IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3625 OF 2009

1 Mr. Sukesh Sen,
Age 34 yrs., R/o Flat No.4,
Archana Apartment,
Samarth Nagar, Aurangabad.

2 Mr. Amol Nerkar,
Age 32 yrs.,
R/o C/o Ulhas Kulkarni,
Samarth Nagar, Behind Wadgaonkar
Hospital, Aurangabad.

3 Mr. Tehsin Sheikh,
Age 32 yrs.,
R/o Barshi Road, Latur,

… **Applicants**.

… **Versus** …

1 Smt. Neetadevi Bagdiya,
R/o Dr. Rajendra Prasad Marg,
Plot No.3152, Opp. Syndicate Bank,
Jalna.

2 The Senior Inspector of Police,
Kranti Chowk Police Station,
Aurangabad.

3 The State of Maharashtra.

… **Respondents**.

…

Mr. R.N. Dhorde and Mr. B.B. Yenge, Advocates for the applicants

Mr. Ajay Deshpande, Advocate for the respondent No.1

Mrs. V.S. Choudhary, APP for the respondent Nos.2 & 3/State

...

CORAM : T.V. NALAWADE &
SMT. VIBHA KANKANWADI,JJ.

Date of reserving
Judgment : 28th NOVEMBER, 2018

Date of pronouncing
Judgment : 23rd JANUARY, 2019.

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed by the original accused persons under Section 482 of the Code of Criminal Procedure to quash and set aside the First Information Report bearing Crime No.523/2009 registered with Kranti Chowk Police Station, Aurangabad and during the pendency of the application the prayer has been amended to quash the charge sheet itself which has been filed. The offences are stated to be punishable under Section 468, 471, 420 r.w. 34 of the Indian Penal Code.

2 The applicants are the employees of ICICI Prudential Life

Insurance Company Limited incorporated under the Companies Act, 1956. The company is a Joint Venture between ICICI Bank, one of India's Foremost Financial Company and Prudential PLC a leading International Financial Services group. Applicant Nos.1 to 3 are working at Aurangabad Branch of the company. Applicant No.1 is a Cluster Manager looking after the customer services. His operation area is Aurangabad, Latur and Jalgaon branches. Applicant No.2 is serving as a Customer Service Manager and looks after the customer service and operations for Aurangabad Adalat road Branch. Applicant No.3 is the Area Manager Sales and looking after the sales for Aurangabad Adalat road Branch along with Jalna and Paithan branches. Respondent No.1 is stated to be the erstwhile customer of the company, who had taken Life Insurance Policy in the year 2006. It is stated that it has been surrendered in the month of September, 2009. It is pleaded that one Mr. Amit Golecha had applied for a Life Insurance Policy by plan name “LIFE TIME” on 11.01.2006 for the sum proposed/death benefit of one crore. The premium was to be paid in quarterly installment by the respondent No.1. After due verification the proposal was accepted by the company by issuing policy No.02489413. The premium of Rs.10,00,000/- was duly paid in first year on quarterly basis. However, thereafter in the year 2007 only two installments were paid out of four. Thereafter, in 2008 no premium was paid at all. In 2009, total premium which was paid was to the tune of Rs.20,00,000/-. In all premium that was paid till 16.06.2009 was Rs.35,00,000/-. Respondent No.1 had applied for partial withdrawal amount of Rs.30,00,000/- from policy on 25.06.2009. It was allowed and it was paid through cheque dated 26.06.2009 drawn on ICICI Bank. It is stated that one Mr. Sagar Dhavale who was the employee of the company working as Associate at CIDCO Branch, Aurangabad tampered with the system of the company from 20.07.2009 and he transferred amount of Rs.74,000/- from the account of respondent No.1 to his account. This was done on three occasions i.e. 04.08.2009, 10.08.2009 and 17.08.2009. Such transfer was illegal and without any authority, exercising fraud on the company. He had misused the lacuna left in the system. The applicants have given details of the lacunas in the procedure, which were used by said Dhavale.

3 The respondent No.1 has alleged that when she inquired with the Call Centre of the Bank about surrendering her policy on 18.08.2009, she came to know that on three dates a sum of Rs.2,22,000/-

has been transferred. She had thereafter approached the Bank at Aurangabad. The company made detailed inquiry. Said Sagar Dhavale admitted his mischief and had given a confessional statement in writing. After giving show cause notice to him, Sagar Dhavale was terminated. The said amount which was misappropriated by him was recovered from him and was remitted to the account of respondent No.1. Thereafter, the respondent No.1 surrendered her policy on 08.09.2009 and consequently the remaining amount of Rs.2,92,596.14ps. was paid to her by cheque dated 05.10.2009 drawn on ICICI Bank. Despite the surrender of the policy, she filed complaint on 22.09.2009 alleging that the present applicants have committed offence punishable under Section 468, 471, 420 of IPC.

4 The applicants have contended that they have not committed any offence. All the material was, in fact, provided to the respondent No.2. She is harassing the applicants. There is no wrongful loss caused to her as she has received the entire amount after surrendering the policy. Though the fact is admitted that there was a mischievous transfer of amount of Rs.2,22,000/- from her account, it was by the employee of the company. The said amount has been recovered from his account and then

remitted to the account of respondent No.1. The respondent No.1 is suspecting that the present applicants have forged her signature and she has been cheated. Even from the face of the FIR, offence of cheating is not made. There was no dishonest intention on the part of the present applicants. The only role assigned to the applicants is that they were unable to reply the queries of respondent No.1. On these grounds they have prayed for quashment of the FIR as well as the charge sheet.

