IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.1320 of 2023
Crl.M.P.Nos.10943 & 10944 of 2025

M/s.Baxter (India) Private Limited,
Situated at 69-72, Sidco Pharmaceutical Complex,
Althur – 603110, Kanchipuram District,
Tamilnadu. A factor covered under
the ESI Act, represented by Sanjiv Verma
Managing Director. ... Petitioner

Vs.

The Employees State Insurance Corporation,
Having its Regional Office at
No.143, Sterling Road, Chennai – 34,
Rep. by Superintendent Legal,
ESI Corporation, Chennai – 34. ... Respondent

PRAYER: Criminal Revision Case has been filed under Section 397 r/w. 401 of Cr.P.C., praying to set aside the orders dated 07.07.2023 passed in Crl.M.P.No.13616 of 2022 in C.C.No.3322 of 2013 on the file of the II Metropolitan Magistrate Court at Egmore, Chennai for offences under Section 85(d) punishable under Section 85(ii) of Employees State Insurance Act, 1948.

For Petitioner	:	Mr.C.Manishankar, Senior Counsel, For Mr.C.Arun Kumar
For Respondent	:	Mr.T.N.C. Kaushik

ORDER

This Criminal Revision Case has been preferred against the order dated 07.07.2023, passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.13616 of 2022 in C.C.No.3322 of 2013, thereby dismissing the petition to discharge the petitioner from the charges.

2. The petitioner is a company and the respondent filed complaint as against the petitioner and two others alleging that the petitioner is engaged in the business of manufacturing of pharmaceuticals. The second and third accused are the Managing Directors of the first accused. The first accused had one of its factory at Kanchipuram District and it is covered under the provisions of Employees State Insurance Act, 1948 (hereinafter referred to as "the ESI Act"). While being so, one Gopu Sankaran was employed in the petitioner's company and on 17.10.2010, he met with an accident and had suffered with severe injuries. Therefore, he was on medical leave and received temporary disability benefits from the respondent for the period from 19.09.2010 to 07.05.2012. While being so, on 15.02.2012, the petitioner company terminated the employment of the said Gopu Sankaran and it is in violation of Section 73(1) of the ESI Act r/w 98 of the ESI General Regulations, 1950. Therefore, they have committed the offence under Section

85(d) punishable under Section 85(ii) of the ESI Act. Hence, the respondent lodged complaint and the same was taken cognizance by the trial Court in C.C.No.3322 of 2013. In view of the settlement arrived between the parties, the petitioner filed an application to discharge them from the charges. However, it was dismissed on the ground that the discharge petition is not maintainable in the summons case. Hence, the petitioner filed the present revision.

3. The learned Senior Counsel appearing for the petitioner submitted that there are three accused in which, the petitioner is arrayed as A1. While one of the employees was on medical leave, he was terminated from his employment on 15.02.2012. Therefore, the respondent lodged complaint. On 01.02.2013, the employee and the petitioner have entered into settlement agreement and settled the issues by payment of compensation to the tune of Rs.11,15,653/-. As per Clause 11 of the settlement, the employee had agreed to withdraw the complaint as against the management before the ESI authorities under Section 73 of the ESI Act. However, the respondent proceeded with the complaint and as such the petitioner filed petition to discharge itself from the charges. However, it was dismissed on the ground that the discharge petition is not maintainable since it is a summon case.

3.1. He further submitted that on these grounds, the petitioner already approached this Court in Crl.O.P.No.12532 of 2014 to quash the entire proceedings along with other two directors in Crl.O.P.No.14261 of 2014. However, this Court by a common order dated 19.02.2020, dismissed the quash petition and ordered dispense with for the appearance of the petitioner before the trial Court. Thereafter, the petitioner filed petition to discharge from all the charges in view of the settlement arrived between the company and employee.

3.2. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in ***(2012) 5 SCC 424*** in the case of ***Bhushan Kumar & anr Vs. State (NCT of Delhi) & anr***, which held that it is inherent in Section 251 of the Cr.P.C., that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Cr.P.C., in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Cr.P.C. Therefore, the discharge petition is very much maintainable and without considering the above judgment of the Hon'ble Supreme Court, the trial Court dismissed the discharge petition by citing the case of ***Subramanium Sethuraman Vs. State of Maharashtra & anr*** reported in ***2004 (13) SCC 234***, which was decided on 17.09.2004 viz., before the judgement of ***Bhushan Kumar & anr Vs. State (NCT of Delhi) & anr.*** Therefore, the trial Court ought not to have dismissed the petition.

