



Crl.O.P.Nos.22258,22370,22374,  
22377 ,22378,22379,22380,  
22381,22383,22384 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :16.10.2023

Pronounced on :20.10.2023

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

Crl.O.P.Nos.22258,22370,22374, 22377 ,22378,22379,22380,  
22381,22383,22384 of 2023

Crl.O.P.No.22258 of 2023 & batch

1. M/s Jayapradha Cine Theatre(A-1)  
Represented by its Partner,  
Mr.Raj Babu,  
No.38, General Patters Road,  
Chennai.

2.Mr.Raj Babu (M/aged 66 years) (A-4)  
Partner.  
M/s Jayapradha Cine Theatre,  
117-a, MLA Colony, Banjara Hills,  
Khairatabad,  
Hyderabad 500 034.

.. Petitioners

/versus/

Employees State Insurance Corporation,  
represented by Insurance Inspector (Legal),  
Punchdeep Bhavan,  
No.143, Sterling Road,  
Nungambakkam, Chennai 600 034.

.. Respondent



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**WEB COPY** Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records relating to the Crl.M.P.No.22076 of 2023 in C.A.No.519 of 2023 on the file of the Principal District and Sessions Judge, Chennai and set aside the same as far as the petitioner is concerned.

For Petitioners :Mr.A.Abdul Hameed,  
Senior Counsel for  
Mrs.Revathi Manivannan

For Respondent :Mr.T.N.C.Kaushick  
Standing Counsel/Spl.P.P.for ESI

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### COMMON ORDER

These batch of 10 Criminal Original Petitions are preferred by A-1 and A-4 in 5 private complaints filed by the Insurance Inspector (Legal) of Employees State Insurance Corporation, Chennai ( in short “ESIC”).

2. The first accused/first petitioner M/s Jayapradha Theatre is a commercial establishment run by its partners. The fourth accused/second petitioner is one of its partners. As an employer it owe to pay ESIC, its contribution and the employees contribution under the Scheme. It is a statutory obligation cast on the petitioners and failure of it is an offence. Since for



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different period there was default in remitting the contribution, orders were issued under Section 45-A of the ESI Act for recovery and simultaneously prosecution under Section 85(a) punishable under Section 85(i)(b) of the Act was launched in the year 2005 as under:-

1.C.C.No.745/2005 under Section 85(a) for the period from 10/02 to 03/03 for Rs.52982/-.

2.C.C.No.746/2005 under Section 85(a) for the period from 11/91-09/02 for Rs.817974/-.

3.C.C.No.748/2005 under Section 85(e)-CPE 4/03-3/04(for non-submission of R.C.)

4.C.C.No.9723/2005 under Section 85(a) for the period from 4/03-9/03 for Rs.52982/-.

5.C.C.No.9725/2005 under Section 85(a) for the period from 10/03-3/04 for Rs.52982/-.

3. The petitioners are challenging the order passed under Section 45-A of Employees' State Insurance Act, 1948 filed under EIOP's. They were later dismissed during the month of July 2017. In the dismissal order, the Employees Insurance Court has also made an observation that the petitioners not interested



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WEB COPY in paying the contribution, but prolonging the issue by preferring various appeals/petitions in different Courts just to delay the criminal prosecution. The reason for such observation is filing of writ petitions in W.P.No.3925/2008, W.P.No.7039/2008, (both were filed to prohibit the Corporation from proceeding further in the CC's). After dismissal of these writ petitions, the petitioners filed W.P.No.5525 of 2011 and W.P.No.5526 of 2011 (both to consider the amnesty proposal as per the Scheme of the year 2010). These writ petitions were also dismissed. Thereafter, filed W.P.No.21210 of 2012 and in this writ petition, the High Court, vide order dated 23/08/2012, directed the ESIC to consider the representation of the petitioner dated 04/02/2011 under Amnesty Scheme. Again the petitioners filed W.P.Nos.13186 to13190 of 2013 and the same were dismissed on 06/02/2014. Thereafter also, the petitioners instead of participating in the trial, unabatedly filing the petitions in one form or another before one Court or another. After 18 years, the Metropolitan Magistrate Court was able to complete the trial and fixed 10/08/2023 as a date for pronouncement of judgment.



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4. On the date of judgment, the second petitioner, who represent the first petitioner did not appear before the Court. Recording the same, the trial Court pronounced judgments in all the five cases. The accused persons were held guilty of committing offences under Sections 85 (a), 85(i) (b) of the Employees State Insurance Act, and sentenced 2<sup>nd</sup> and 4<sup>th</sup> accused to undergo 6 months Simple Imprisonment and accused 1,2 and 4 to pay fine of Rs.5000/- each out of which, Rs.3,000/- to be paid to the complainant (ESIC) as compensation. Beside, they were directed to pay the contribution amount claimed in each cases.

5. Challenging the 5 judgments, the petitioners have filed Criminal Appeals. Without surrendering, they had sought for suspension of sentence. The Principal District and Session Judge, Chennai heard the petitions for suspension of sentence and dismissed them on 11/09/2023.

6. The dismissal order, which declined to suspend the sentence is impugned in these batch of petitions filed by A-1 and A-4.



