IN THE HIGH COURT OF JUDICATURE AT BOMBAY, AURANGABAD BENCH, AT AURANGABAD.

Criminal Application No. 0463 of 2018

District : Aurangabad

1. Aegon Life Insurance Company Ltd.
(Formerly known as Aegon Religare Life Insurance Company Ltd.),
Registered office at Building No.1,
Third Floor, Unit No.1,
Nesco Park,
Western Express Highway,
Goregaon (E), Mumbai - 400 063.

2. Chairman,
Aegon Life Insurance Company Ltd.
(Formerly known as Aegon Religare Life Insurance Company Ltd.),
Registered office at Building No.1,
Third Floor, Unit No.1,
Nesco Park,
Western Express Highway,
Goregaon (E), Mumbai - 400 063.

3. Executive Director,
Aegon Life Insurance Company Ltd.
(Formerly known as Aegon Religare Life Insurance Company Ltd.),
Registered office at Building No.1,
Third Floor, Unit No.1,
Nesco Park,
Western Express Highway,
Goregaon (E), Mumbai - 400 063.

(Represented for applicant nos.01 to 03 by Shri Ashish Kishor Ovalekar,
Age : 40 years,
Occupation : Service as Assistant Vice-President (Legal), Employee Code 15616.

.. Applicants

versus

1. The State of Maharashtra,
   Through Kannad Police Station,
   Dist. Aurangabad.

2. Sanjay s/o. Nemichand Ambekar,
   Age : 47 years,
   Occupation : Business,
   R/o. Near Kannad Khandsari
   Area, Kannad,
   Taluka Kannad,
   Dist. Aurangabad.

.. Non-applicants.

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Mr. Hemantkumar F. Pawar, Advocate, for the applicants.

Mr. S.W. Munde, Addl. Public Prosecutor, for non-applicant no.01.

Mr. P.K. Ipper, Advocate, holding for Mr. P.V. Barde, Advocate, non-applicant no.02.

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CORAM : PRASANNA B. VARALE &
SMT. VIBHA KANKANWADI, JJ.

DATE : 09TH MARCH 2018

JUDGMENT *[Per Smt. Vibha Kankanwadi, J.]* :

01. The applicant no.01 - Company has filed this application invoking the inherent powers of this Court under Section 482 read with Section 320 of the Code of Criminal Procedure, 1973, to get the first information report quashed and set aside which has been filed on the basis of the information lodged non-applicant no.02.

02. The applicant no.01 - Company is a

registered Company having its head office at the given address. Applicant nos.02 and 03 are ex-chairman and executive director. The applicants came to know about the registration of the crime against them with Kannad Police Station, for the offences punishable under Sections 406, 409, 417, 419, 420, 427, 468, 471, 120B, read with Section 34 of the Indian Penal Code vide C.R. No. I-088/2016 on the information given by non-applicant no.02. The FIR is against 23 persons. Accused nos.01, 04, 07, 10, 13 and 16 are the Insurance Companies, whereas accused nos.02, 03, 05, 06, 08, 09, 11, 12, 14, 15, 17 and 18 are the Chairman and Directors of the said Company. Accused nos.19 to 23 are the brokers of the Insurance Company.

03. The informant is stated to be resident of Kannad city and educated up to IIIrd standard. He runs a cloth shop named and styled as Rajdhani Collection. He had taken loan of Rs. 1,50,00,000/- from the State Bank of Hyderabad. In the FIR, it has been contended that on 23.03.2014, when the informant was proceeding towards Bombay, he received a call on his mobile, around 03.00 p.m. to 05.00 p.m. A lady disclosing her name as Shruti Desai, holding the post as Assistant Manager, Head Office of HDFC Bank, Delhi, talked with the informant and gave information in respect of the loan facilities available with the Bank. It was disclosed to him, that the said Bank will give loan with zero percent interest. The State Bank of Hyderabad was charging 14 % interest to the

informant and under such circumstance, he answered positively to the proposal put forward by the said lady. Thereafter, the dealing was struck.

04. The FIR further states that when it was asked by the informant as to what he would be required to do to obtain loan of Rs. 1,00,00,000/-, then he was told that he has to take life insurance policy of HDFC Bank for an amount of Rs. 2,68,000/-. He was directed to submit documents. It was then decided that the representative of the said Bank would meet the informant at Ulhasnagar, District Thane, as the informant was on his way. Accordingly, that representative met the informant on 23.03.2014. The informant handed over two cheques drawn on State Bank of Hyderabad, Kannad Branch, for an amount of Rs. 2,65,000/- and also the KYC documents. It was also told after the lady was contacted, that the proposal will be completed by 11.00 'O' clock and the amount of Rs. 1,00,00,000/- would be deposited in his account. Again after a lapse of two days, the lady called the informant and put proposal that since he is good with the banking, he can avail loan of Rs. 10,00,00,000/-. The informant then asked the lady to give loan of Rs. 4,00,00,000/-. The insurance policy required to be taken was to the tune of Rs. 4,40,000/-. She had then sent reprsentative of applicant no.01 - Company and also the application. The cheque was given by the informant in respect of that amount. However, thereafter for about 08 to 10 days, there was no communication. When the lady was

contacted, she told that higher officer had sent e-mail to the informant and asked the informant to ensure amount of Rs. 5,10,000/- and thereafter loan would be sanctioned. The informant told the lady, that it is not possible for him to invest again. The lady then told him that any of his relatives can take policy. On that basis, the informant's brother Sanjay invested the amount. Inspite of investing the amount, the lady had compelled the informant to take insurance of Rs. 2,68,000/-. He did not receive the amount.

