

**IN THE COURT OF THE II METROPOLITAN MAGISTRATE, EGMORE,
CHENNAI DISTRICT.**

**PRESENT: Tr. C. Sundarapandian, B.Com., B.L.,,
II Metropolitan Magistrate
Wednesday, 10th day of August 2023
CALENDER CASE NO. 9723 OF 2005
(CNR. NO TNCHOF-000200-2005)**

Case Summary

Sl. No.	Description	Details
1	The period of remand of the accused:	Nil
2	The date of filing of the complaint/final report in the Court;	31.03.2005
3	The date of committal of the case to the Court of Session;	Nil
4	The date of questioning of the accused under Sections 228, 240, 246 and 251 of the Code of Criminal Procedure, 1973, as the case may be;	11.12.2020
5	Filing of all miscellaneous petitions and their results including The results on challenge before superior Courts; except routine Petitions like petitions under Section 317 of the Code;	<p>(i) The 3rd Accused had filed Petition under Section 239 Cr.P.C to discharge him from the case in CrI.M.P. No. 2232 of 2012 and the same was dismissed on 15.12.2017. Thereafter he had preferred Revision before Hon'ble Principal Sessions Judge in CrI.R.C. No. 7 of 2018 against CrI.M.P. No.2232 of 2012 and the same was dismissed on 04.10.2018, confirming the order passed by the lower court and also directed the lower court to complete the case within six months.</p> <p>(ii) The 3rd Accused had filed Petition to stay of all further proceedings in C.C.No.745 of 2005 in CrI.M.P. No.1649 of 2018 and the same was dismissed on 07.03.2018.</p> <p>(iii) The 4th Accused had filed CrI.M.P.No. 6542 of 2021 under Section 438 Cr.P.C on the file of Hon'ble High Court to enlarge him on bail and the same was closed on 01.04.2021 with a direction to the Petitioner to surrender before this court within a period of two weeks and file appropriate petition for recalling the non bailable warrant.</p> <p>(iv) Further, The 4th Accused had filed CrI.O.P.No. 3000 of 2018 under Section 482 Cr.P.C to call for records by sending in C.C.No.745 of 2005 to be sent to the Chief Metropolitan Magistrate Court, Chennai keeping view of the transfer OCPMP No. 4662 of 2017and quash the Petition along with stay was dismissed on 26.8.2021 for non-prosecution.</p>

		<p>(v) The 4th Accused had filed Petition under Section 311 Cr.P.C in Crl.M.P. No.26499 of 2022 and the same was allowed on 05.07.2023.</p> <p>(vi) The 1st Accused Partnership Firm represented by P. Sriramkumar has filed Writ Petitions Nos. 5525 and 5526 of 2011 in the nature of Writ of Prohibition and the same was Dismissed on 05.10.2012.</p> <p>(vii) The 1st Accused Partnership Firm represented by 4th Accused Raj Babu has filed Writ Petitions Nos. 21210 of 2012 in the nature of Writ of Mandamus and the same was Dismissed on 23.08.2021 with Direction.</p> <p>(viii) Petition u/s 203 Cr.P.C filed by 1st Accused represented by its PAartner Raja Babu (4th Accused) in Crl.M.P. No.15903 of 2022 and the same was dismissed on 05.07.2023.</p> <p>(ix) Petition Under Section 309 Cr.P.C filed by 2nd Accused in Crl.M.P.No.32502 of 2023 and the same was allowed on 03.08.2023</p> <p>(x) The 1st and other Accused had filed Crl.O.P No. 1062, 1067, 1073, 1076, 1119, 1110, 1116, 1122 and 1129 of 2019 before Hon'ble High Court, Madras to quash impugned order of adjudication of this court dated 04.1.2019 was dismissed on 20.09.2022.</p> <p>(xi) The 1st Accused had filed Crl.O.P. No. 23563, 23669, 23673, 23680 and 23685 of 2019 represented by 4th Accused to Quash the sanction of Criminal Prosecution before Hon'ble High Court, Madras was Dismissed on 14.10.2019 with direction to complete the trial and dispose of the cases at least within a period of six months from the date of receipt of copy of Order.</p>						
6	Date of examination in-chief and cross-examination of witness;	<table border="0"> <tr> <td>Witness</td> <td>Chief</td> <td>Cross</td> </tr> <tr> <td>PW.1</td> <td>13.07.2023</td> <td></td> </tr> </table>	Witness	Chief	Cross	PW.1	13.07.2023	
Witness	Chief	Cross						
PW.1	13.07.2023							
7	Date of examination of the accused under Section 313 of the Code;	19.07.2023						
8	Details of abscondence of an accused and his Appearance / production, as the case may be;							
9	Grant of stay by superior Courts and the results thereof	Nil						
10	Details of Victim Compensation Ordered	The 1 st , 2 nd and 4 th Accused are liable to pay fine of Rs.5,000/- (Rupees Five Thousand Only) each respectively. Out of which Rs.3,000/- (Rupees Three Thousand Only) each is to be paid to the Complainant for Compensation under Section 357 (i) Cr.P.C						

