
(2013) 05 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : CRM-A-222 MA of 2011

Employees' State Insurance Corporation	APPELLANT
Vs	
Maninder Singh and Another	RESPONDENT

Date of Decision : 17-05-2013

Acts Referred:

Citation : (2013) 139 FLR 534 : (2014) LLR 33

Hon'ble Judges : M.M.S. Bedi, J

Bench : Single Bench

Advocate : B.S. Bhatia, for the Appellant;

Final Decision : Dismissed

Judgement

M.M.S. Bedi, J.—The Employees State Insurance Corporation aggrieved by the acquittal of the respondents, has preferred this appeal u/s 378(4) Cr.P.C. with application for leave to file said appeal.

The petitioner-Corporation had filed a complaint u/s 85(a) of the Employees State Insurance Act, 1948 (for short "the Act") against the respondents on the ground that return of contribution to the appellant u/s 39, 40 and 43 of the Act for a period from October 2000 to March 2001 have not been submitted and as such an offence punishable u/s 85(a) of the Act had been committed by the respondents. The Trial Court has acquitted the respondents, inter alia, on the following grounds: --

- (i) The respondent firm does not fall within the definition of factory u/s 2(12) of the Act and
- (ii) that the order dated 29.4.1998, requiring the respondents to deposit contribution for the wages for the period 2000-2001 is pending adjudication u/s 75 of the Act.

Counsel for the appellant has vehemently contended that the acquittal order passed by the trial Court is not sustainable as the Trial Court did not have any

jurisdiction to consider whether the establishment of the respondents fall under the definition of factory u/s 2(12) of the Act.

2. I have heard the learned Counsel for the appellant and gone through the scheme of the Act. Whether a dispute between employer and corporation regarding the contribution is to be decided by the Employees Insurance Court u/s 75 of the Act. The adjudication of a dispute and claim falls under Chapter VI of the Act. Subject-matter of the dispute between employer and Corporation in respect of any contribution or any other dues can be raised by the employer in the Employees Insurance Court after depositing 50 percent of the amount due as claimed by the Corporation as per section 75(2-B) of the Act. During pendency of the dispute regarding contribution before adjudicatory authority, the ESI had opted to launch prosecution against the respondents. The sine qua non for requiring contribution under the ESI Act is that principal-employer should fall in the definition of factory. As per section 2(12) of the Act a factory means any premises wherein 10 or more persons are employed for manufacturing process. During pendency of a dispute before adjudicatory authority the complaint is not maintainable. Moreover, when management of the employer does not fall under the definition of factory, the launching of prosecution is not valid. The Judicial Magistrate First Class, Ludhiana has given fair and adequate reasons for acquitting the respondents.

No ground is made out to interfere in the well reasoned order.

Dismissed.