatri, husband of the petitioner as her only brother namely, Inderpreet Singh was deaf and dumb and was not capable of handling the affairs of the Company. The petitioner had resigned from the Company on 14.12.2017 and, thus, she remained the Director from 09.09.2013 to 14.12.2017 and again joined the Company as an Additional Director on 01.11.2021 upon the declaration of her husband and she became Director on 30.11.2021. Learned senior counsel further submitted that since the petitioner was never served with the notice as she was not in India at the relevant time and, therefore, there was no cause for her to show documents to the respondent/complainant in the present case.

4. On the other hand, learned counsel appearing on behalf of respondent No. 1 vehemently argued that in fact ESIC had sought the documents from the Company for the period from 01.07.2016 to

31.07.2021. He further submitted that repeated opportunities were granted to the petitioner, principal employer as well as her establishment to produce the record of the establishment from 01.07.2016 to 31.07.2021. Even, some of the notices were received by the petitioner herself and in spite of that, the documents were not produced before the respondent No. 1/complainant. Even otherwise, the petitioner remained Director of the Company from 09.09.2013 to 14.12.2017. By way of the notices, the record, which was sought to be produced, pertained to the period from 01.07.2016 to 31.07.2021. Thus, the record of the establishment, which was to be produced before the respondent No.1, pertained to the period, when the petitioner was also one of the Directors. Still further, admittedly, the petitioner had again become Director on 30.11.2021 and before filing of the complaint, a show cause notice under Section 85(g) of the ESI Act was issued to the petitioner, i.e., the principal employer, asking her to show cause as to why she should not be prosecuted under Section 85(g) of the Act. Even, admittedly, on 08.03.2022, the petitioner was Director of the Company and she can be held liable for the acts committed by her in her capacity as principal employer of the establishment.

5. I have heard the learned counsel for the parties and with their able assistance, I have gone through the record carefully.

6. In fact, the main ground pleaded by the petitioner in the present petition is that the petitioner had not received the numerous notices, which were issued by respondent No.1/complainant as the petitioner was not in India at the relevant time and she had migrated to Australia in June 2019. Thereafter, she was employed in Australia and even she was not the Director of the establishment/Company on the date of issuance of the notices by respondent No.1 and she had become Director on 01.11.2021. I have considered the submissions made by the learned senior counsel for the petitioner and find no force in the said arguments. In fact, from the record, it was apparent that the petitioner was admittedly the Director of the establishment from 09.09.2013 and resigned from the Company on 14.12.2017. By way of notices dated 11.08.2021, 13.08.2021, 20.08.2021 and 12.11.2021, the respondent No.1/complainant had demanded the production of the records from 01.07.2016 to 31.07.2021. Consequently, it is clear that the petitioner was the Director of the Company from 01.07.2016 to 14.12.2017, when she finally resigned as a Director. Thus, the record also pertained to the period, when the petitioner was the Director of the Company. Still further, the petitioner had again joined the Company as a Director on 01.11.2021 and this clearly shows that she was interested in day to day affairs of the petitioner/Company. Even, at the time of issuance of notice dated 12.11.2021 and the final show cause notice dated 08.03.2022, the petitioner was the Director in the

Company and she cannot escape her liability on any ground. Being the Director, she was incharge and responsible to the Company for the day to day affairs of the Company and cannot be absolved of her criminal liability in this regard. In fact, in view of Section 38 of the ESI Act read with Regulations 12, 14, 15 of the Employees State Insurance (General) Regulations 1950, all the employees have to be insured as per law within 10 days of their appointment and as per Section 39 of the ESI Act, the contribution of all the coverable employees is required to be made every month by the employer and as per Section 40 of the ESI Act, principal employer is required to pay the contribution in respect of every employee, whether directly employed by him or through an immediate employer.

7. However, the record was not produced by the petitioner and her establishment and they were rightly ordered to be prosecuted by the respondent No. 1. Apart from that, the petitioner has disputed the fact that she had signed C-20 dated 20.09.2021 and notice dated 12.11.2021, whereas on the other hand, learned counsel for the respondent No. 1 submitted that the said communications were duly received and signed by the petitioner. In fact, while exercising the jurisdiction under Section 482 Cr.P.C., the High Court is not expected to hold a mini trial before it and the genuineness of the documents can only be adjudicated by the trial Court, by granting ample opportunities to both the sides.

8. Apart from that, it has been vehemently argued by the learned counsel for the petitioner that that she was having estranged relations with her husband Gaurav Khatri at the relevant point of time and she was not in touch with Smt. Usha Rawat, by whom, the notices were received and acknowledged. However, the said argument does not find favour with this Court due to the simple reason that the petitioner has not placed on record any documentary evidence to substantiate the said plea before this Court. Neither any complaint before any authority nor any other litigation has been produced before the Court by the petitioner or her husband to show that there were differences between them and both the parties were living separately. Even otherwise, strained relations in a matrimonial life are again a disputed question of facts and such facts can only be established by the parties by adducing evidence before the trial Court and can never be the subject matter of adjudication in the proceedings held before this Court under Section 482 Cr.P.C. However, as per the admitted case of the prosecution, the petitioner was in touch of Ms. Usha Rawat, who has sent an e-mail to the petitioner in March, 2023. Thus, there is a presumption that the petitioner was well aware of the proceedings and was very well aware of the pendency of the matter before the ESIC officials, however, neither the petitioner nor her establishment had proceeded with due diligence to prevent the offence. Still further, it has been submitted by learned counsel for the

petitioner that the sanction had been obtained for prosecuting two directors, but the complaint only named the petitioner as an accused. In fact, from the record, it is established that the record pertaining to the year 2016/2017 was to be produced before the ESIC officials and the petitioner was admittedly a director at that time. Apart from that, it is apparent that the petitioner was regularly in touch with her husband and she had joined as a director again on 01.11.2021 with her husband. Thus, she cannot allege that she was having matrimonial differences with her husband Gaurav Khatri. Even otherwise, the show cause notices had been sent to the residential as well as official addresses of the petitioner, which clearly showed that the petitioner was well aware of the present matter and day to day affairs of the Company. Thus, in view of the above findings, this Court finds no substance in the submissions made by learned counsel for the petitioner and the petition is, accordingly, ordered to be dismissed being meritless.

02.02.2024

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking

:

Yes/No

Whether reportable

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Yes/No