2025 INSC 500

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025

[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.3743 OF 2024]

AJAY RAJ SHETTY …APPELLANT

VERSUS

DIRECTOR AND ANR. …RESPONDENTS

R1: DIRECTOR

R2: M/S ELECTRIEX (I) LTD.

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted.

2. This appeal has been preferred by the Appellant against the Final Judgment and Order dated 08.12.2023 (hereinafter referred to as the 'Impugned Order') passed by the High Court of Karnataka at

Bengaluru (hereinafter referred to as the 'High Court'), by which Criminal Revision Petition No.164 of 2015 filed by the Appellant and Respondent No.2 has been dismissed.

BRIEF FACTS:

3. M/s Electriex (India) Limited (hereinafter referred to as 'Respondent No.2' or 'Company') was declared as a sick industry by the Board for Industrial and Financial Reconstruction (hereinafter referred to as the 'BIFR') on 31.10.2001 in Case No.49/2000. On 24.09.2002, the BIFR ordered for a change in the management of Respondent No.2. Aggrieved by this Order, Respondent No.2 preferred Appeal No.340/2002 before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter to referred to as the 'AAIFR'). Such appeal was dismissed *vide* AAIFR's Order dated 15.01.2003. Following this, Respondent No.2 filed Writ Petition No.20033/2003 before the High Court and it is relevant to note that the Employees' State Insurance Corporation (hereinafter referred to as 'ESIC') was also a party to the said writ petition, wherein the High Court on 03.03.2008 remanded the matter back to the BIFR to

consider the matter expeditiously keeping in view the the interest of all the parties concerned and quashed the Orders of BIFR and AAIFR dated 24.09.2002 and 15.01.2003, respectively.

4. On 01.07.2010, BIFR directed the Company to negotiate with the secured creditors for settlement of their dues. On 01.02.2011, ESIC officials visited the factory premises of Respondent No.2 to ascertain and verify about its deductions towards the Employees' State Insurance (hereinafter to referred to as 'ESI') contribution for the period from 01.02.2010 to 31.12.2010. Pursuant thereto, a Report was prepared which disclosed that even though deductions of Rs.8,26,696/- (Rupees Eight Lakhs Twenty-Six Thousand Six Hundred and Ninety-Six) from the wages of Respondent No.2's employees were made for the above-mentioned period, the same was not deposited with the ESIC. In the Report, the authorized signatory of Respondent No.2 had mentioned the Appellant's name as the '*General Manager*' and '*Principal Employer*' of the Company. On the basis of the Report, a private complaint was filed by the Respondent No.1 for offence(s) under Section 85(a)[1] of the

[1] '***85. Punishment for failure to pay contributions, etc.****—If any person—*
(a) fails to pay any contribution which under this Act he is liable to pay, or
(*b*) xxx
(*c*) xxx

Employees' State Insurance Act, 1948 (hereinafter to referred to as the 'Act') against the Appellant and Respondent No.2 before the Special Court for Economic Offences, Bangalore (hereinafter referred to as the "Trial Court") namely, CC No.326/2011 on 11.10.2011.

5. The Trial Court on 28.09.2013 convicted the Appellant under Section 85(i)(b) of the Act and sentenced him to undergo imprisonment for six months along with a fine of Rs.5000/- (Rupees Five Thousand). Aggrieved, the Appellant and Respondent No.2 filed Criminal Appeal No.553/2013, before the Principal City Civil and Sessions Judge, Bangalore which was subsequently transferred to the Fast Track Court VI, Bangalore (hereinafter referred to as the 'First Appellate Court'). The First Appellate Court

---

(*d*) xxx
(*e*) xxx
(*f*) xxx
(*g*) xxx
he shall be punishable—
(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but—
(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;
(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees:
Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;
(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both.'

on 14.11.2014 upheld the order of conviction and sentence passed by the Trial Court and dismissed Criminal Appeal No.553/2013. Aggrieved by such Order of the First Appellate Court, the Appellant and Respondent No.2 filed Criminal Revision Petition No.164 of 2015 before the High Court.

