IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1555 OF 2016

Ravindra S/o Kanta Yadav,
Age- 55 years, Occu- Service,
R/o Room of Popat Dongare,
Sangram Chowk, Wadgaon Gupta,
M.I.D.C. Ahmednagar,
Tq. & Dist. Aahmednagar. … **PETITIONER**
(Orig. Complainant)

Versus

1. Shri. Dnyandeo S/o Bajirao Kale,
Age- 52 years, Occ. L.I.C. Agent,
R/o Sankalpa Society,
Shrikrishnanagar, Pipeline Road,
Ahmednagar, Tq. & Dist. Aahmednagar.

2. The State of Maharashtra … **RESPONDENTS**
(Resp. No. 1 is Orig. Accused)

...

Advocate for Petitioner : Mr. N.C. Garud
A.P.P. for Respondent -State: Mr. P.K. Lakohtiya
Advocate for Respondent no.1 : Mr. S.R. Andhale

...

CORAM : MANGESH S. PATIL, J.
RESERVED ON: 09.09.2019
PRONOUNCED ON: 17.10.2019

JUDGMENT :-

Heard. Rule. Rule is made returnable forthwith. Learned advocate Mr. Andhale for the Respondent no.1 waives service. Learned A.P.P. waives service for the Respondent no.2. At the request of both the sides the matter is heard finally at the stage of admission.

2. Petitioner is the original complainant who filed a private complaint against the Respondent no.1 alleging that they were acquainted with each other. The Respondent was working as an agent of Life Insurance Corporation. The Respondent no.1 induced him to invest his savings in L.I.C. policies. Under the promise of buying policies, in the month of November 2007 he paid to the Respondent no.1 a total amount of Rs.1,70,000/-. The Respondent obtained his signatures on blank forms and promised to invest the money. However the Respondent no.1 only invested Rs.70,000/- and misappropriated the rest of the amount of Rs.1,00,000/-. When he started insisting, the Respondent no.1 gave him two receipts in the month of January 2008. One for Rs.50,000/- and the other for Rs.20,000/-. He did not give any receipt in respect of the remainder amount of Rs.1,00,000/-.

3. The Petitioner then alleged that the Respondent no.1 again approached him under the pretext of further contribution of L.I.C. premium. He told the Petitioner about having got three policies and saying that annual premium for the three policies was Rs.25,000/-, Rs.12,500/- and Rs.5,000/- totaling Rs.42,500/- took a cheque from the Petitioner bearing no.172073 for an amount of Rs.85,000/- dated 10.03.2008. Even at the time when the

Petitioner insisted for the receipt in respect of Rs.1,00,000/- the Respondent no.1 bluffed him. Thus he alleged that under the pretext of buying policies and for payment of premium the Respondent no.1 induced him to part with an amount of Rs.1,70,000/- and later on an amount of Rs.85,000/- but the entire amount was not paid to the L.I.C. and thereby he has cheated the Petitioner.

4. Lastly, the petitioner alleged that when he made inquiry with the L.I.C. office on 30.11.2012 he was not given any satisfactory answer and therefore he filed a police complaint on 23.04.2013 but since no cognizance was taken he was filing the complaint.

5. The learned Magistrate recorded his statement under verification as contemplated under Section 200 of the Code of Criminal Procedure and by the order dated 23.08.2013 the learned Magistrate directed the process to be issued against the Respondent no.1 for the offence punishable under Section 420 of the Indian Penal Code.

6. The Respondent no.1 challenged the order of issuance of process by filing a revision under Section 397 of the Code of Criminal Procedure before the Sessions Court. By the impugned judgment and order, the learned Additional Sessions Judge allowed the revision and quashed and set aside the

order directing process to be issued against the Respondent no.1. Hence this Writ Petition.

7. The learned advocate for the Petitioner vehemently submitted that *prima facie* all the necessary ingredients for constituting the offence of cheating could easily be made out from the allegations in the complaint and the statement of the Petitioner under verification. It is after perusing the complaint and the statement and the papers filed with the complaint and by application of mind, the learned Magistrate had directed the process to be issued holding that there was sufficient reason to believe that the offence was committed. The order was neither perverse nor arbitrary in the absence of which the Sessions Court ought not to have intervened and reversed the order.

8. The learned advocate would further submit that the learned Additional Sessions Judge has exceeded his jurisdiction and entered into the area of scanning the evidence and has come to an independent conclusion, when the learned Additional Sessions Judge was not legally entitled to undertake such an exercise. Therefore the impugned order passed by the learned Additional Sessions Judge is grossly erroneous and has caused a serious prejudice to the Petitioner who has been deprived of substantiating his allegations.