Sl. No.	Description	Details
1	Name of Complainant	Employees State Insurance Corporation, Punchdeep Bhavan No.143, Sterling Road, Nungambakkam, Chennai
2	Name of the Accused:	1.M/s. Jayapradha Cine Theatre, 2.Ms.Jayapradha,Partner, M/s. Jayapradha Cine Theatre, 3.Tr.Sri Ram Kumar, Partner, M/s. Jayapradha Cine Theatre, (The case against 3 rd Accused is split up and separate CC. No..... is assigned. 4. Tr. Raj Babu, M/s. Jayapradha Cine Theatre.
3	Charges against the accused :	The Accused have failed to comply with the statutory obligations of payment of contributions due to the Employees State Insurance Corporation in exercise of Powers conferred under Section 45-A, determined the contribution due amounting to Rs.52,982/- for the period from 01.04.2003 to 30.09.2003 by its order dated 09.02.2005 and the said order was communicated to the accused with direction to comply within the time limit stipulated i.e., within 15 days of the communication of the said 45-A Order, however, all the accused failed to comply with the statutory orders dated 09.02.2005 issued under the provisions of Section 45- A of the Act and thus committed an offence of non-payment of contributions under Section 85(a) of the said Act punishable under Section 85 (i) (b) of the Act.
4	Plea of the 1 st 2 nd and 4 th accused :	Not guilty
5	Finding of the Judge :	Accused are found guilty U/s. 85 (a), 85 (i) (b) of Employees State Insurance Act and the accused are Convicted u/s255 (2) of Cr.P.C

6	Sentence or order :	<p>In the result, 2nd and 4th accused are found guilty for commission of offence U/s. 85 (a), 85 (i) (b) of Employees State Insurance Act and the accused are Convicted u/s 255 (2) of Cr.P.C, and sentenced to undergo 6 months simple imprisonment. Further, the 1st 2nd and 4th Accused are liable to be pay fine of Rs.5,000/- each respectively. Out of which Rs.3,000/- (Rupees Three Thousand Only) each is to be paid to the Complainant for Compensation under Section 357 (i) Cr.P.C. Fine Amount in Total is Rs.15,000/-. In default of payment of fine by the 2nd and 4th Accused shall undergo 2 months imprisonment. All the accused shall pay Contribution of Rs.52,982/- to Complainant. Time Two months.</p> <p>Property Order: Nil.</p>
7	Pleader for the accused :	Tr. Raja Babu / 4 th Accused appeared as Party-in-Person for himself and on behalf of 1 st Accused and Mr. TNC KAUSHIK appeared for 2 nd Accused.
8	Prosecution conducted by :	Mr. P. Babu ESI Panel Advocate.

This case having been taken on file on 31.03.2005 and came up for final hearing on 26.07.2023 before me in the Presence of Tr P. Babu ESI Panel Advocate for the Complainant Corporation and Tr. Raja Babu / 4th Accused appeared as Party-in-Person for himself and on behalf of 1st Accused and Tr. TNC KAUSHIK Learned Advocate for 2nd Accused, upon perusing the case records, upon hearing arguments of both sides and having been stood over for consideration till this day, this court delivered the following:-

JUDGMENT

The Employees State Insurance Corporation has filed Complaint against 1st to 4th Accused for having failed to pay contribution due amounting to Rs.52,982/- for the period from 01.04.2003 to 31.09.2003 by its order dated 09.02.2005 thus committed an offence of non-payment of contributions under Section 85(a) of the said Act

punishable under Section 85 (i) (b) of the Act..