5 Heard learned senior counsel Mr. R.N. Dhorde and Mr. B.B. Yenge for the applicants, learned counsel Mr. A.S. Deshpande for the respondent No.1 and learned APP Mrs. V.S. Choudhary for the respondent Nos.2 and 3/State.

6 It will not be out of place to mention here that by order of this Court on 06.08.2018, the adjournment was granted on the request of learned APP to take instructions about the procedure used for operating and opening the accounts of the account holders in the said company. It was submitted by the applicants that the absconding accused Dhavale was having his unique key and he alone was using it. He used that single key and had opened the account of informant. He did the mischief. This fact was to be verified. Thereafter, time and again the Investigating

Officer was called upon to collect the independent information regarding the procedure. Thereafter, it was submitted that information has been received that software was used in the process of opening the account and the said software was supplied to the Bank by Tata Consultancy Services Ltd.. When notice was issued to the said company, the representative appeared and submitted a written submission. It was stated that though Tata Consultancy Services Ltd. had supplied the software, it is for the subsequent period. Prior to that the software developed by DXC Technology India Pvt. Ltd. was used. The Investigating Officer was asked to collect the necessary information from that company. Accordingly, a letter was given on 30.10.2018 to the Investigating Officer explaining the software which was used by ICICI Prudential Insurance Company during the period when the offence is stated to have taken place. Some questions were forwarded to the company and they have been answered. It was specifically stated to the question No.5 which was as follows :

> **Q.No.5** Was there a process for payment of insurance amount to the policy holder by which the said payment would be authorized by one or more authorizer ?

The answer was that, the configuration in the system related to payment transaction may have one or more authorization levels.

Question No.3 was also relevant. Question No.3 and its answer is also relevant, which is reproduced here :

Q.No.3 Is there any defined process in software for returning the withdrawal request asked by any customer of ICICI Pru. ?

Answer The system has capability to provide access to individuals to process any transaction basis the "Authority configuration management (ACM)" defined in the system. There is a set process by which the access is granted to individual business users.

Process :

i) Upon submission of request of Policy holder requesting partial withdrawal of (insurance) money from the insurance policy ("Insurance Policy"), the relevant officer of the insurance company ("Request Processor") will initiate the internal process for making payment against the said request.

ii) Once the part surrender transaction is processed by the Request Processor, authorized personnel of the insurance company ("Payment Processor") will be able to create the payment against the Policy Holder's request.

iii) Once the payment is created in the system by the Payment Processor, the “Payment Checker” will check the Payment processor's transaction and will process the payout.

7 It will not be out of place to mention here that the charge sheet is already filed and this procedure is coming on record in response to the questions asked. Under such circumstance, it is required to be seen as to whether a case is made out to quash the FIR together with entire charge sheet.

8 It has been submitted on behalf of the applicants that each employee of the company had unique password and only that person could have committed any crime or misdeed. The inquiry was held by the company, in which Mr. Sagar Dhavale admitted to be the person who misused the system and he has also given a confession to the defect. Present applicants had no access to his password and the amount which was misappropriated by him by withdrawing it from the account of the informant had gone to his account by using the system and not physically. That amount was recovered from him and after the informant conveyed

that she wants to withdraw all the amount of the policy, the said amount has been given to her with interest. Under such circumstance, as on date of the FIR there was no misappropriation or cheating. The applicants were having their own duties at the respective post and therefore there was no question of the day coming into contact with each other and also with main accused Dhavale to do any act. The applicants have produced on record so called confessional writing of Dhavale and also the document in respect of allowing the informant to withdraw entire amount of the policy.

9 As aforesaid, in fact, it was necessary for the Investigating Officer to consider as to what exactly was the mode adopted for withdrawal of the amount; how the transaction had taken place and whether any other person had any kind of access at the point of withdrawal. That may be relevant as part of the ingredients of the offences are concerned, however, it is also to be noted that as per the informant, when withdrawals were made, she was making inquiry with the present applicants, at that time they had not given proper answers nor they responded properly to their customer. What were the duties of the present applicants would be the matter of evidence, however, what

has come on record is that the software which was developed by DXC Technology India Pvt. Ltd. was not confined to access by one person only. Ultimate entries can be made by a person, however, prior to that when the withdrawal is proposed, then as per the letter of the said company it had put security measures and ultimately the administrative sanction was important. Now, it will have to come on record that the said withdrawals were without the administrative sanction. Under such circumstance, only on the basis of single key theory; it cannot be said that the applicants had no role to play at all. Further, when they are coming with a case that the fraud was committed by said Dhavale alone then they will have to prove the same, which can be done only at the time of the trial and therefore, no case is made out to quash the FIR. Though the informant is stated to have received the entire amount from the company, the offences as per the contents of the FIR were complete before the amount of withdrawal permitted by the company to the informant. Therefore, payment itself will not give advantage to applicants to say that as on the date of FIR there was no offence against anybody. Important point to be noted is that as regards said Dhavale is concerned, it appears that only administrative action is taken by the company and no criminal action has been initiated though, if all the contents of the application are taken to be true would require criminal action to be taken against him by the company itself. Under such circumstance, no case is made out to exercise discretion or inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 to quash the First Information Report. Hence, the application is hereby rejected.

(Smt. Vibha Kankanwadi)
JUDGE

(T.V. Nalawade)
JUDGE

agd