05. The FIR further states that, in all, the informant has taken policy of Rs. 28,00,000/-. When the informant started facing financial problem, he tried to encash and get the amount as against the policy. In fact, on the basis of the communication and even the e-mail, the informant had got confidence and, therefore, he had parted with his amount. However, the Company has deceived him. With these allegations, the informant had lodged a criminal complaint on 26.05.2016 which was registered as Criminal Misc. Application No. 240 of 2016, before Judicial Magistrate (F.C.), Kannad. However, the original complainant had approach the learned Magistrate on 13.06.2016 with a prayer that he may be allowed to withdraw Criminal Misc. Application No. 240 of 2016 with liberty to file fresh complaint. The said prayer of the informant was allowed on 13.06.2016.

06. After withdrawal of said Criminal Misc. Application No. 240 of 2016, the informant filed Criminal Misc. Application No. 324 of 2016 on 14.07.2016. By an order dated 18.07.2016, learned Judicial Magistrate (F.C.), Kannad, directed the police to investigate the offence in terms of provisions of Section 156(3) of the Code of Criminal Procedure. On the basis of the said report, offence vide C.R. No. I-088/2016 came to be registered.

07. Applicant nos.01 to 03 had filed criminal revision application before learned Sessions Court at Aurangabad, challenging the order passed by the Judicial Magistrate (F.C.), Kannad, below Exhibit 1 in Criminal Misc. Application No. 324 of 2016, dated 18.07.2016. The said case is still pending.

08. It has been contended by the applicants, that the basic contention of the informant is that agents / representatives of the Company had given the loan facility to him with dishonest and fraudulent intention. In fact, the applicant has registered itself as a Life Insurance Company with the Insurance Regulatory & Development Authority of India [IRDAI]. Accused nos.19 to 23 are independent insurance brokers registered with IRDAI which institute authorise such brokers to source policies of all insurance companies. These brokers are not the agents or employees of the applicants. For the acts of such brokers or agents, the applicants cannot be held vicariously responsible. Still the applicants

with *bona fide* and looking into the nature of allegations, by showing soft corner, is issuing / returning the premium which the informant had deposited through the brokers / agents. Applicant nos.01 to 03 had issued cheque of HDFC Bank in favour of the informant - non-applicant no.02 which has been accepted by the informant. The informant has received entire amount of premium which he had paid and, therefore, he does not want to proceed against the present applicants. They have, therefore, prayed for quashing of the FIR against them.

09. Non-applicant no.02 was served and he appeared through Advocate. Heard Advocate Mr. H.F. Pawar for the applicants. Heard Advocate Mr. P.K. Ipper, holding for Advocate Mr. P.V. Barde, for non-applicant no.02 - original informant. Learned Addl. Public Prosecutor Mr. S.W. Munde was present on behalf of non-applicant no.01.

10. A statement has been made on behalf of the informant, that the informant had received the cheque of the premium given by the applicants and he has encashed it. Therefore, he has no grievance for quashing the FIR against the present applicants.

11. It is to be noted that the entire transaction is running around the representation made to the informant and then his act on the basis of the said representation. It has been stated that various insurance companies had made representations to the

informant and the said representations were through accused nos.19 to 23, who are said to be the brokers. Now, as regards the allegations against the present applicants is concerned, it was stated that the premium was paid by the informant to the present applicant no.01. How far the Directors i.e. applicant nos.02 and 03 would be responsible vicariously for the alleged acts done by the brokers, is a question. But entire transaction is definitely in respect of money that has been involved. The parties i.e. present applicants and the non-applicant no.02 have settled their dispute. Further, it is also to be noted that the first criminal miscellaneous application, that was filed by the informant, was allowed to be withdrawn by the learned Judicial Magistrate (F.C.), Kannad, with liberty to file fresh proceedings and accordingly, fresh proceedings were filed. Thereafter they have been sent for investigation as per Section 156(3) of the Code of Criminal Procedure. That means, the matter is still at investigation stage.

12. Out of the offences those have been stated to be committed, Sections 409, 468, 471 and 120B of the IPC are not compoundable under Section 320 of the Code of Criminal Procedure. Other sections are compoundable either with or without the permission of the Court. Without going into the technicalities, whether those non-compoundable sections are made out from the contents of the complaint or not, when the complainant has received the amount which he had

spent and he is satisfied with that, we find this to be a fit case wherein we should invoke the inherent powers of this Court. No doubt, since the matter relates to the financial affairs, yet it is based on contract and when the informant is satisfied with the amount which was offered by the applicants to him and he has encashed that amount, the application deserves to be allowed.

13. It is to be noted that the matter related to contract. However, the informant had approached the criminal authorities. The applicants, though liable for the contract, have now come with application for quashing the FIR and consequential proceedings. Under such circumstance, we propose to impose condition of deposit of amount with the Legal Services Authority of this Court.

13. Hence, the following order :-

(a) The application is hereby allowed.

(b) The first information report bearing C.R. No. I-088/2016, registered with Kannad Police Station, District Aurangabad, and the proceedings in Criminal Misc. Application No. 324 of 2016 before Judicial Magistrate (F.C.), Kannad, to the extent of present applicants, are hereby quashed and set aside.

(c) This order is subject to the condition, that the applicants shall deposit amount of Rs. 10,000/-

[Rupees ten thousand] with the High Court Legal Services Sub-Committee at Aurangabad, within a period of four weeks from the date of this order.

(Smt. Vibha Kankanwadi)
JUDGE

(Prasanna B. Varale)
JUDGE

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