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**WEB COPY 7.** Mr.Abdul Hameed, the Learned Senior Counsel appearing for the

petitioners submitted that, on the date before judgment, the second petitioner came down to Chennai to attend the Court. However, due to sudden illness he was hospitalised and not able to attend the Court. After recovery, he had instructed the counsel to file appeal and seek suspension of sentence. The Appellate Court, erroneously dismissed the petitions stating that conviction warrant issued against the absconding convicts and not surrendered to the Court before seeking suspension of sentence.

8. The learned Senior Counsel appearing for the petitioners also submitted that pending trial, the contribution amount already paid. Therefore, the order of conviction and sentence itself is liable to be setaside. Further, the declining the amnesty proposal offered by the petitioners with malafide intention will vitiate the criminal prosecution.

9. Per contra, the learned Standing Counsel and Special Public Prosecutor for ESI had filed a detailed counter stating that, how the liability has occurred and the tactics adopted by the petitioners to delay the payment of the



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statutory contribution. He submitted that the liability commenced from the year 1991, for which after delay of several years, just a month before the judgment, the petitioners had remitted the contribution demanded. The amount remitted, after delay of 18 years after prosecution without the accrued interest and non appearance on the date of judgment would clearly show the attitude of the petitioners. Listing out the various petitions filed to delay the proceedings and the contribution due payable by the first petitioner's establishment as on 27/09/2023 with interest which runs to Rs.37,68,977/-, the learned Counsel submitted that, the petitioners are not entitled for suspension of sentence, unless they pay the amount.

10. The following are the dues pending from the petitioners excluding damages:

<b>Period</b>	<b>Contribution due</b>	<b>Total interest due (as on 27.09.2023)</b>	<b>Damages</b>	<b>Total Dues (as on 27.09.2023)</b>
12/85 to 03/88	0	54,429		54,429
04/88 to 09/88	0	19,852		19,852
10/88 to 09/89	0	43,657		43,657
10/89 to 10/91	0	66,316		66,316
10/88 to 09/89	0		19,931	19,931



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Period	Contribution due	Total interest due (as on 27.09.2023)	Damages	Total Dues (as on 27.09.2023)
10/87 to 03/88	0		8,422	8,422
11/91 to 09/02	0	26,07,795		26,07,795
10/02 to 03/03	0	1,34,350		1,34,350
04/03 to 09/03	0	1,30,387		1,30,387
10/03 to 03/04	0	1,26,402		1,26,402
04/04 to 09/04	61,133	1,75,670		2,36,803
10/04 to 03/05	61,133	1,38,081		1,99,214
06/06 to 09/06	40,756	80,663		1,21,419
	<b>1,63,022</b>	<b>35,77,602</b>	<b>28,353</b>	<b>37,68,977</b>

11. The Learned Senior Counsel for the petitioners dispute the quantum of alleged due and claims that the establishment has been closed long ago and the calculation shown in the counter affidavit is incorrect. Further, he also submitted that for these claims, there was no notice or order under Section 45-A been received.

12. Heard the counsels. Records perused.

13. ESI Act is a Social Welfare Legislation meant for protecting the interest of the employees. The employer is supposed to collect the contribution

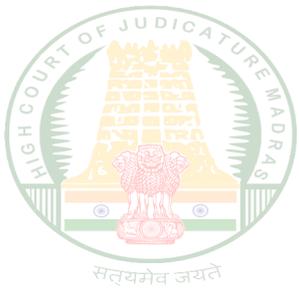


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WEB from its employee and also make a matching contribution and remit it to the Corporation every month within the time prescribed. In this case, it is found that the first petitioner partnership firm represented by its partners have collected the Employee's Contribution, but not remitted along with its contribution. This default has been committed continuously and by some or other way, the petitioners were able to delay the trial for nearly 18 years. Their scant respect to the judicial system shown by the petitioner is recorded by the trial Court in its judgment. The counter filed by the Corporation also shows that how this case been prolonged with a fake attempt to settle the dispute under Amnesty Scheme.

14. Therefore, this Court is of the view that, the appellate Court is right in rejecting the petitions to suspend the sentence of the accused, who did not appear before the trial Court on the date of judgment and also did not surrender before the Appellate Court, when the request for suspension of sentence was taken up for hearing. The track record of the case justifies the said order. Hence, these Criminal Original Petitions are dismissed.

15. In case the conviction warrant is executed, or all or any accused



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WEB COPY surrender before the Appellate Court and seek bail/suspension of sentence, the said application shall be considered only with a deposit of Rs.20,00,000/- (Rupees Twenty Lakhs only) paid jointly or severally in the account of the appeals. The Lower Appellate Court shall not entertain petition for bail/suspension of sentence, unless the pre-condition of deposit is complied and the accused/petitioner physically appears. To enable the petitioners to satisfy the pre-condition (deposit of Rs.20 lakhs and appearance in person) 15 days time from today is granted.

20.10.2023

Index:yes/no

Speaking order/non speaking order

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To:

- 1.The Principal District and Sessions Judge, Chennai.
- 2.The Insurance Inspector (Legal),  
Employees State Insurance Corporation,  
Punchdeep Bhavan, No.143, Sterling Road,  
Nungambakkam, Chennai 600 034.
- 3.The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.



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**delivery Common Order made in**  
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