4. Per contra, the learned counsel appearing for the respondent submitted that the discharge petition is not at all maintainable in the summon cases. Therefore, the trial Court rightly dismissed the petition, though the matter has been settled between the petitioner and the employee. That apart, the petitioner and other accused had already filed quash petition to quash the entire proceedings and the same was also dismissed by this Court in Crl.O.P.Nos.12532 & 14261 of 2014 by a common order dated 19.02.2020. Once again on the very same ground, the petitioner has come forward with the petition to discharge. Therefore, the trial Court rightly dismissed the petition and the interference of this Court is unwarrented.

5. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6. At this juncture, the issues that are to be decided by this Court in the present case are as follows :-

(i) Whether a discharge petition is maintainable in the summon case?

(ii) Whether the entire trial can proceed further even after the settlement entered between the petitioner and its employee?

7. Admittedly it is a summon case. The respondent filed a private complaint for the contravention of the offence under Section 73(1) of the ESI Act r/w 98 of the ESI General Regulations, 1950. Therefore, the petitioner is liable to be punished for the offence of non-compliance of Section 85(d) of the ESI Act which is punishable under Section 85(ii) of the ESI Act.

8. On receipt of the said complaint, the trial Court after examining the supportive witnesses and also on perusal of documents filed by the respondent had taken cognizance in C.C.No.3322 of 2013 and issued summon to the accused. There are totally four accused in which, the petitioner is arrayed as A1. After taking cognizance, the petitioner entered into the memorandum of settlement with the employee who was terminated from his employment during his medical leave viz., Gopu Sankaran, on 01.02.2013. Accordingly, a sum of

Rs.11,11,827/- was settled to the employee by the petitioner. The employee also agreed to withdraw the complaint filed by him before the respondent to prosecute the petitioner. The petitioner also produced the receipt dated 01.02.2013 after receipt of the settlement amount by its employee. However, the respondent proceeded with the prosecution against the petitioner and two others. Therefore, the petitioner filed quash petition before this Court in Crl.O.P.No.12532 of 2014 and two other directors had filed another quash petition in Crl.O.P.No.14261 of 2014, to quash the entire proceedings in C.C.No.3322 of 2013 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai. However, it was dismissed by this Court by a common order dated 19.02.2020.

9. The learned Senior Counsel appearing for the petitioner submitted that though the petitioner filed quash petition on the ground of settlement between the employee and the employer, it was not brought to the notice of this Court and it was not discussed in the order passed by this Court. Therefore, the petitioner filed the discharge petition before the trial Court to discharge the petitioner from the charge. However, it was dismissed on the ground that already the Hon'ble Supreme Court of India held in the case of ***Subramanium Sethuraman Vs. State of Maharashtra & anr*** reported in ***2001 (13) SCC 324***

dated 17.09.2004 that, discharge, review, re-consideration, recall of order of issue of process under Section 204 of the Cr.P.C., is not contemplated under the Cr.P.C., in a summons case. Once the accused has been summoned, the trial Court has to record the plea of the accused as per Section 251 of the Cr.P.C., and the matter has to be taken to trial to its logical conclusion and there is no provision which permits a dropping of proceedings, along the way. It was held by three Judges of the Hon'ble Supreme Court of India.

10. Subsequently in the year 2012, in the case of ***Bhushan Kumar Vs. State (NCT of Delhi)*** reported in ***2012 (5) SCC 424*** consisting two Hon'ble Judges of the Hon'ble Supreme Court of India held as follows:-

> *"20. It is inherent in Section 251 of the Code that when an accused appears before the trial Court pursuant to summons issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial Court to carefully go through the allegations made in the charge sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code."*

Therefore, the trial Court rightly upheld the decision of three Hon'ble Judges of the Hon'ble Supreme Court of India held in ***Subramanium Sethuraman Vs. State of Maharashtra & anr*** reported in ***2004 (13) SCC 234,*** and dismissed the discharge petition filed by the petitioner on the ground that discharge petition is not maintainable in the summon case. Hence, this Court finds no infirmity or illegality in the order passed by the trial Court by dismissing the discharge petition.

11. However, in view of the settlement entered between the employee and the employer viz., Gopu Sankaran and the petitioner herein dated 01.02.2013, the employee agreed to withdraw his compliant filed before the respondent for prosecuting the petitioner under Section 73(1) of the ESI Act. The relevant portion of the memorandum of settlement dated 01.02.2013 is as follow:-

> *"TERMS OF SETTLEMENT*
>
> *1. Mr. Gopu Sankaran agrees that he was discharged from services due to his continued ill health vide letter dated 01.02.2012 and a copy of which is annexed herewith as ANNEXURE A and the order of discharge dated 01.02.2012 issued by the management on the ground of continued ill health is valid.*
>
> *2. As a result of this settlement, Mr. Gopu Sankaran has been discharged from services with effect from 15.02.2012 and*

on and from that date he ceased to be in the services of the Company.

