

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.47738 of 2012

Arising Out of PS.Case No. -1392 Year- 2010 Thana -null District- PATNA

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1. Upendra Singh, Branch Manager, Reliance General Insurance Co. Ltd., 301302, Kaushalya Estate, Bunder Bagicha, Dak Bunglow Road Chowraha, Patna.

.... Petitioner/s

Versus

1. The State Of Bihar.

2. Manish Kumar, Partner, M/S Satyendra Kumar and Company, Resident Of G-7, Tara Tower, Behind Republic Hotel, Exhibition Road, Police Station Gandhi Maidan, District Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Shahi, Adv.

Ms Archana Sinha, Adv.

For the State : Mr. Dr. Mayanand Jha, APP

Mr. Rajendra Prasad Nat, APP

For Opposite Party No.2 : Mr. Nagadeo Choubey, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 04-05-2015

This application under section 482 of the Code of Criminal Procedure has been filed for quashing the order of summoning dated 04.12.2010 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1392(C) of 2010.

2. The brief facts of the case, as per the complaint petition, is that the complainant is a contractor and the accused persons are the officials of Reliance General Insurance Company Limited (in short “the Company”), which deals in providing various kinds of risk bearing general insurance regarding health, construction etc. The accused persons allured and persuaded the complainant for the insurance of the allotted work of road construction as named in the



complaint petition. After much persuasion, the complainant submitted a proposal form for insurance along with a cheque bearing no.698774 dated 06.08.2007 in favour of the Company for a sum of Rs.01,09,544/-, which was encashed by the accused persons at Kolkatta on 23.08.2007. Despite receipt of the premium for insurance, the accused persons neither issued any policy against the said proposal nor refunded the premium amount paid by the complainant. After much persuasion, the accused persons issued a cheque for Rs. 45,024.90 only to the complainant without disclosing any reason for retaining the rest amount. The complainant sent a legal notice to the accused persons but they did not give reply to the notice and as such the complainant was compelled to file the complaint petition. The complainant has further claimed that the accused persons allured and induced the complainant for wrongful loss in good faith to the complainant with ulterior motive and evil design for wrongful gain and they are still utilizing the hard earned money received from the complainant and they have kept mum without disclosing any reason to the complainant.

3. The complainant was examined on oath and in support of the complaint one enquiry witness, namely, Sanjay Kumar was examined on behalf of the complainant. After holding enquiry, the learned Magistrate, finding prima facie case to be made out for the

offences punishable under sections 406, 420 and 120B of the Indian Penal Code, took cognizance vide impugned order dated 04.12.2010 against the petitioner and two others, namely, Managing Director of the Company and one Birendra Prasad, an agent of the Company.

4. At the outset, it has been submitted by the learned counsel for the petitioner that the parties have mutually settled their dispute outside the court. They have filed a compromise petition in the court below. The offences for which the petitioners are being prosecuted are under sections 406, 420 and 120-B of the Indian Penal Code. Though the offences under sections 406 and 420 of the Indian Penal Code are compoundable but section 120-B of the Indian Penal Code is not compoundable under section 320 of the Code and, hence, the petitioner has filed the present application under section 482 of the Code for quashing the summoning order.

5. Dr. Mayanand Jha, learned Additional Public Prosecutor, has submitted that since substantive offences punishable under sections 406 and 420 of the Indian Penal Code are compoundable in nature and the parties have entered into a compromise, no useful purpose would be served by putting the accused persons on trial for the offence under section 120-B of the Indian Penal Code as the same deals with the conspiracy hatched up in respect of substantive offence for which the accused are put on trial.

6. Mr. Nagdeo Chaubey, learned counsel for the opposite party no.2, concedes that the matter which essentially involves dispute of a civil nature has amicably been settled between the parties to the lis and the opposite party no.2 is no more interested now in proceeding with the complaint in question.

7. While dealing with a case of almost identical nature, a three Judge Bench of the Apex Court in ***Central Bureau of Investigation, ACB, Mumbai Vs. Narendra Lal Jain and others [(2014)5 SCC 364]*** held in paragraph 13 as under :-

“In the present case, as already seen, the offence with which the respondent-accused had been charged are under Sections 120-B/420 of the Penal Code. The civil liability of the respondents to pay the amount to the Bank has already been settled amicably. The terms of such settlement have been extracted above (see para 3). No subsisting grievance of the Bank in this regard has been brought to the notice of the Court. While the offence under Section 420 IPC is compoundable the offence under Section 120-B IPC is not. To the latter offence the ratio laid down in ***B.S. Joshi*** [B.S. Joshi Vs. State of Haryana : (2003) 4 SCC 675] and ***Nikhil Merchant*** [(2008) 9 SCC 677] would apply if the facts of the given case would so justify. The observation in ***Gian Singh*** [Gian Singh Vs. State of Punjab : (2012) 10 SCC 303] (para 61) will not be attracted in the present case in view of the offences alleged i.e. under Sections 420/120-B IPC.”

8. In the present case, having regard to the fact that the dispute between the parties is purely of a civil nature not involving

any public policy and the opposite party no.2 has settled the disputes with the accused persons, no useful purpose would be served by allowing the prosecution to continue even though section 120-B of the Indian Penal Code is not compoundable under section 320 of the Code.

9. In that view of the matter, for the purpose of securing the ends of justice, I deem it fit and proper to allow the application.

10. Accordingly, the impugned order dated 04.12.2010 passed by the learned Judicial Magistrate 1st Class, Patna in Complaint Case No. 1392(C) of 2010 and the entire criminal prosecution arising out of the said complaint case are quashed.

(Ashwani Kumar Singh, J)

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