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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 331/2019**

ESI CORPORATION

..... Petitioner

Through: Mr. Manohar Lal, Adv.
with Mr. Arvind Kumar
Bansal, SSO, ESIC.

versus

M/S. B.L. KASHYAP & SONS & ANR. Respondents

Through: Mr. Vignaraj Pasayat,
Adv. for R-1 and 2.
Ms. Anubha Bhardwaj,
SPP for CBI with Ms.
Aditi Singh and Mr. Dhruv
Kothari, Adv. for R-3 /
CBI.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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12.01.2024

CRL.M.A. 32261/2023 (*exemption from filing certified copies /
illegible / typed copies of the annexures*)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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10346/2019**

3. The present petition is filed challenging the order dated 04.05.2018 (hereafter '**impugned order**'), passed by the learned CMM/SE/District Court, Saket, New Delhi, in CC No. 624669/2016.

4. The petitioner, Employee State Insurance Corporation, had filed a complaint under Section 85(g) read with Section 86(A) of



the Employees' State Insurance Act, 1948 (hereafter '**ESI Act**') alleging that the respondent had failed to furnish the information and produce the records as directed by the petitioner corporation under Section 45/45A of the ESI Act.

5. It was alleged that the respondent company deliberately did not produce the relevant records as sought by the petitioner corporation for inspection despite various opportunities, repeated visits and Show Cause Notices dated 13.07.2011 and 02.08.2011.

6. Respondent No.1 had given a written reply dated 14.07.2011, and a representative of Respondent No.1 also appeared before the office of the petitioner corporation on 11.08.2011. It was stated by Respondent No.1 that the entire record sought for inspection had been seized by the CBI in relation to an investigation in relation to the Case RC No. 217 2011 A 0008/ ACU-IV, CBI New Delhi.

7. The learned Trial Court noted that it was an admitted position that at the relevant time, Respondent No.1 was not in possession of the requisite records, and hence, they could not have complied with the notice dated 13.07.2011. In light of the said observation, the learned Trial Court had discharged the respondents.

8. The learned Special Public Prosecutor for the CBI confirms that the documents were seized from the possession of the respondent company, and some of the documents were handed over in the year 2015.

9. The learned counsel for the petitioner also does not dispute that the reply was received from the respondent company specifically stating that they are not in possession of the records sought for.

10. In view of the above, this Court finds no infirmity with the
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impugned order passed by the learned Trial Court. The learned Trial Court rightly recorded that the charges cannot be framed against the respondent company in the absence of the intention to commit the alleged offence under Section 45/45A of the ESI Act. When the respondent company admittedly were not in possession of the documents, they, in no circumstance, could have supplied the same to the petitioner corporation.

11. Insofar as the second prayer in the present petition is concerned, the learned Special Public Prosecutor for the CBI submits that they have no objection if the authorised officer of the petitioner corporation inspects the documents kept in the custody of the CBI. She, however, submits that the documents, even otherwise, have been returned back to the respondent company.

12. In such circumstances, this Court is of the opinion that no direction is required to be passed in that regard, and the authorised officer of the petitioner corporation is at liberty to contact the concerned officer of the CBI and seek inspection of the documents, if any, in the custody of the CBI.

13. The petitioner corporation is also at liberty to issue an appropriate notice, if permissible in law, seeking records/ documents from the respondent company.

14. In view of the above, the present leave petition is dismissed with the aforesaid observations. Pending applications are also disposed of

AMIT MAHAJAN, J

JANUARY 12, 2024

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