2. The excerpts of the Complaint in this case is as follows:-

The Accused have failed to comply with the statutory obligations of payment of contributions due to the Employees State Insurance Corporation in exercise of Powers conferred under Section 45-A, determined the contribution due amounting to Rs.52,982/- for the period from 01.10.2003 to 31.03.2004 by its order dated 09.02.2005 and the said order was communicated to the accused with direction to comply within the time limit stipulated i.e., within 15 days of the communication of the said 45-A Order, however, all the accused failed to comply with the statutory orders dated 09.02.2005 issued under the provisions of Section 45-A of the Act and thus the Accused have committed an offence of non-payment of contributions under Section 85(a) of the Employees' State Insurance Act, punishable under Section 85 (i) (b) of the Act.

3. This Court has taken Cognizance of offence and the case was taken on file, issued summons to Accused. After furnishing the copies of records relied on by the Prosecution to the Accused as per the provisions of Sec. 207 of Cr. P.C., after perusing the records, since prima facie case was made out against the accused, this Court asked accused explaining substance of the case of prosecution for offences Under Section 85(a) of the said Act punishable under Section 85 (i) (b) of the Act against the accused and the same was read over and explained to them in Thamizh. On questioning the Accused they denied the charges, pleaded not guilty. The 3rd accused is absconding and Non Bailable Warrant is pending, the case against 3rd Accused is separated by assaigning New C C No. 1498 of 2020 from 04.03.2020 onwards.

4. To prove the guilt of the accused, the prosecution has examined one witness PW.1 and marked Ex.P.1 to Ex.P.7. Neither Witnesses were examined nor exhibits were marked on the side of defence.

5. Plea of the accused: -

The accused was questioned regarding the commission of offence and they denied the offence that the case is false. They denied the substance of accusation and pleaded not guilty.

6. The case of prosecution in brief as per the witnesses is as follows:-

The case of the prosecution as per the evidence of prosecution witnesses is that The Regional Director of the Employees' State Insurance Corporation, Tarnilnadu (hereinafter referred to as the "Corporation") is the Chief Executive of the Tamilnadu Region of the Corporation, a statutory body constituted under Section 3(1) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act). He is a public servant within the meaning of Section 21 of the Indian Penal Code read with Section 93 of the Act. He is represented herein by the Insurance Inspector (Legal), Regional Office, ESI Corporation, Chennai - 600 034 (also a public servant) who in turn has been duly authorized to act, appear, make applications and institute criminal proceedings on behalf of the Corporation in all the Courts, vide the Resolution of the Corporation dated 26.07.91 which appeared in the Gazette of India, Part-III dated 17.08.91. An attested copy of the said Resolution is enclosed. The Accused No.1 is the Theatre and accused No.2 to 4 are the Partners of the Theatre known as M/s. Jayapradha Cine Theatre situated at 38, General Patters Road, Chennai – 600 002. The Theatre is covered under the said Act, as per provisions of Section 1(4) read with Section 2(12)/1(5). Thus, a distinctive No.51-18253-121 known as code number was allotted to the said Theatre. The Act, read with the ESI (General) Regulations, 1950, (hereinafter referred to as the "Regulation") is applicable to the said Theatre. The Accused No.1 is the Theatre and accused No.2 to 4 are the Partners of the Theatre who are in charge and responsible for the conduct of the business of the Theatre at the time of the commission of offence and so vicariously liable for the said offence. Under Section 40 of the ESI Act, the Principal Employer shall pay both the contributions, i.e., Employer's share of contribution, and Employees' share of Contribution in respect of every employee in the first instance and the Principal Employer is entitled to recover from the Employees, their share of contribution from their wages relating to the period in respect of which the contribution is payable. That

the employer is also required to submit to the Corporation, Returns and particulars and also maintain Registers as per Section 44 read with various provisions of ESI (General) Regulations, 1950. Every such contribution is payable under the Act by remitting Employer's share and Employee' share of contribution within 21 days from the expiry of the wage period in which the contribution fall due or within the stipulated period as laid down in the order issued by the Authorised Officer under Section 45-A. As the said accused have failed to comply with the statutory obligations of payment of contributions due, the Corporation in exercise of powers conferred under Section 45-A, determined the contribution due amounting to Rs.52,982/- (Rupees Fifty Two Thousand. Nine Hundred and Eighty Two only) for the period from 01.04.2003 to 30.09.2003 by its order dated 09.02.2005 and the said order was communicated to the accused with directions to comply within the time limit stipulated therein, i.e. within 15 days of the communication of the said 45-A Order. The accused, however, failed to comply with the statutory orders dated 09.02.2005 issued under the provisions of Section 45-A of the said Act and has thus committed an offence of non-payment of contributions under Section 85(a) of the said Act punishable under Section 85(i)(b) of the Act. The said offence has been committed within the jurisdiction of this Hon'ble Court. The Regional Director has accorded sanction for prosecution of the accused for the above said offence as required under Section 86(1) of the Act, The said sanction order is dated 10.03.2005. The Complainant prayed to punish the accused for contravening Provision Under Section 85(a) of the ESI Act, 1948 punishable under Section 85 (i) (b) of the Act, to pass order to the accused to pay the above referred contribution of Rs.52,982/- (Rupees fifty two thousand nine hundred and eighty two only) payable under the Act within a period Court may specify, as provided under Section 85-C of the ESI Act, 1948; allow the whole or part of the fine, if any, imposed upon the accused to the Corporation as provided under Section 357 Cr.P.C and pass any other order or direction deem fit in the circumstances of the case.

