

525/02 appeal

5/6/24

Date: 17-05-2024

To

The Regional Director,
ESI Corporation,
Regional Office, Sector 19,
Chandigarh

Re: **NACT/4175/2019**


ESIC

VERSUS

SAMEER GUPTA

BILL

1.	Final payment	Rs. 2,500/-
	Total	Rs. 2,500/-


SEEMA PASRICHA

Advocate

PAN No. BDXPS7375H

Account No. 55139232471

State Bank Of India

District Courts, Sector 43, Chandigarh

IFSC: SBIN0050719



Note: Copy of Order dated 04-10-2023 is annexed herewith

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

In the Court of Dr. Aman Inder Singh,
Chief Judicial Magistrate, Chandigarh (UID:HR0303)

Case Details

Case Type	NACT
Filing Number	5891/2019, Filing Date: 02.04.2019
Registration Number	4175/2019, Date of Registration: 02.04.2019
CNR Number	CHCH03-005892-2019
Date of Judgment	04.10.2023

Employees State Insurance Corporation, through Insurance Inspector/ Social Security Officer, Sector 19A, Chandigarh.

----- Complainant

Versus

1. Sameer Gupta, Partner and Principal Employer of M/S Electronic Products of India, Resident of House No. 610, Sector 18B, Chandigarh.
2. M/S Electronic Products of India, 373, Phase I, Industrial Area, Chandigarh.

----- Accused

Complaint under Section 85 (g) of The Employees State Insurance Act, 1948.

Present:- Ms. Monika Sharma, Social Security Officer on behalf of complainant represented by Ms. Seema Pasricha, Advocate.
Accused no.1 for self and on behalf of accused no.2 on bail with counsel Sh. Yogesh Mittal, Advocate.

JUDGMENT

1. The above named accused have been sent to face trial under Section 85 (g) of The Employees' State Insurance Act, 1948 (ESI Act) by the

Chief Judicial Magistrate, Chandigarh
04.10.2023

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

complainant.

2. In brief, facts of the present case are that accused no.1 is the partner and principal employer of accused no.2, who is in charge and is responsible for the day to day affairs of accused no.2 in terms of section 2(17) of ESI Act. The accused no.1/employer was covered under ESI Act since 29-3-1979. On 23-10-2017, 26.10.2017 & 15.11.2017, the Social Security Officer visited the office of accused no.1 for inspection of records and gave the inspection report after which the accused were served notice dated 05.04.2018 under Section 45(2) of ESI Act wherein the accused were granted another opportunity to produce records on 25.04.2018. On 01.05.2018, the accused no. 1 submitted one application before complainant corporation and sought some time to produce the record, but the same was not produced. On 18.05.2018, the accused were again served notice under section 45(2) of ESI Act wherein the accused were granted another opportunity to produce records on 31.05.2018, but the accused failed to appear and produce the records. On 11.07.2018, another notice was sent to the accused for launching prosecution under section 85(g) of the Act, in case the records are not produced within 15 days, but the accused no. 1 sought some more time to produce the record. Last opportunity was granted to the accused on 09.10.2018 for appearance along with the records including

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

Attendance Register, Wages and Salary Register, General Ledgers, Cash Book including Balance Sheets, Bills/Vouchers, Employees register under Regulation 32, Accident Register required to be maintained under Regulation 66, Inspection Book maintained under Regulation 102-A, Contractor's contribution detail register, vide notice dated 11.09.2018. Thereafter one more last opportunity was granted to accused, but the accused failed to produce any documents/records. Hence, the present complaint has been filed.

3. On finding a prima-facie case, the accused was ordered to be summoned to face the trial vide order dated 02.04.2019. The accused appeared in response to notice and was bailed out.
4. From the material placed on the file, a prima-facie case under Section 85 (g) of ESI Act, 1948 was found to have been made out. Accordingly, notice of accusation was served upon the accused on 21.10.2021 to which he pleaded not guilty and claimed trial.
5. In order to prove its case, the complainant has examined Ms. Monika Sharma, Social Security Officer as CW-1 and Sh. Jaman Singh, Social Security Officer, as CW2. Thereafter, CW1 closed the evidence of complainant.
6. On completion of prosecution evidence, statement of the accused under section 313 Code of Criminal Procedure, 1973 was recorded, vide which, all the incriminating circumstances appearing in the

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

evidence of the prosecution were put to him. He denied the allegations and pleaded false implication. However, no evidence was adduced in defence.

7. I have heard learned counsel for the parties and gone through the file very carefully with their assistance.
8. Allegations against the accused are that accused no.1 being the partner/principal employer of accused no.2 failed to produce the records of the accused no.2 concern despite repeated demands. Notice of accusation was accordingly served upon the accused persons. Thereafter, it was for the complainant to prove its case against the accused beyond shadow of all reasonable doubt by adducing cogent evidence. In this process the complainant has examined CW-1 Ms. Monika Sharma and CW2 Sh. Jaman Singh, Social Security Officers of complainant corporation. CW1 has deposed that accused no. 1 is the partner and principal employer of accused no. 2 and covered under ESI Act since 29.03.1979. She deposed that Insurance Inspector went for inspection of the record of the accused-firm/company on 23.10.2017, 26.10.2017 & 15.11.2017 as per Ex. C-4/CW-1, Ex.C-5/CW-1 and submitted inspection report vide letter dated 15.11.2017, Ex. C-6/CW-1 and that SSO informed the Regional Director about the inspection and recommendation to initiate prosecution under Section 85 (g) of the Act against accused persons. CW1 deposed that

