IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.31637 of 2012

Arising Out of PS.Case No. -383 Year- 2011 Thana -null District- JAMUI

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Ratneshwar Upadhyay, SON OF Sri Yogendra Upadhyay, Bm, Life Insurance Corporation Of India, Jamui Branch , P.O./P.S./District & Town-Jamui

.... Petitioner

Versus

1. The State Of Bihar
2. Krishna Kumar Sao S/O Gokul Prasad Yadav R/O Hellajot, P.S.-Jhajha, Distt-Jamui

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Rajeev Ranjan Prasad, Advocate Mr. Abhimanyu Vats, Advocate Mr. Sudhanshu Trivedi, Advocate Mr. Abhishek Singh, Advocate.
For the Opposite Parties	:	Mr. Yogendra Singh, APP
For the Informant	:	Mr. Rajesh Kumar Sinha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 03-05-2017

Heard Sri Rajeev Ranjan Prasad, learned counsel for the petitioner, Mr. Yogendra Singh, learned APP for the State as well as Mr. Rajesh Kumar Sinha, learned counsel for the Informant.

2. Petitioner seeks quashing of order dated 19.07.2011 passed by Sri Sharad Chandra Kumar, Judicial Magistrate, Ist Class, Jamui in Case No.383(C) of 2011 as also the entire criminal prosecution whereunder the Magistrate finding prima-facie case for the offence under Sections 403, 409, 467/34 of the IPC ordered for issuance of summons against the petitioner and other co-accused.

3. The facts in brief is that the complainant/Opposite Party No.2 filed a complaint case on the file of learned Chief Judicial Magistrate, Jamui alleging therein that being policy holder of Life Insurance Corporation of India, Jamui

Branch, he received payments on two occasions but he was not paid an amount of Rs.40,000/- as final payment. It is alleged that on repeated inquiry, the complainant was assured that he would receive the cheque, but later on it was found that the cheque issued by the Opposite Party was received by the agent. The complainant approached the accused persons one by one but accused no.2 and 3 abused the complainant and threatened to implicate him in a false case. The complainant gave a written notice to the Divisional Manager, Life Insurance Corporation of India on 11.02.2011 which was not replied. The brother of the complainant received an envelop on 03.03.2011 which on opening was found empty. The complainant thereafter, suspecting some foul play on the part of the accused persons, filed the complaint case. The Magistrate examined the complainant on solemn affirmation and three more witnesses. After inquiry, the Magistrate found prima-facie case for the offence under Sections 403, 409, 467/34 of the IPC and ordered for issuance of summons.

4. The learned counsel for the petitioner submits that from the complaint petition itself, it would appear that there is no allegation of misappropriation of money or criminal breach of trust or commission of an act of forgery. The complainant had lodged the case against the Branch Manager of LIC without mentioning the name of person who allegedly chaired the said post on the relevant date. The petitioner has been summoned without any basis. He further submits that a cheque for an amount of Rs.40,000/- vide cheque bearing no.173099 dated 28.12.2000 was sent to the complainant (Opposite Party No.2) through the agent to deliver the same to the complainant. As the policy holder refused to receive the cheque, the same was sent to him by speed post. The complainant has falsely alleged that the envelop received under speed post was an empty one. The complainant has filed a complaint case no.11 of 2012 also before the District Consumer Forum, Jamui under the provision of Consumer Protection Act, 1956 for redressal of his grievance. The insurance company again issued another cheque bearing no.42000595 dated 02.12.2012 for Rs.40,000/- which on refusal has been filed before the court below and so no case of misappropriation of is made out against the petitioner or any employee of Insurance Company. He further submits that in view of provisions of Section 47 of Life Insurance Corporation Act,1956 the complaint case is not sustainable in the eye of law and so the order issuing summons is fit to be quashed.

5. The APP on the other hand opposed the submissions. It has been submitted that as the Insurance company mala-fide withheld the last payment and they are liable to be prosecuted.

6. On perusal of the materials on record, I find that the grievance of the complainant/Opposite Party No.2 is that the last instalment of Rs.40,000/- has been withheld by the Life Insurance Company. From the submission of learned counsel for the petitioner, it appears that the Insurance Company had already issued a cheque for an amount of Rs.40,000/- in favour of the complainant. In course of submissions, the counsel for the petitioner under took to revalidate the cheque even if it has not been presented before the bank by the complainant. In this regard, the provision of Section 47 of Life Insurance Corporation of India Act, 1956 has been cited on behalf of petitioner which reads as follows:-

> "Section 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."

7. The provision is explicit and it bars penal prosecution also if the Act is done in good faith by the employees of corporation. In the case in hand, the complainant has not made out a case of mala-fide act of any employee of the Life

Insurance Corporation.

8. The acts of employee of Life Insurance Corporation in not issuing cheque in time at best would amount deficiency in their service for which the complainant has remedy before appropriate forum. The complainant has also availed another forum by filing a complaint case no.11 of 2012 before the District Consumer Forum, Jamui. In the case in hand, I find that the averment made in the complaint petition as also the materials on record do not attract any penal provision of the IPC. The dispute is purely a civil dispute. The Magistrate without considering all these facts has passed the order in mechanical manner which is not sustainable in the eyes of law.

9. In view of discussions made above, this Court has no option but to quash the impugned order. Accordingly, the order dated 19.07.2011 passed by Judicial Magistrate, Ist Class, Jamui in Complaint Case No.383C of 2011 is set aside and the above criminal proceeding is quashed.

10. This Cr. Miscellaneous is allowed.

(Sanjay Kumar, J)

B.Kr./-

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