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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 6843/2022, CRL.M.A. 26517/2022

M/S PARK HOSPITAL PVT. LTD. & ORS. Petitioners

Through: Mr. Siddharth Luthra, Sr. Advocate
(VC) Amicus with Mr. Tanveer
Ahmed Mir, Mr. S.K. Goyal, Mr.
Fahad Khan, Mr. Rakesh Bhardwaj
and Mr. Kartik Venu, Advocates.

versus

EMPLOYEES STATE INSURANCE CORPORATION.. Respondent

Through: Mr. K. P. Mavi, Advocate with Mr.
Arvind Kumar Bansal, SSO ESIC.

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
17.04.2023

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1. The present petition has been filed seeking the following prayers:

*“A. Quash I set aside the Criminal Complaint No. 1161/17 Titled
"E.S.I. Corporation Vs MIS Park Hospital" arising out of Case.
No.3 I ESIC I 17 under section 85 (g) ESI Act, 1948 filed by the
Respondent No. 1 for the offence under Section 85(g) of the ESI
Act against the Petitioners herein;*

*B. Quash I set aside the order taking cognizance and well as order
summoning the Petitioners dated 19.01.2017 passed by the court
of Sh. Pranjal Aneja, Ld. MM - Shahdara District, Karkardooma
Courts, Delhi;*

*C. Quash I set aside all consequential proceedings arising from
the said complaint; and/or”*



2. Learned counsel for the respondent at the outset submits that since the present petition has been filed against the summoning order passed by the learned MM, the proper remedy for the petitioners would have been to file a revision petition before the learned Sessions Court under Section 397 Cr. P.C.
3. Per contra, Sh. Siddharth Luthra, learned senior counsel assisted by Mr. Tanveer Ahmed Mir, for the petitioner submits that in view of the judgment of the Hon'ble Supreme Court in ***Adalat Prasad v. Rooplal Jindal & Ors.*** 2004 SCC 7 338 and ***Sethuraman v. Rajamanickam***, 2009 SCC 5 153, the only window/remedy available to the petitioner is by way of Section 482 Cr. P.C.
4. Let the matter be listed for arguments on this issue and on maintainability on 09.10.2023.
5. Further, Sh. Siddharth Luthra, learned senior counsel has submitted that since the notification No. S-38025/23/2010-SS.I dated 23.03.2011 is under challenge in Writ Petition (Civil) No. 4572/2011 titled ***Hospitals and Nursing Homes Employees Federation & ors. V. Govt. of India and Ors.*** and Writ petition (Civil) No. 6111/2011 titled ***Delhi Medical Association v. Union of India and Anr.***, the respondent-corporation should not have issued the show cause dated 15.02.2016.
6. Sh. Siddharth Luthra, learned senior counsel has submitted that as stay of the operation of this notification has been issued, the petitioner is not covered with ESI. Learned counsel submits that this petition is still pending disposal and next listed on 12.09.2023.
7. Learned counsel for the respondent submits that as per records of the



ESI, the petitioner has been depositing the ESI contribution since April, 2015 and is also taking all the benefits. Learned counsel submits that they should not be any hitch for the petitioners to produce the records.

8. Sh. Siddharth Luthra, learned senior counsel submits that the petitioner-hospital came under the umbrella of ESI only after notification No. S-38025/23/2010-SS.I dated 23.03.2011 which was ultimately stayed in above writ petitions bearing Writ Petition (Civil) No. 4572/2011 titled **Hospitals and Nursing Homes Employees Federation & ors. V. Govt. of India and Ors.** and Writ petition (Civil) No. 6111/2011 titled **Delhi Medical Association v. Union of India and Anr.** and therefore there was no occasion for the petitioner to maintain the records. However, learned senior counsel has very fairly submitted that the petitioners shall produce the records of whatever is being maintained by them after 2015 to the Corporation and with a representation regarding the challenge of notification dated 23.03.2011.
9. **Let respondent-corporation examine the same and file the reply/report.**
10. In the meantime, let petitioners appear through counsel before the learned Trial Court and let the procedure regarding supply of copies be completed. However the learned Trial Court shall await the orders of this Court before framing of notice under Section 251 of Cr. P.C..

DINESH KUMAR SHARMA, J

APRIL 17, 2023/Pallavi