6. The High Court by the Impugned Order dated 08.12.2023 dismissed the Revision Petition of the Appellant and Respondent No.2 on the ground that the evidence on record clearly established that the Appellant was General Manager and Principal Employer of Respondent No.2 and it was also established that a contribution of Rs.8,26,696/- (Rupees Eight Lakhs Twenty-Six Thousand Six Hundred and Ninety-Six) was deducted during the period 01.02.2010 to 31.12.2010 from the employees of Respondent No.2, but not remitted to the ESIC.

APPELLANT'S SUBMISSIONS:

7. The learned senior counsel for the Appellant submitted that the appointment of the appellant was in July, 2009, to the post of

Technical Coordinator in Respondent No.2. This Court's attention was also drawn to the fact that proceedings before the BIFR was instituted in 2001, long before the Appellant's appointment and further that appointment order was not given as the Company was sick and salary was also not paid. It was also contended that the burden is on the prosecution to show that the Appellant was appointed as General Manager, which they have only done by referring to the Report produced by the ESIC. The Report also cannot be relied upon as the official who prepared it was not brought before the Court for the Appellant to cross-examine him.

8. It was further submitted that the prosecution lodging case against the Appellant for contravening Section 85(a) of the Act is erroneous as there is no such averment, either in the complaint or in the evidence that it was the Appellant who had deducted the contribution from the wages of the employees and had failed to deposit the same with Respondent No.1. The other fact pointed out by the Appellant was that under Regulation 10-C[2] of the Employees'

[2] '***10-C. Intimation regarding change in particulars submitted at the time of registration of factory/establishment***.—*The employer in respect of a factory/establishment to which this Act applies and to whom a code number has already been allotted, shall intimate to the appropriate Regional Office, Sub-Regional Office, Divisional Office or Branch Office, any change in the particulars furnished in Form 01 at the time of registration of the factory/establishment within two weeks of such change.*'

State Insurance (General) Regulations, 1950 (hereinafter referred to as the 'Regulations'), the Principal Employer is required to submit Form 01(A) to the ESIC, but the same was not produced.

9. Learned senior counsel submitted that the Appellant paid the entire dues to the Respondent No.1 after the Impugned Order and at the time of filing Petition for Special Leave to Appeal before this Court, hence prayed for his acquittal.

10. With regard to his designation, it is pointed out that in the counter-affidavit of the Respondent No.2 filed before this Court, Paragraph 5 explicitly provides that the Appellant was working only as a '*Technical Coordinator*' in the Company and one Mr. Ajit Hegde was the Principal Employer of Respondent No.2 at the relevant time.

11. The Appellant raised another leg of argument by contending that the guilt of the accused has to be kept in mind while imposing liability under the Act. It was submitted that the Act essentially criminalizes a civil wrong. This is evident by perusing Regulation

31C[3] of the Regulations, wherein it is provided that the ESIC has the power to recover unpaid contributions from the defaulting employer by way of a penalty and it is at the discretion of the ESIC to either waive off such damages or to reduce the same by up to 50%. This is contingent on the Company being declared as a '*sick company*', which Respondent No.2 was in this case. Therefore,

---

[3] '***31-C. Damages on contributions or any other amount due, but not paid in time***.—*If an employer fails to pay contribution within the periods specified under Regulation 31, or any other amount payable under the Act, the Corporation may recover damages, not exceeding the rates mentioned below, by way of penalty:—*

Period of delay	*Maximum rate of damages in per cent per annum of the amount due*
(i) Less than 2 months	*5%*
(ii) 2 months and above but less than 4 months	*10%*
(iii) 4 months and above but less than 6 months	*15%*
(iv) 6 months and above	*25%*

Provided that the Corporation in relation to a company in respect of which a Resolution Plan has been sanctioned by the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016 may:

(a) Waive up to 50 per cent of the damages levied or leviable depending upon merits of the case.