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

thereafter, notice dated 05.04.2018 under Section 45 (2) of ESI Act, Ex. C-7/CW-1 was served upon the accused persons, but they failed to produce the record, however, one application dated 01.05.2018 Ex. C- 9/CW-1 was submitted by accused no. 1 and he sought time to submit the record. CW1 further deposed that notice dated 18.05.2018 Ex. C-10/CW-1 and show cause notice dated 11.07.2018 Ex. C- 11/CW-1 were also served upon the accused, but accused did not produce any record of closure of the unit. CW1 deposed that complainant corporation had granted last opportunity on 15.11.2018 Ex. C-16/CW-1 and the same was replied by the accused vide letter dated 07.12.2018 Ex. C-17/CW-1. However, the accused failed to produce the record. Version of CW1 is duly corroborated by CW2.

9. In this complaint under Section 85(g) of The Employees' State Insurance Act, 1948, accused no.1 is alleged to be a partner and principal employer of M/S Electronic Products of India. The accused no.2 is the concern M/S Electronic Products of India. However, there is no averment regarding the correct legal status of accused no.2 i.e. whether it is a proprietary concern or a partnership firm. There is also nothing on record to show whether accused no.1 Sameer Gupta was arrayed as a partner or principal employer of M/S Electronic Products of India. CW1 is Ms. Monika Sharma, Social Security Officer of ESI Corporation. In her cross examination, she has stated that she has not

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

seen any document of proprietorship, partnership or Memorandum of Articles of Association in the file brought by her from the office. The defence set up by the accused is that, it has not been proved that he was principal employer connected with the concern. He has also submitted that concern had already been closed in the year 2013 and therefore, he could not have been asked to produce documents detailed in Ex. C4/CW1, C5/CW1, C7/CW1 and C10/CW1. There is, however, a letter Ex. C9/CW1 dated 23.04.2018 on record which has been addressed by Sameer Gupta, accused no.1, describing himself as a partner. This letter is addressed to the Regional Director, ESI Corporation, Chandigarh. In this letter, Sameer Gupta, accused no.1, states that he shall submit all the records with the Corporation as demanded from him through letter dated 05.04.2018 Ex. C7/CW1. He has further stated that his accounts person / dealing officer is on leave and therefore, further time was prayed for. Subsequently also, the record was not produced and another opportunity was granted to him vide Ex.C10/CW1 dated 18.05.2018 to produce the records. Thereafter, a notice dated 11.07.2018 was sent to him which is Ex. C11/CW1. On 30.07.2018 Ex. C13/CW1 was sent by accused to the Regional Director, ESIC in which he takes the stand that unit stood closed w.e.f. 01.04.2013. In the letter Ex. C9/CW1, accused has taken a clear stand that he will produce all the documents which are

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

required by the department vide letter Ex. C7/CW1. The stand of accused, therefore, is wavering and inconsistent.

10. In view of foregoing, the accused are held guilty and convicted for having committed the offence under Section 85 (g) of the Employees' State Insurance Act, 1948. Let the convict be heard on quantum of sentence after some time.

Pronounced in open court
04.10.2023

(Dr. Aman Inder Singh),
Chief Judicial Magistrate,
Chandigarh (UID:HR0303).

ORDER ON QUANTUM OF SENTENCE

Present:- Ms. Monika Sharma, Social Security Officer on behalf of complainant represented by Ms. Seema Pasricha, Advocate.
Convict Sameer Gupta in person for self and on behalf of accused no.2 with counsel Sh. Yogesh Mittal, Advocate.

1. Both the sides were heard on quantum of sentence. Statement of convict on quantum of sentence also recorded.
2. Convict has submitted that he is sole bread earner of his family and is a first offender, therefore, lenient view may be taken. Learned defence counsel also submitted that convict will not commit such offence in future, therefore, lenient view may be taken against the convict. On the other hand, complainant has submitted that as the offence against the convict has been proved, therefore, convict may be punished with

Chief Judicial Magistrate, Chandigarh
04.10.2023

NACT 4175/2019, CNR No. CHCH03-005892-2019
ESIC Vs M/S Sameer Gupta and anr.

highest punishment as provided under the law.

3. I have given thoughtful consideration to the submissions of both the sides.
4. Taking into consideration the age, character and antecedents of the convicts and facts and circumstances of the present case, the convict Sameer Gupta is sentenced to undergo simple imprisonment for three months and to pay a fine of Rs.3000/- for the offence punishable u/s 85(g) of the Employees' State Insurance Act, 1948. In default of payment of fine, the convict shall undergo simple imprisonment for further fifteen days. Further, the convict/accused no.2 concern is also sentenced to pay a fine of Rs.3,000/- for the above offence and same shall be paid by convict no.1. Fine deposited by the convicts in the Court. File be consigned to the record room after due compliance.

Pronounced in open court
04.10.2023

(Dr. Aman Inder Singh),
Chief Judicial Magistrate,
Chandigarh (UID:HR0303).

Note. This judgment contains eight pages and each page has been checked and signed by me.

Pronounced in open court
04.10.2023
Narender, Stenographer II

(Dr. Aman Inder Singh),
Chief Judicial Magistrate,
Chandigarh (UID:HR0303).

NARENDER
KUMAR Digitally
signed by
NARENDER
KUMAR

Chief Judicial Magistrate, Chandigarh
04.10.2023