7. On conclusion of the prosecution witnesses on 19.07.2023 the accused were

examined u/s.313 Cr.P.C., pertaining to the incriminating circumstances and evidence tendered against them by the prosecution witnesses. The accused had denied the same as false. No oral or documentary evidence was let in on defence side.

8. Point for consideration is that: -

(i). Whether the prosecution has established the guilt of the accused beyond reasonable doubt?

9. On Point :-

The learned ESI Panel Advocate has submitted that the prosecution examined PW.1 who had deposed about the occurrence corroborating with material documents. The prosecution has proved the guilt of the accused beyond reasonable doubt and accused shall be punished.

10. Whereas, the learned counsel for the 2nd Accused would submit by filing Memo that the 4th Accused on his own behalf and on behalf of the other Accused, had paid the entire amount due towards ESI Contribution by means of Demand Draft which was acknowledged by the Respondent / Complainant. The Copy of the memo / acknowledgment is filed in along with the memo and submitted to record and pass appropriate order.

11. In criminal cases the burden to prove the case beyond all reasonable doubt is on the prosecution. As a general rule the onus of proving everything essential to the establishment of the charge against the accused lies on the prosecution. Keeping this broad principle in mind, let us now analyze the circumstances projected by the prosecution. The learned Panel Advocate has argued that the prosecution has proved through evidence of PW1 and Exhibits. Further argued that the evidence of prosecution witnesses are cogent, clear and trustworthy. Therefore, it is essential to peruse evidence of prosecution witnesses in detail.

12. The prosecution has mainly charged Accused under Section 85 (a) of the Act Punishable under Section 85 (1) (b) of Employees State Insurance Act. Further, under Section 86 A. Offences by companies (1)...(2)... (i).. (ii) “director” in relation to- (a) ... (b) a firm means a partner in the firm.

13. Section 85 (a) and 85 (1) (b) of Employees State Insurance Act reads as follows.

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) deducts or attempts to deduct from the wages of an employee the whole or any part of the employer’s contribution, or (c) in contravention of section 72 reduces the wages or any privileges or benefits admissible to an employee, or (d) in contravention of section 73 or any regulation dismisses, discharges, reduces or otherwise punishes an employee, or (e) fails or refuses to submit any return required by the regulations or makes a false return, or (f) obstructs any Inspector or other official of the corporation in the discharge of his duties, or (g) is guilty of any contravention of or non-compliance with any of the requirements of this Act or the rules or the regulations in respect of which no special penalty is provided,

[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].]

14. The case of Prosecution is that, The Accused have failed to comply with the statutory obligations of payment of contributions due to the Employees State Insurance Corporation in exercise of Powers conferred under Section 45-A, determined the contribution due amounting to Rs.52,982/- for the period from 01.04.2003 to 30.09.2003 by its order dated 09.02.2005 and the said order was communicated to the accused with direction to comply within the time limit

stipulated i.e., within 15 days of the communication of the said 45-A Order, however, all the accused failed to comply with the statutory orders dated 09.02.2005 issued under the provisions of Section 45-A of the Act and thus committed an offence of non-payment of contributions under Section 85(a) of the said Act punishable under Section 85 (i) (b) of the Act.