(b) in exceptional hard cases, waive either totally or partially the damages levied or leviable.'

The Proviso above, prior to its substitution [Notification No.N-12/13/1/2016-P&D dated 17-10-2018]**, read as under:**

'*Provided that the Corporation, in relation to a factory or establishment which is declared as sick industrial company and in respect of which a rehabilitation scheme has been sanctioned by the Board for Industrial and Financial Reconstruction, may:*

(a) in case of change of management including transfer of undertaking(s) to workers' cooperative(s) or in case of merger or amalgamation of sick industrial company with a healthy company, completely waive the damages levied or leviable;

(b) in other cases, depending on its merits, waive up to 60 per cent damages levied or leviable;

(c) in exceptional hard cases, waive either totally or partially the damages levied or leviable.'

ESIC ought to have adopted a more liberal approach instead of pressing for criminal prosecution.

12. Learned senior counsel summed up his argument stating that, if at all the appellant is to be convicted, it can be for a day till the rising of the Court. He relied on the judgment of this Court in ***ESI Corpn. v A K Abdul Samad,*** **(2016) 4 SCC 785**.

SUBMISSIONS BY RESPONDENT NO.1:

13. Learned counsel for Respondent No.1 submitted that the Appellant had a chance to produce documents to show that he was only a '*Technical Coordinator*'. Furthermore, the High Court made an observation that the Appellant also had an opportunity to produce wage-slips or pay-slips to show his status, and the same was not done. The Appellant also made no efforts to summon any relevant documents from Respondent No.2.

14. The learned counsel for ESIC also drew the Court's attention to a judgment of the Madras High Court in ***Pentafour Products***

***Ltd. v. Union of India*, 2005 SCC Online Mad 841**, wherein the issue pertained to the applicability of Section 138 of the Negotiable Instruments Act, 1881 *vis-à-vis* Sections 22(1)[4] and 22A[5] of the Sick Industrial Companies (Special Provisions) Act, 1986. The Madras High Court ruled that an order declaring a company sick under the Sick Industrial Companies (Special Provisions) Act, 1986 did not prohibit criminal proceedings against such company, under Sections 22(1) or 22A thereof.

15. It was submitted by learned counsel that the High Court observed that despite there being sufficient evidence against the Appellant, he was convicted under Section 85(i)(b) of the Act and

---

[4] '***22. Suspension of legal proceedings, contracts, etc.***—*(1) Where in respect of an industrial company, an inquiry under Section 16 is pending or any scheme referred to under Section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under Section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority.*
xxx'

[5] '***22-A. Direction not to dispose of assets***.—*The Board may, if it is of opinion that any direction is necessary in the interest of the sick industrial company or creditors or shareholders or in the public interest, by order in writing, direct the sick industrial company not to dispose of, except with the consent of the Board, any of its assets—*
(a) during the period of preparation or consideration of the scheme under Section 18; and
(b) during the period beginning with the recording of opinion by the Board for winding up of the company under sub-section (1) of Section 20 and up to commencement of the proceedings relating to the winding up before the concerned High Court.'

not under Section 85(i)(a) of the Act, thereby giving him a lesser sentence. In this backdrop, he sought dismissal of the appeal.

SUBMISSIONS BY RESPONDENT NO.2:

16. Learned counsel for Respondent No.2 submitted that the Appellant after completing Engineering course without any industrial experience joined as '*Technical Coordinator*' in the Company in July, 2009. He worked from July, 2009 to April, 2011 with the Company. He was only a Technical Coordinator and never acted as Principal Employer nor as General Manager.

17. Learned counsel also submitted that one of the promoters of the Company is the Principal Employer, namely Mr. Ajit Hegde. It was further submitted that the Appellant cleared the balance amount of Rs. 6,86,696/- (Rupees Six Lakhs Eighty-Six Thousand Six Hundred and Ninety-Six) of ESIC dues on 22.12.2023, though he was not the Principal Employer or General Manager of Respondent No.2 and counsel submitted that after the BIFR was dissolved by the Central Government (in 2016), the Company cleared the

Provident Fund Account dues and made a one-time full and final settlement with all its employees.