9. The learned advocate for the Respondent no.1 referring to the information collected from the L.I.C. office placed on record before the revisional Court submitted that the complaint has been filed with some misunderstanding. The L.I.C. in its communication dated 27.12.2012 has specifically pointed out that the amounts of Rs.50,000/- and Rs.20,000/- were paid as first premium for the two policies on 14.11.2007 and the remainder amount of Rs.1,00,000/- was paid as a premium for the third policy on 29.03.2008. Thus the entire amount of Rs.1,70,000/- received by the Respondent no.1 was duly invested in the L.I.C. There was no element of deception much less at the inception. The learned Additional Sessions Judge has clearly pointed out as to how the entire amount of Rs.1,70,000/- has been duly accounted for and stands invested and there was no reason for the learned Magistrate to take cognizance of the complaint and issue the process.

10. I have carefully gone through the papers. It is trite that at the stage of directing a process to be issued on a private complaint, Section 204 of the Code of Criminal Procedure only requires the Magistrate to form an opinion that there is sufficient ground to proceed. At that stage it is not expected of the Magistrate to indulge in and undertake a wholesome exercise of scanning and sifting the material. At that stage the Magistrate is only to be cautious that the process is not being issued which would work as an

instrument of oppression. It is also not expected at that stage that the Magistrate should pass some elaborate order assigning full proof reasons. The law only requires him to apply his mind and to form an opinion regarding existence of sufficient ground. It is not expected of a complainant to lead the entire evidence and the Magistrate is also not excepted to seek evidence to an extent to unable him to form an opinion that the allegations would ultimately result in conviction.

11. Bearing in mind these principles if one examines the matter in hand, the Petitioner had specifically alleged about having parted with an amount of Rs.1,70,000/- in the beginning and another amount of Rs.85,000/- for buying insurance policies and payment of premia. Therefore it was for him to come clean and demonstrate about having deposited the entire money in the name of the Petitioner. It is specifically alleged by the petitioner that the Respondent no.1 failed to account for an amount of Rs.1,00,000/- out of the first payment. As regards the second payment it is alleged that the Respondent no.1 also failed to account for the entire amount of Rs.85,000/-. Even if one accepts the communication which the Respondent no.1 had received from the Life Insurance Corporation of India and which he had produced before the Sessions Court, dated 27.12.2012 (Exhibit-B), the communication only reads about the L.I.C. having received a total sum of

Rs.1,25,000/- as premiums for three different policies. It does not show that the entire amount of Rs.1,70,000/- plus Rs.85,000/- i.e. Rs.2,55,000/- was deposited with the L.I.C. Therefore even if this document which is produced by the Respondent no.1 before the Sessions Court is accepted at its face value and which has also been relied upon by the learned Additional Sessions Judge, it does not account for the entire sum paid by the Petitioner to the Respondent no.1.

12. The learned Additional Sessions Judge without even examining as to if this document can be said to be a document of impeccable character and can be relied upon and gone into has only dealt with it in perfunctory manner. As is pointed out herein-above, accepting this letter as it is, still, it only accounts for an amount of Rs.1,25,000/- against a total amount of Rs. 2,55,000/- received by the Respondent no.1 from the Petitioner. If that be so, one cannot comprehend as to how the learned Additional Sessions Judge could have, based on this communication alone, drawn a conclusion that there was no intention to deceive at the inception.

13. In my considered opinion, in fact, the learned Additional Sessions Judge has clearly exceeded the jurisdiction and has indulged in the task of scanning evidence while exercising the powers of revision under Section 397

of the Code of Criminal Procedure which, it is trite, can only be invoked if the orders passed by the Magistrate are perverse, arbitrary or capricious. When on his own showing, the learned Additional Sessions Judge could only find that an amount of Rs.1,25,000/- was deposited, this amounts to replacing his own opinion in the place of the one arrived at by the learned Magistrate in the order directing process to be issued.

14. The learned Additional Sessions Judge in spite of having noted about the Respondent no.1 having later on taken a cheque for Rs.85,000/- has not insisted and has not indulged into any scanning of the material to ascertain if and how this amount has been utilized by the Respondent no.1.

15. *Prima facie*, the allegations in the complaint clearly demonstrate that the Respondent had obtained a total amount of Rs.2,55,000/- from the Petitioner and under the pretext of depositing that money in the L.I.C. has not been able to account for it in its entirety. This much of material at the stage of issuance of process was indeed sufficient for the Magistrate to form an opinion about this being case of cheating. At that stage this much of material was sufficient and by no stretch of imagination could it be said that the order directing process to be issued was either perverse, arbitrary or capricious which was liable to be interfered with in exercise of the limited power conferred upon the learned Additional Sessions Judge under Section 397 of

the Code of Criminal Procedure. The impugned order passed by the learned Additional Sessions Judge is clearly perverse, arbitrary and capricious and is liable to be interfered with by invoking the powers of this Court under Article 227 of the Constitution of India.

16. The Writ Petition is allowed. The impugned order passed by the learned Additional Sessions Judge is quashed and set aside and the one passed by the learned Magistrate directing the process to be issued against the Respondent no.1 for the offence punishable under Section 420 of the Indian Penal Code is restored. The Rule is accordingly made absolute.

[MANGESH S. PATIL, J.]

KAKADE