15. In this regard, the Crucial Witness is PW.1 Sujeendranath NS - Social Security Officer has deposed that the Corporation in exercise of powers conferred under Section 45-A, determined the contribution due amounting to Rs.52,982/- (Rupees fifty two thousand nine hundred and eighty two only) for the period from 01.10.2003 to 31.03.2004 by its order dated 09.02.2005 and the said order was communicated to the accused with directions to comply within the time limit stipulated therein, i.e. within 15 days of the communication of the said 45-A Order. The Accused, however, failed to comply with the statutory orders dated 09.02.2005 issued under the provisions of Section 45-A of the said Act and has thus committed an offence of non-payment of contributions under Section 85(a) of the said Act punishable under Section 85(i)(b) of the Act. The said offence has been committed within the jurisdiction of this Hon'ble Court. The Exhibits marked are Ex.P1 is Gazette Publication, Ex.P.2 is Show Cause Notice C-18 dated 26.03.2004 issued to the Accused Theatre and other Accused. Ex.P.3 is From D-5 Dated 10.12.2004 to Accused Theatre and other Partners of 1st Accused. Ex.P.4 Acknowledgment Card received by 1st Accused. Ex.P.5 is Order under Section 45-A of E.S.I Act dated 09.02.2005 issued to the Accused Theatre and its Partners. Ex.P.6 is Form C-6. Ex.P.7 Sanction order dated 10.03.2005.

The relevant portion of deposition of PW.1 is as follows.

1 வது எதிரி திரையரங்கு, 2 வது எதிரி ஆஜரில் இல்லை. 3 வது எதிரியின் மீதான வழக்கு தனியாக பிரிக்கப்பட்டுள்ளது. 4 வது எதிரி நீதிமன்றத்தில் ஆஜர்.

நான் தற்போது Social Security Officer ஆக பணி செய்து வருகிறேன். இவ்வழக்கை தாக்கல் செய்வதற்கு எனக்கு Gazette Publication/அரசிதழ் மூலம் அனுமதி வழங்கியுள்ளார்கள். அந்த

உண்மை நகல் **ம.த.சா.ஆ. 1** ஆகும். இவ்வழக்கில் 1 வது எதிரி ஜெயபிரதா தியேட்டர் ஆகும். 2 முதல் 4 எதிரிகள் மேற்படி தியேட்டரின் பங்குதாரர்கள் மற்றும் தினந்தோறும் நடைபெறும் நடைவடிக்ளை (ளுக்கு பொறுப்பான நபர்கள் ஆவார்கள். மேற்படி தியேட்டரின் கோடு எண். 51-18253-121 ஆகும். தொழிலாளர் காப்பீட்டு சட்டப்பிரிவு 40 உடன் உடன் இணைந்த தொழிலாளர் காப்பீட்டு சட்டம் பொது Regulation 31 ன் படி மேற்படி ஜெயபிரதா தியேட்டரில் பண்புரியும் பணியாளர்களுக்காக அதன் உரிமையாளர்கள் Contribution தொழிலாளர் காப்பீட்டு நிறுவனமான எங்கள் நிறுவனத்தில் செலுத்த வேண்டும் ஆனால் அக்டோபர் 2003 முதல் மார்ச் 2004 வரை அவர்கள் அவ்வாறு Contribution செலுத்த தவறிவிட்டார்கள். எனவே நாங்கள் ஜெயபிரதா தியேட்டருக்கு C-18 adhoc, BASIS அறிவிப்பு dt.10/12/2004, எதிரிகளுக்கு அனுப்பினோம். மேற்படி அறிவிப்பு **ம.த.சா.ஆ.2** ஆகும். மேலும் படிவம் டி-5 நாள்- 10.12.2004 என்ற அந்த அறிவிப்பும் அனுப்பினோம். அது **ம.த.சா.ஆ.3** ஆகும். மேற்படி ம.சா.ஆ.3 ஐ 1 வது எதிரி பெற்று கொண்டதற்காக அஞ்சல் ஒப்புக்கை அட்டை **ம.த.சா.ஆ.4** ஆகும். மேற்படி அறிவிப்புகளை பெற்று கொண்டு மேற்படி அறிவிப்பில் ஜெயபிரதா தியேட்டர் கம்பிளக்ஸ் உரிமையாளர்கள், ஆஜராக சொல்லிக் கூறினோம். மேற்படி அறிப்பினை பெற்று கொண்டு ஆஜர் ஆவதாக கூறியிருந்தார்கள். காலஅவசாகம் கேட்டார்கள். ஆனால் அவர்கள் ஆஜராகவில்லை மற்றும் அவர்கள் தொழிலாளர்களின் சம்மந்தமாக எந்தவித Statement Return னும் சமர்ப்பிக்கவில்லை. எனவே நாங்கள் இஎஸ்ஐ சட்டப்பிரிவு 45 A கீழ் 09.02.2005 தேதியிட்ட மேற்படி உத்தரவு பிறப்பித்தோம். அந்த உத்தரவு **ம.த.சா.ஆ. 5** ஆகும் அதில் எந்த காலம் என்றும் அக்டோபர் 2003 முதல் மார்ச் 2004 வரை என்று குறிப்பிட்டும் Contribution தொகை ரூ.52,982/- வை செலுத்த சொல்லி கூறியிருந்தோம். ஆனால் அதன்படி அவர்கள் செலுத்தவில்லை. எனவே 1 முதல் 4 எதிரிகள், இஎஸ் ஐ சட்டப்பிரிவு 85(a) பிரிவின் கீழ் தண்டிக்கக்கூடிய குற்றத்தை புரிந்துள்ளதால் 1 முதல் 4 எதிரிகள் பிரிவு 85(1)(b) ன் தண்டனை வழங்கும்படி பிராத்திக்கொள்கிறேன். இஎஸ் ஐ சட்டப்பிரிவு 86(1) ன் பிரிவின் கீழ் மண்டல இயக்குநர் 1 முதல் 4 எதிரிகள் மீது வழக்கு தொடர்வதற்கு முன் அனுமதி அளித்துள்ளார். ஜெயபிரதா தியேட்டரில் பண்புரியும் ஊழியர்களுக்கு ESI பங்கு தொகை செலுத்தவதற்கான விவரங்களை பணத்தை form C-6 ல் பதிவு செய்வோம். ஆனால் அக்டோபர் 2003 முதல் மார்ச் 2004 வரை அவர்கள் தொழிலாளர் காப்பீட்டு சட்டத்தின் கீழ் செலுத்த வேண்டிய contribution தொகையை செலுத்துவில்லை. மேற்படி படிவம் சி-6 **ம.த.சா.ஆ.6** ஆகும். 1 முதல் 4 எதிரிகள் மீது வழக்கை பதிவு செய்ய 10.03.2005 ல் முன் அனுமதிக்கப்பட்டது அதற்கான உத்தரவு **ம.த.சா.ஆ.7** ஆகும். மனுப்படி எதிரிகளுக்கு தண்டனை வழங்கும்

