



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**Criminal Appeal No.937 of 2007**

The Regional Director  
Employees' State Insurance  
Corporation, Panchdeep Bhavan,  
NM Joshi Marg, Lower Parel,  
Mumbai- 400 013.

... Appellant.

Versus

1. Mr BC Chawla  
Chairman, National Sports  
Club of India  
Lala Lajpatrai Marg,  
Worli, Mumbai-400 018.

2. The National Sports Club  
of India,  
Lala Lajpatrai Marg,  
Worli, Mumbai-400 018.

3. State of Maharashtra ... Respondents.

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Mr Anand Kulkarni, for the appellant.  
Ms Priyanka H Chavan appointed Advocate (Legal Aid) for  
respondents No.1 and 2.  
Mr Arfan Sait, APP, for the respondent No.3/ State.

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**Coram: R.N. Laddha, J.**

**Date: 6 March 2026**

**Judgment :**

The instant appeal arises from the judgment and order passed by the learned Metropolitan Magistrate, 25 Court, Mazgaon, Mumbai, in CC No.7/ESIC/2002, acquitting the respondents/accused of the offence punishable under Section 85(g) read with Section 85(iii)(a) of the Employees' State Insurance Act, 1948.

2. The case of the prosecution, in brief, is that respondent No.1 is the principal employer of the establishment known as National Sports Club of India, situated at Lala Lajpatrai Marg, Worli, Mumbai, and the said establishment is covered under the provisions of the ESI Act.

3. According to the prosecution, an insurance inspector of the Employees' State Insurance Corporation visited the establishment on 18 June 2001 for inspection under Section 45 of the Act and called upon the accused to produce records relating to wages and accounts for the period April 1995 to March 1998. It was alleged that the accused failed to produce the said records for inspection. On this basis, after obtaining sanction from the Joint Director, a complaint came to be filed against the accused for the aforesaid offence.



4. The case was tried as a summons case. The particulars of the offence were explained to the accused on 14 January 2003, to which the accused pleaded not guilty and claimed to be tried. In order to prove its case, the prosecution examined two witnesses, namely, Madhukar Dudhaji Mhatre (P.W.1), insurance inspector attached to the Legal Department of the ESI Corporation and Kaldura Prakasam (PW2), insurance inspector who allegedly visited the establishment.

5. The evidence of P.W.1 indicates that he had not personally visited the establishment nor had he asked the accused to produce the records. His role was limited to filing the complaint based on the report submitted by P.W.2 and on the sanction granted by the competent authority. P.W.2 deposed that he visited the establishment of the accused for the inspection of records and that the last visit was made on 18 June 2001. According to him, he had called upon the establishment to produce the books of accounts for the period 1995–1998 for verification of wages, but the establishment failed to produce the said records. He therefore submitted a report to the Regional Director.

6. The learned counsel appearing for the accused contended that the records had already been produced earlier before the authorities and that the visit dated 18 June 2001 was only for



re-verification of the records.

7. Upon perusal of the documentary evidence, particularly the visit note produced at Exhibit P4, it is evident that the inspection conducted on 18 June 2001 was for re-verification of records i.e. books of accounts for the period from April 1995 to March 1998. This itself indicates that the records had been verified earlier. The cross-examination of P.W.2 assumes significance. He admitted that the word re-verification in his visit report referred to verification of records that had already been examined earlier by another Inspector. He further admitted that upon earlier verification, the dues found payable had already been deposited by the establishment. These admissions clearly indicate that the relevant records had been produced earlier and that the dues determined pursuant to such verification had been paid by the establishment. In the absence of any material showing the necessity for reopening the earlier verification or assessment, the demand made by the inspector for production of the same records again appears to have been for the purpose of re-verification.

8. It is well settled that unless the statute specifically provides for reopening an assessment or requiring repeated production of records already verified, the employer cannot be subjected to prosecution merely for failure to produce the same



documents again. In the present case, the prosecution has failed to establish any statutory provision under the Employees' State Insurance Act, 1948 authorising such reopening or repeated verification of records already examined. The prosecution has also not examined the officer who had allegedly conducted the earlier verification. No material has been placed on record explaining the purpose or legal basis for the alleged re-verification. In criminal proceedings, the burden lies upon the prosecution to prove the offence beyond reasonable doubt. The evidence on record, particularly the admissions of P.W.2, creates a clear doubt as to whether the accused had actually committed any default under Section 85(g) of the Act. The learned Magistrate, after appreciating the evidence on record, held that the prosecution had failed to prove that the accused had deliberately failed to produce the records as required under law. The Magistrate therefore acquitted the accused.

9. It is well settled that an appellate court ordinarily does not interfere with an order of acquittal unless the view taken by the trial court is perverse or wholly unreasonable. In the present case, the findings recorded by the learned Magistrate are based on the evidence on record and do not suffer from any illegality. This Court therefore finds no reason to interfere with the order



of acquittal.

10. As a result, the present criminal appeal stands dismissed. The judgment and order of acquittal passed by the learned Metropolitan Magistrate in CC No.7/ESIC/2002, on 19 January 2004 is hereby confirmed.

[R.N. Laddha, J.]