ANALYSIS, REASONING AND CONCLUSION:

18. The basic point canvassed by the Appellant is that he neither held the post of General Manager nor was he the 'Principal Employer' during the relevant period. The submission urged was that the liability was on the Company for making payments to the ESIC, therefore, he could not be charged, much less convicted, for an offence under the Act.

19. The Trial Court, the First Appellate Court as well as the High Court have returned concurrent findings of fact that the Appellant was liable, as in the record of Respondent No.2/Company he was described as General Manager, which could not be controverted by him. Further, there is also a finding that except for a stand taken before the authorities/Court, the Appellant was not able to show that he was not holding such a post or was not designated as General Manager, on the basis of his appointment letter, pay-slips etc.

Moreover, the Appellant who, be it noted, does not deny that he was under the employment of Respondent No.2/Company has not disclosed as to who was/were the person(s) holding such positions during the relevant period of time, about which he could not have been ignorant. Section 2(17) of the Act, which defines '*principal employer*', reads as under:

> '***(17) "principal employer" means—***
>
> *(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948 (63 of 1948), the person so named;*
>
> *(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;*
>
> *(iii) in any other establishment, any person responsible for the supervision and control of the establishment;*'

20. From the above, it is clear that the definition also includes a '*managing agent*' of the Owner/Occupier in the case of a factory or '*named as the manager of the factory under the Factories Act, 1948*' (hereinafter referred to as the "Factories Act") and for '*any other establishment*', '*principal employer*' would include '*any person responsible for the supervision and control of the*

establishment'. Therefore, designation of a person can be immaterial if such person otherwise is an agent of the Owner/Occupier or supervises and controls the establishment in question. From the materials available on record, we find that the Appellant falls within the ambit of Section 2(17) of the Act, being a '*managing agent*'.

21. Before the High Court, two decisions were relied upon by the Appellant *viz*. ***Employees' State Insurance Corpn., Chandigarh v Gurdial Singh*****, AIR 1991 SC 1741** and ***J K Industries Limited v Chief Inspector of Factories and Boilers*****, (1996) 6 SCC 665**. In our view, these are clearly distinguishable. In ***Gurdial Singh*** (*supra*), it was held that when a factory had an Occupier, who would fall within Section 2(17)(i) of the Act, the Directors of the company concerned could not be roped in by resorting to Section 2(17)(iii) of the Act, which was in the nature of a residuary clause. It was laid down that in the absence of factual proof and of actual position, Directors could not be treated as owners *ipso facto*. While holding that the High Court therein was right in affixing liability on the company, in the event of an 'occupier', the occupier was liable

to meet the demand, despite some other person being named as a 'manager'. To our mind, ***J K Industries Limited*** (*supra*) operates in a different field i.e., in the context of liability under the Factories Act and the interpretation accorded to, on whom liability falls on under the Factories Act, cannot be *simpliciter* accorded also to liability under the Act, as the Act has specific provisions thereon. Ultimately, the Court concluded:

> '***62.*** *To sum up our conclusions are:*
>
> *(1) In the case of a company, which owns a factory, it is only one of the directors of the company who can be notified as the occupier of the factory for the purposes of the Act and the company cannot nominate any other employee to be the occupier of the factory;*
>
> *(2) Where the company fails to nominate one of its directors as the occupier of the factory, the Inspector of Factories shall be at liberty to proceed against any one of the directors of the company, treating him as the deemed occupier of the factory, for prosecution and punishment in case of any breach or contravention of the provisions of the Act or for offences committed under the Act.*
>
> *…*'
>
> (emphasis supplied)

22. Therefore, ***J K Industries Limited*** (*supra*) dealt only with the Factories Act and do not aid the Appellant in the instant context.