படி பிராத்திக்கொள்கிறேன்.

(4 வது எதிரி ராஜ்பாபு (1 வது எதிரி நிறுவனத்தின் கூட்டாளி) பு.த.சா.1 சாட்சி நீதிமன்றத்தில் சாட்சியம் அளிக்கும் போது தனக்கு உடல் நிலை சரியில்லை நான் தொகை செட்டில்மென்ட் செய்து விடுகிறேன் என்று திரும்ப திரும்ப ஒரே விவரத்தை கூறி பு.த.சா.1 ஐ சாட்சியம் அளிக்க விடாமல் இடையூறு ஏற்படுத்துகிறார்)

எதிரிகள் தரப்பில் குறுக்குவிசாரணை-இல்லை.

எதிரிகள் தரப்பில் வழக்கறிஞர் ஆஜரில் இல்லை.

16. Thus, it is evident that the 1st Accused is Theater. The 2nd to 4th Accused are partners. Other facts culled out from materials available in records are that earlier it was Midland Theatre and now it is Jayapradha Theatre. The Theatre is covered under the said Act, as per provisions of Section 1(4) read with Section 2(12)/1(5). Thus, a distinctive No.51-18253-121 known as code number was allotted to the said Theatre. The Act, read with the ESI (General) Regulations, 1950, is applicable to the said Theatre. The Accused No.1 is the Theatre and accused No.2 to 4 are the Partners of the Theatre who are in charge and responsible for the conduct of the business of the Theatre at the time of the commission of offence and so vicariously liable for the said offence. Under Section 40 of the ESI Act, the Principal Employer shall pay both the contributions, i.e., Employer's share of contribution, and Employees' share of Contribution in respect of every employee in the first instance and the Principal Employer is entitled to recover from the Employees, their share of contribution from their wages relating to the period in respect of which the contribution is payable. The employer is also required to submit to the Corporation, Returns and particulars and also maintain Registers as per Section 44 read with various provisions of ESI (General) Regulations, 1950. Every such contribution is payable under the Act by remitting Employer's share and Employee' share of contribution within 21 days from the expiry of the wage period in which the contribution fall due or within the stipulated period as laid down in the order issued by the Authorised Officer under Section 45-A. The accused have failed to comply with the statutory obligations of

payment of contributions due, the Corporation in exercise of powers conferred under Section 45-A, determined the contribution due amounting to Rs.52,982/- Thus, it is clear that the PW.1 has categorically deposed that it is the accused who have contravened the Provision under Section 85 (a) punishable under Section 85 (1) (b) of Employees State Insurance Act. There is no explanation by Accused as to any Reply for Show cause notice or filing of Returns. In the absence of the same this court draws inference that the Accused have failed to file Returns