3. The management agrees to pay a sum of Rs. 11,15,653/- (Rupees Eleven lakhs fifteen thousand six hundred and fifty three only) towards Exgratia. The above amount includes the income tax of Rs. 1,15,653 which will be borne by the company.

4. The management shall also bear the expenses to a tune of Rs. 81,864/-(Rupees Eighty one thousand eight hundred and sixty four only) for the final surgery of Mr. Gopu Sankaran for his right hand that collapsed on 17.09.2010. The above amount includes the income tax of Rs. 16,864 which will be borne by the company.

5. The management has also agreed to pay a sum of Rs. 2,041/- (Rupees two thousand and forty one only) towards statutory bonus for 2011-12.

6. The management has also agreed to pay a sum of Rs. 10,500/- (Rupees ten thousand and five hundred only) towards three months notice pay.

7. The management is also paying him a sum of Rs. 4,773/- (Rupees four thousand seven hundred and seventy three only) towards his leave encashment.

8. The management has also agreed to pay a sum of Rs. 30,288/- (Rupees Thirty thousand two hundred and eighty eight only) towards Gratuity.

9. The management has also waived off the balance recovery of Rs. 3000/-paid him as salary advance in May '08

10. The total amount of Rs. 11,11,827/- (Rupees Eleven lakhs eleven thousand eight hundred and twenty seven) vide cheque bearing No. 042805, dated 09-Jan-13, drawn on Citi Bank in favour of S Gopu (name as per bank account) towards Gopu Sankaran's Full and Final Settlement as per ANNEXURE B. Mr. Gopu Sankaran accepts the same towards full and final settlement of all his claims against the management.

11. In the view of this settlement, the Employee agrees to withdraw his complaint filed by him before the ESI authorities for prosecuting the management under section 73 of the ESI Act.

12. Mr. Gopu Sankaran hereby agrees and accepts to withdraw the dispute raised by him under Section 2 A of the Industrial Disputes Act, 1947 before the Labour Officer which was taken for conciliation as Ref.: A/911/2012.

13. Mr. Gopu Sankaran also agrees that the management is not liable for any dispute between ESI and himself regarding sickness benefits received by him during the period of his non employment. He further agrees that he is solely responsible for the same.

14. After receiving the amount mentioned in clause 10 of the settlement Mr. Gopu Sankaran shall issue a receipt of the said amount in full and final settlement of all his claims arising out of his discharge from service.

15. Consequent to the receipt of the said amount as above, Mr. Gopu Sankaran agrees and accepts that he has no claim whatsoever whether monetary or otherwise against the Management including that of reinstatement or re-employment.

16. Further to above, Employee also agrees that he will not approach Baxter (India) Pvt Ltd in future for any request / help/issues and also agrees that he will not file any petition against Baxter (India) Pvt Ltd for whatsoever reason thereof.

The parties agree for the above terms."

12. Accordingly, the employee viz., Gopu Sankaran received a sum of Rs.11,11,827/- by way of cheque and issued receipt dated 01.02.2013. Therefore, no purpose would be served if the trial continues as against the petitioner and other two accused persons, since the entire matter has been settled between the petitioner and its employee. In fact, the employee also agreed and accepted to withdraw the dispute raised by him under the Industrial Dispute Act and also the petitioner is not liable for any dispute before the ESI authorities regarding sickness benefits received by the employee during the period of his non-employment. Therefore, at any chance the petitioner and other directors cannot be punished for any of the offences stated and the contravention under Section 73(1) of the ESI Act cannot be maintainable as against the petitioner and the other two directors. Hence, the continuation of the

proceeding would not serve any purpose.

13. In view of the above discussions, the trial Court viz., the learned II Metropolitan Magistrate Court, Egmore, Chennai, is directed to close the entire proceeding in C.C.No.3322 of 2013 as against the petitioner and two other directors. Accordingly, the Criminal Revision Case stands disposed of. Consequently, connected miscellaneous petitions are closed.

24.06.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order

rts

G.K.ILANTHIRAIYAN. J,

rts

To
1. II Metropolitan Magistrate Court,
Egmore, Chennai.

2. The Superintendent Legal,
ESI Corporation,
Employees State Insurance Corporation,
No.143, Sterling Road, Chennai – 34.

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