23. Further, the High Court rightly indicated that non-remittance of the contribution deducted from the salary of an employee to the ESIC is a offence under Section 85(a) of the Act and punishable under Section 85(i)(a) of the Act but the Trial Court had imposed a lesser sentence as provided under Section 85(i)(b) of the Act. This is clearly borne out by Section 85(i)(a) of the Act which provides for a sentence of not less than one year imprisonment and fine of Rs.10,000/- (Rupees Ten Thousand), since the amount had been deducted from the salaries of the employees and not paid, which is the fact in the present case, whereas under Section 85(i)(b) of the Act, sentence of imprisonment is not less than six months and with fine of Rs.5,000/- (Rupees Five Thousand) in other cases. Of course, the Trial Court could have given a lesser sentence even for an offence under Section 85(i)(a) of the Act under the proviso to Section 85(i) of the Act. Overall, the High Court did not feel the necessity to interfere in the lesser sentence awarded by the Trial Court. Thus, we find that the conviction and the sentence does not require any interference, much less in the present case, where despite contributions having been deducted from the employees' salaries, they were not deposited with the ESIC.

24. In ***A K Abdul Samad*** (*supra*), the question before the Court was as to whether discretion had been granted only to reduce the sentence of imprisonment for a term lesser than six months or whether it encompassed discretion to levy no fine or a fine of less than five thousand rupees. Answering the said question, the Court held:

> '***9.*** *In our considered view, the clause "shall also be liable to fine", in the context of the Penal Code may be capable of being treated as directory and thus, conferring on the court, a discretion to impose sentence of fine also in addition to imprisonment although such discretion stands somewhat impaired as per the view taken by this Court in Zunjarrao Bhikaji Nagarkar [Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409: 1999 SCC (L&S) 1299]. But clearly no minimum fine is prescribed for the offences under IPC nor that the Act was enacted with the special purpose of preventing economic offences as was the case in Chern Taong Shang [Chern Taong Shang v. Commander S.D. Baijal, (1988) 1 SCC 507: 1988 SCC (Cri) 162]. The object of creating offence and penalty under the Employees' State Insurance Act, 1948 is clearly to create deterrence against violation of provisions of the Act which are beneficial for the employees. Non-payment of contributions is an economic offence and therefore the legislature has not only fixed a minimum term of imprisonment but also a fixed amount of fine of five thousand rupees under Section 85(a)(i)(b) of the Act. There is no discretion of awarding less than the specified fee, under the main provision. It is only the proviso which is in the nature of an exception whereunder the court is vested with discretion limited to imposition of*

> *imprisonment for a lesser term. Conspicuously, no words are found in the proviso for imposing a lesser fine than that of five thousand rupees. In such a situation the intention of the legislature is clear and brooks no interpretation. The law is well settled that when the wordings of the statute are clear, no interpretation is required unless there is a requirement of saving the provisions from vice of unconstitutionality or absurdity. Neither of the twin situations is attracted herein.*
>
> ***10.*** *Hence, the question is answered in favour of the appellant and it is held that the amount of fine has to be rupees five thousand and the courts have no discretion to reduce the same once the offence has been established. The discretion as per the proviso is confined only in respect of the term of imprisonment.*'
>
> (emphasis supplied)

25. The decision in ***A K Abdul Samad*** (*supra*), thus, is of no help to the Appellant. While the fine awarded and affirmed by the Courts below is upheld, we are not convinced to substitute the term of imprisonment to be operative only for a day till the rising of the Court

26. Accordingly, the appeal, being devoid of merit, stands dismissed. The Appellant is directed to undergo the sentence after setting off the period already undergone, if any and pay the fine, if not already paid, as awarded by the Trial Court. The exemption

from surrendering granted by order dated 18.03.2024 stands withdrawn. The appellant shall surrender before the Trial Court within two weeks from today.

27. Registry is directed to send a copy of this order to the Trial Court.

28. No order as to costs.

29. I.A. No.20317/2024 is allowed.

30. I.A. No.20329/2024 is disposed of.

…….....J.
[SUDHANSHU DHULIA]

…….....…..J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
APRIL 17, 2025