17. A combined reading of evidence of PW.1 and Ex.P.1 to Ex.P.7 marked by prosecution would go to show that evidence has been placed on record by prosecution to prove that that accused have committed offence who have contravened the Provision under Section 85 (a) punishable under Section 85 (1) (b) of Employees State Insurance Act.

18. Be, that as it may, (i) the 3rd Accused had filed Petition under Section 239 Cr.P.C to discharge him from the case in Crl.M.P. No. 2235 of 2012 and the same was dismissed on 15.12.2017. Thereafter he had preferred Revision before Hon'ble Principal Sessions Judge in Crl.R.C. No. 4 of 2018 against Crl.M.P. No.2236 of 2012 and the same was dismissed on 04.10.2018, confirming the order passed by the lower court and also directed the lower court to complete the case within six months.

(ii) The 3rd Accused had filed Petition to stay of all further proceedings in C.C.No.9723 of 2005 in Crl.M.P. No.1646 of 2018 and the same was dismissed on 07.03.2018.

(iii) The 4th Accused had filed Crl.M.P.No. 6525 of 2021 under Section 438 Cr.P.C on the file of Hon'ble High Court to enlarge him on bail and the same was closed on 01.04.2021 with a direction to the Petitioner to surrender before this court within a period of two weeks and file appropriate petition for recalling the non bailable warrant.

(iv) Further, The 4th Accused had filed Crl.O.P.No. 3000 of 2018 under Section 482 Cr.P.C to call for records by sending in C.C.No.745 of 2005 to be sent to the Chief Metropolitan Magistrate Court, Chennai keeping view of the transfer

OCPMP No. 4662 of 2017 and quash the Petition along with stay was dismissed on 26.8.2021 for non-prosecution.

(v) The 4th Accused had filed Petition under Section 311 Cr.P.C in Crl.M.P. No.26499 of 2022 and the same was allowed on 05.07.2023.

(vi) The 1st Accused Partnership Firm represented by P. Sriramkumar has filed Writ Petitions Nos. 5525 and 5526 of 2011 in the nature of Writ of Prohibition and the same was Dismissed on 05.10.2012.

(vii) The 1st Accused Partnership Firm represented by 4th Accused Raj Babu has filed Writ Petitions Nos. 21210 of 2012 in the nature of Writ of Mandamus and the same was Dismissed on 23.08.2021 with Direction.

(viii) Petition u/s 203 Cr.P.C filed by 1st Accused represented by its Partner Raja Babu (4th Accused) in Crl.M.P. No.15915 of 2022 and the same was dismissed on 05.07.2023.

(ix) Petition Under Section 309 Cr.P.C filed by 2nd Accused in Crl.M.P.No.32505 of 2023 and the same was allowed on 03.08.2023.

(x). The 1st Accused had filed Crl.O.P. No. 23563, 23669, 23673, 23680 and 23685 of 2019 represented by 4th Accused to Quash the sanction of Criminal Prosecution before Hon'ble High Court, Madras was Dismissed on 14.10.2019 with direction to complete the trial and dispose of the cases at least within a period of six months from the date of receipt of copy of Order.

Where as, the case is of the year 2005. The Above filing of Petitions would go to show that first of all the 3rd and 4th Accused are actively engaged in day to day affairs of the Partnership Firm and they are vicariously liable for act of 1st accused Partnership Firm.

19. The 2nd Accused has filed Written Argument on 03.08.2023 that the 1st Accused Firm was wound up as on 2008 and non-functional as on this date. Whereas the period of commission of crime is October 2003 to March 2004. The period of wound up of Firm is very much belated to the period of commission of crime. Hence, the contention of 2nd accused turned turtle. Further, the 1st, 4th accused have not taken

such plea who have actively filed Writ and other Petitions seeking amnesty schemes which draws inference that the 1st Accused Firm is active in nature. Except, such Written Argument and Memo there is no legally acceptable evidentiary Material Documents adduced by 2nd Accused inspite of sufficient opportunity were granted to substantiate the same. Hence, on that score also, the Contention of 2nd Accused cannot be countenanced.

