IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51717 of 2013

Arising Out of PS.Case No. -941 Year- 2011 Thana -AURANGABAD COMPLAINT CASE District- AURANGABAD

==

1. Uttam Kumar Haldar(Chief Manager), Life Insurance Corporation Of India, Aurangabad (Branch), Bihar.
2. Cashier, Life Insurance Corporation Of India, Aurangabad Branch (Bihar)

.... Petitioners

Versus

1. The State of Bihar
2. Yogendra Kumar Rajak S/O Gopal Rajak Village- Dhobdiha, P.O- Dadhipi, Via- Shivganj, P.S- Madanpur, District- Aurangabad (Bihar)

.... Opposite Parties

==

Appearance :

For the Petitioner/s : Mr. Abhimanyu Vatsa, Addvocate
Mr. Nilanjay Chatterjee, Advocate
Mr. Sudhanshu Trivedi, Advocate

For the Opposite Party/s : Mr. APP

==

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 25-05-2017

Heard learned counsel for the petitioner and learned APP for the State. In spite of notices having been issued to opposite party no. 2, which was duly received by him, as informed by the notice server, he has chosen not to appear. Hence, this application is being heard on merits.

Petitioners under Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.) seek quashing of the order dated 15.05.2012, passed by Sri R.K. Tiwary, learned Judicial Magistrate, 1st Class, Aurangabad, in Complaint Case No. C-941/2011, whereby cognizance for the offence punishable under Sections 406 and 420 of the Indian Penal Code has been taken against the petitioners while issuing summons.

The brief facts of the case is that the complainant filed a complaint case before the learned Chief Judicial Magistrate, Aurangabad stating therein that he had insured himself with the LIC under the "Money Plus" policy from Aurangabad Branch in which he paid first annual premium of Rs. 20,000/- on 23.07.2007. The second premium of Rs. 20,000/- was deposited on 14.08.2008 through one Rajesh Kumar, who was a LIC agent. The 3rd premium of Rs. 20,000/- was deposited on 03.11.2009 again through Raj Kumar, LIC agent, but after five years he could take the surrender value that he approached the branch. The complainant alleged that it was informed by the petitioners, who were Chief Manager and Cashier respectively of the LIC Branch, that the said policy No. 515345955 was in a lapsed condition as the 3rd premium, which was deposited through cheque, the cheque had bounced, hence, the 3rd premium could not be appropriated towards the Insurance Policy, whereas the complainant stated that the 3rd premium was deposited in cash, which was misappropriated by the petitioners, hence, a complaint case was lodged.

It has been submitted by the learned counsel for the petitioners that the said Rajesh Kumar has been made witness no. 1 in the said complaint case and there is contradiction in the statement of the complainant in his complaint and on the examination of Rajesh Kumar, who has stated that the complainant had deposited the amount himself in cash. It is submitted that the whole prosecution case fails as the witness Rajesh Kumar has not supported the statement of the complainant and that under Section 47 of the LIC of India Act, the employees of LIC are protected from mala fide prosecution. Section 47 of the said Act is quoted hereunder :

> "47. Protection of action taken under Act-
> No suit, prosecution or other legal proceeding shall lie against any member or employee of the Corporation for anything which is in good faith done or intended to be done under this Act."

He further submits that the petitioners have not committed any offence and while holding their official position, the policy premium of the insured was deposited and in the present case the 3rd premium of Rs. 20,000/- through cheque got dishonoured, hence, the policy lapsed. He further relies on the judgment of the Apex Court in the case of Harshad J. Shah and another Vs. L.I.C. of India and others, since reported in (1997) SC 2459 while referring to para 17 and 18, submits that as per Regulation 8(4) of 1972, which in 1991 became a Rule, prohibits the agent from collecting the premium on behalf of the LIC and for which the LIC could not have been made liable.

He further submits that the matter is purely of civil nature, which has been given a criminal colour and prosecution has been lodged against the officials of the LIC while holding their official position.

However, learned APP for the State submits that prima facie case is made out against the petitioners, hence, the order of cognizance calls for no interference.

Having heard the rival submissions of the parties, since the matter arises out of civil dispute, which can only be ascertained on the basis of evidence and documents by a civil court of competent jurisdiction, allowing the prosecution to continue as against the petitioners would amount to gross abuse of the process of the Court, hence, the order of cognizance dated 15.05.2012, passed by Sri R.K. Tiwary, learned Judicial Magistrate, 1st Class, Aurangabad in connection with Complaint Case No. C-941/2011 and the entire proceedings in connection with the aforesaid complaint case, is hereby quashed.

Application is allowed.

(Nilu Agrawal, J)

Rajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	25.05.2017
Transmission Date	25.05.2017