20. From evidence of PW.1 sufficiently corroborates with the evidence as to the nature and manner in which the contravention took place. The testimony of prosecution witnesses are reliable, trustworthy, cogent and duly corroborated by other witnesses and material documents. The Prosecution has proved its case beyond all reasonable doubt. To disprove the case of prosecution, the Accused had not brought on records any facts and circumstances except bare denial and thus the defence failed to disprove the case. The other grounds raised by Learned counsel for Accused does not hold much water. From Prosecution side evidence, I am of opinion that the accused is guilty, liable to be convicted and sentenced.

21. **Question of Sentence.** A2, A4 called absent. Hence Question of sentence could not be asked.

22. The Employees State Insurance Act is a piece of social welfare legislation enacted primarily with the object of providing certain benefits to employees in case of sickness, maternity and employment injury and also to make provision for certain others matters incidental thereto. The Act in fact tries to attain the goal of socio-economic justice enshrined in the Directive principles of state policy under part 4 of our constitution, in particular articles 41, 42 and 43 which enjoin the state to make effective provision for securing, the right to work, to education and public assistance in cases of unemployment, old age, sickness and disablement. Thus, the commission of crime is socio – economic offence. Therefore, the offence committed is heinous and deplorable.

23. I would, therefore, uphold and maintain conviction of the Accused under Section 85 (1) (b) of Employees State Insurance Act. Hence, the Pleas of Accused are

dismissed. In view of the aforesaid discussion and on balancing aggravating and mitigating circumstances, in my opinion, the present case does not fall under the category of to show leniency case i.e. there is no alternative but to impose sentence. It is a fit case, where the Accused should be directed to suffer sentence Since the gravity of offence is serious, no leniency could be considered.

In the result, 2nd and 4th accused are found guilty for commission of offence U/s. 85 (a), Punishable under Section 85 (i) (b) of Employees State Insurance Act and the accused are Convicted and sentenced to undergo 6 months simple imprisonment u/s. 255 (2) of Cr.P.C., and Further, the 1st, 2nd and 4th Accused are liable to pay fine of Rs.5,000/- (Rupees Five Thousand Only) each respectively. Out of which Rs.3,000/- (Rupees Three Thousand Only) each is to be paid to the Complainant for Compensation under Section 357 (i) Cr.P.C. Fine Amount in Total is Rs.15,000/- (Rupees Fifteen Thousand Only) In default of payment of fine by the 2nd and 4th Accused (4th Accused for 1st Accused) shall undergo 2 months simple imprisonment. All the accused shall pay Contribution Amount of Rs.52,982/- to Complainant. Time to pay Contribution is Two months. A2, A4 called absent. Issue Non Bailable Warrant against A2, A4.

Property Order: Nil

Typed by me in Computer, corrected and pronounced by me in open court this the 10th day of August 2023.

**II Metropolitan Magistrate,
Egmore, Chennai.08.**

List of Witnesses:

List of Witnesses on the side of Prosecution :

SL. No.	Witness	Name
1	PW.1	Sujeendranath NS - Social Security Officer

List of Exhibits on the side of Prosecution:-

**Judicial Form No. 68 (Rule 49)
Exhibits Index
In the court of II Metropolitan Magistrate
Calendar Case No.9723 OF 2005**

S.No. of the Exhibit	Description of the Exhibit and its date	Date, when the exhibit was filed in the case	How Marked	By whom filed	Remarks
1	Gazette Publication,		Ex.P.1	PW.1	
2	Show Cause Notice C-18 dated 10.07.2003 issued to the 1 st Accused Theatre	10.07.2003	Ex.P.2	PW.1	
3	is Form D-5 Dated 10.12.2004 to Accused Theatre and other Partners of 1 st Accused	10.12.2004	Ex.P.3	PW.1	
4	Acknowledgment Card received by 1 st Accused		Ex.P.4	PW.1	
5	is Order under Section 45-A of E.S.I Act dated 09.02.2005 issued to the Accused Theatre and its Partners		Ex.P.5	PW.1	
6	Extract of Form C-6 register		Ex.P.6	PW.1	
7	Sanction order dated 10.03.2005		Ex.P.7	PW.1	

List of Defense Witness and Exhibits : Nil.

**II Metropolitan Magistrate,
Egmore, Chennai.08.**

